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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

US EPA - REGION IX
HEARING CLERK

IN THE MATTER OF)	U.S. EPA Docket No.
)	RCRA-9-2014-00 <u>8</u>
TEMARRY RECYCLING INC.)	
)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
)	
RESPONDENT)	
_____)	

CONSENT AGREEMENT

A. INTRODUCTION

1. This is a civil administrative enforcement action initiated pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Temarry Recycling, Inc. ("Temarry" or "Respondent").
2. Respondent is an exporter of hazardous waste, operating in California.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent exported waste to Mexico that had not been identified on Respondent's Notification of Intent to Export, or on the Acknowledgment of Consent issued by the United States, as required by 40 C.F.R. § 262.52. This is in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq.

B. JURISDICTION

4. Respondent is a "person" as defined in 40 C.F.R. § 260.10.

5. Respondent is a “primary exporter” of hazardous waste as defined in 40 C.F.R. § 262.51.
6. As required by 40 C.F.R. § 262.53¹, Respondent completed its Notification of Intent (“NOI”) to export for 2013, and received an Acknowledgment of Consent (“AOC”) from EPA, to export certain hazardous wastes. The NOI and AOC allowed Temarry to export “solids (rags, towels, wood and other industrial debris) contaminated with flammable organic solvents, non-halogenated, oils and grease,” EPA Waste Codes D001, D007, D008, D018, D035, F003, and F005.
7. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty for any past or current violation, or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
8. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the signatory below.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Meet Requirements for Export of Hazardous Waste

9. Paragraphs 1 through 8 above are incorporated herein by this reference as if they were set forth here in their entirety.
10. 40 C.F.R. § 262.52 states that exports of hazardous waste are prohibited unless, among other things, notification in accordance with 40 C.F.R. § 262.53 has been given, and the receiving country has consented to accept the hazardous waste.
11. In November 2012, Temarry provided notification of intent to export pursuant to 40 C.F.R. § 262.53. That notification of intent listed specific wastes to be exported.
12. On January 9, 2013, EPA provided Temarry with an Acknowledgment of Consent of the receiving country. The Acknowledgment of Consent listed the same waste codes as the notification of intent to export.
13. In 2014, EPA determined that Temarry had exported hazardous wastes that were not listed on its notification of intent to export or the EPA’s acknowledgement of consent.

¹ Because of the Federal government’s special role in matters of foreign policy, EPA does not authorize states to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. These provisions are not part of California’s authorized program.

14. Therefore EPA alleges that Respondent exported hazardous waste without meeting the requirements of 40 C.F.R. § 262.52.

D. CIVIL PENALTY

15. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy (“Penalty Policy”), including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWELVE THOUSAND FOUR HUNDRED DOLLARS (\$12,400.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

E. ADMISSIONS AND WAIVERS OF RIGHTS

16. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
17. Respondent neither admits nor denies any allegations of fact set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

18. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of Respondent's Federal civil penalty liability for the violations and facts alleged herein.
19. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
20. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

21. Respondent consents to the assessment of and agrees to pay a civil penalty of TWELVE THOUSAND FOUR HUNDRED DOLLARS (\$12,400.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
22. Respondent shall submit payment of the TWELVE THOUSAND FOUR HUNDRED DOLLARS (\$12,400.00) within thirty (30) calendar days of the Effective Date of this CA/FO in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sf01.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

At the time payment is made, a copy of the payment transmittal shall be sent to:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Jennifer MacArthur (ENF 2-2)
Enforcement Division

Waste and Chemical Section
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

23. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

24. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.

25. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
26. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 22.
27. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
28. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
29. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. CERTIFICATION OF COMPLIANCE

30. By Signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with the hazardous waste export requirements at 40 C.F.R. §§ 262.50 – 262.53, that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

J. RESERVATION OF RIGHTS

31. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
32. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
33. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
34. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

K. OTHER CLAIMS

35. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, 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 the Facility.

L. MISCELLANEOUS

36. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
37. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
38. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

8/25/14

Date

9/16/14

Date



Name, Title: Matt Sanger, President
Temarry Recycling



Douglas K. McDaniel, Chief
Waste and Chemical Section
Enforcement Division
U.S. Environmental Protection Agency, Region 9

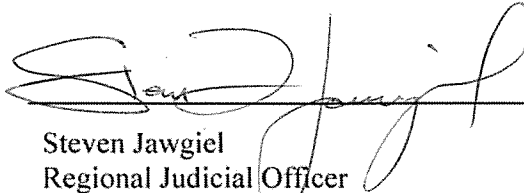
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Section 22.18 (U.S. EPA Docket No. RCRA-9-2014-0008) be entered and that Temarry Recycling pay a civil penalty of TWELVE THOUSAND FOUR DOLLARS (\$12,400.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/22/14

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Temarry Recycling, Inc. (Docket #: RCRA-09-2014-00 08)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

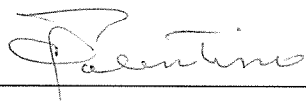
A copy was mailed via CERTIFIED MAIL to:

Matt Songer, President
Temarry Recycling, Inc.
476 Tecate Road, P.O. Box 100
Tecate, CA 91980

CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 5096

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugerman, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



FOR: Regional Hearing Clerk
U.S. EPA, Region IX

9/24/14

Date