

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Patrick J. Kelly Drums, Inc.,

Respondent.

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended

CONSENT AGREEMENT AND FINAL ORDER

Docket No. RCRA-02-2025-7104

PRELIMINARY STATEMENT

This is a civil administrative enforcement proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq. (referred to collectively as the “Act” or “RCRA”).

The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New Jersey has been authorized by EPA to conduct a hazardous waste program.

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

EPA has given notice of this action to the State of New Jersey.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Patrick J. Kelly Drums, Inc. (“PKD” or “Respondent”), a for-profit corporation organized pursuant to the laws of the State of Pennsylvania.
2. Respondent is a “person” as that term is defined in Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

3. Respondent has been the owner and/or operator of a facility located at 2109 Howell Street, Camden, New Jersey ("the Facility"), as those terms are defined in 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Administrative Code (NJAC) 7:26G-4.1(a).
4. At the Facility, Respondent reconditions and remanufactures metal drums and sells for steel recycling those unsuitable for reuse. At the Facility, Respondent, at times, also reconditions and remanufactures plastic drums/ totes, and for those unsuitable for reuse as totes, shreds them as high-density polyethylene, which is sold for reuse.
5. Respondent, in carrying out its activities and in the course of conducting its normal commercial operations, has been generating, and continues to generate at the Facility, "solid waste," as defined in 40 C.F.R. § 261.2 as incorporated by reference in NJAC 7:26G-5.1(a).
6. Respondent, in carrying out its activities and in the course of its normal commercial operations, has been generating, and continues to generate at the Facility, "hazardous waste," as defined in 40 C.F.R. § 261.3 as incorporated by reference in NJAC 7:26G-5.1(a).
7. Respondent has been generating one thousand (1,000) kilograms or more of non-acute hazardous waste in a calendar month and as a result is considered to be a large quantity generator of hazardous waste.
8. On or about July 18, 2023, duly designated representatives of EPA conducted an inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations (the "Inspection").
9. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927-6928, on or about February 16, 2024, EPA sent Respondent a combined Notice of Violation and Request for Information ("NOV-IRL") regarding hazardous waste activities at the Facility. EPA received responses on or about March 3, 2024, and March 25, 2024.
10. Based on the EPA's inspection and Respondent's responses to EPA's IRLs, EPA determined that Respondent failed to comply with the following hazardous waste requirements at the varying time periods specified below:
 - a. On or about June 13, 2023, Respondent sent eighty-eight (88) fifty-five (55) gallon drums identified as "waste flammable liquids" off-site as an ignitable hazardous waste (D001) to Lone Star Industries, Inc. ("LSI") (MOD981127319). LSI analyzed the wastes in the drums and, having found that the material in 2 drums contained mercury, rejected and returned the two drums to Respondent. Subsequent analysis by Respondent found that the contents of 1 of the 2 drums exceeded RCRA toxicity thresholds for mercury in 40 C.F.R. § 261.24 and, as such,

should have included a D009 characteristic hazardous waste code in addition to designation as D001 for ignitability, while the contents of the other drums were below the threshold and regulated only as a D001 ignitable waste. The drum of D001/D009 hazardous waste was shipped to Clean Harbors El Dorado (ARD069748192) on October 30, 2023, and the other drum (D001-only) was re-sent to LSI on September 18, 2023. Respondent's failure to determine if each solid waste it generated constituted a hazardous waste for any characteristics beyond ignitability is a violation of 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G- 6.1(a).

- b. At the time of the July 2023 inspection, Respondent stored ninety-four (94) fifty-five (55) gallon drums of hazardous waste in 2 rows of wooden pallets in the Central Accumulation Area (CAA) without adequate access between the rows to allow for unobstructed movement of facility personnel, inspectors, or emergency responders. Respondent's storage of hazardous waste without maintaining sufficient aisle space is a violation of 40 C.F.R. § 264.35, as incorporated by reference by NJAC 7:26G-9.1(a).

11. EPA issued a Notice of Opportunity for Pre-Filing Discussion with Respect to Prospective Enforcement Action under RCRA to Respondent on June 22, 2024, and met virtually with Respondent on August 13, 2024. Respondent submitted an August 30, 2024, response which avers that the allegations represent isolated incidents within PKD's overall compliance with RCRA.

12. The parties have engaged in settlement discussions in good-faith and have now agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this

Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and waives its right to contest or appeal that Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the EPA, Region 2 Regional Hearing Clerk (such date henceforth referred to as the "effective date").

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with RCRA and all applicable federally- authorized New Jersey hazardous waste regulations relating to the generation, storage, and management of hazardous waste at the Facility, including the New Jersey Administrative Code (NJAC) regulations that provide for and incorporate by reference the following federal rules, which require Respondent to:
 - a. Make appropriate hazardous waste determinations before shipment of any applicable waste to a permitted hazardous waste TSD facility (if required as a result of the hazardous waste determination), pursuant to 40 C.F.R. § 262.11 as incorporated by reference in NJAC 7:26G-6.1(a).
 - b. Maintain sufficient aisle space for hazardous waste containers pursuant to 40 C.F.R. § 264.35 as incorporated by reference by NJAC 7:26G-9.1(a).
2. Respondent hereby certifies that, as of the date of its signature of this Consent Agreement and to the best of its knowledge and belief, it is in compliance at the Facility with applicable RCRA requirements, especially but not limited to the requirements referenced in EPA's Findings of Facts and Conclusions of Law of this CA/FO and set out in the prior paragraph.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by Respondent.
4. Respondent agrees to pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").
5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
6. When making a payment, Respondent shall:
 - a. Identify the payment with Respondent's name and the docket number of this Consent Agreement, RCRA-02-2025-7104
 - b. Concurrently with any payment or within twenty-four (24) hours of any payment, Respondent shall serve proof of such payment by email to the following persons:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
via electronic mail to: CINWD_AcctsReceivable@epa.gov

Derval Thomas, Section Leader
Enforcement and Compliance Assurance Division
Thomas.Derval@epa.gov

and

Karen L. Taylor, Assistant Regional Counsel
Office of Regional Counsel
Taylor.Karen@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

7. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
 - a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS large corporate underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, EPA will assess a

charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
9. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into

compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at:
<https://www.irs.gov/pub/irs-pdf/fw9.pdf>
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Wise.Milton@epa.gov, within thirty (30) days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within thirty (30) days from the date on which the Regional Administrator signs the Final Order located at the end of this CAFO; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five days of Respondent's receipt of the TIN.
11. Complainant shall email the Respondent representative designated in Paragraph 13 of this Consent Agreement below a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO by email and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.
12. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted by Respondent to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by email to:

Derval Thomas, Section Leader
Enforcement and Compliance Assurance Division
Thomas.Derval@epa.gov

and

Karen L. Taylor, Assistant Regional Counsel
Office of Regional Counsel
Taylor.Karen@epa.gov

13. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted by Respondent to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by email to:

Ed Bash
Compliance Manager
Patrick K. Kelly Drums, Inc.
1810 River Avenue
Camden, NJ 08105
Ed.Bash@kellydrums.com

with a copy to:

Mara Cohen Jackel, Esq.
Gordon Rees Scully Mansukhani
Three Logan Square
1717 Arch Street, Suite 610
Philadelphia, PA 19103
MJackel@grsm.com


14. Full payment of the penalty described in Paragraph 4 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in Paragraph 10 in EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
15. The provisions of this Consent Agreement shall be binding upon Respondent, and its successors or assigns.
16. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.
17. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

18. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
19. Each party hereto agrees to bear its own costs and attorney's fees in this matter.
20. The undersigned signatory for Respondent certifies that they are duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
21. EPA and Respondent agree that the parties may use electronic signatures for this matter.

In the Matter of Patrick J. Kelly Drums, Inc., Docket No.: RCRA 02-2025-7104

RESPONDENT:

BY
(Signature)



NAME: Patrick J. Kelly

TITLE: President

COMPLAINANT:

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

In the Matter of Patrick J. Kelly Drums, Inc., Docket No.: RCRA 02-2025-7104

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Patrick J. Kelly Drums, Inc., Docket Number RCRA-02-2025-7104. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order, which represents a consent order memorializing a settlement between EPA and the Respondent. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a)

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

In the Matter of Patrick J. Kelly Drums, Inc., Docket No.: RCRA 02-2025-7104

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Copy by EMAIL:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by EMAIL:

Mara Cohen Jackel
Senior Counsel
Gordon Rees Scully Mansukhani
Attorney for Respondent
Three Logan Square, 1717 Arch Street, Suite 610
Philadelphia, PA 19103
MJackel@grsm.com

Signature:

Date: