



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Copy by Email

APR 26 2019

Mr. Josh Stahl
President
Reviva Corporation
5130 Main Street Northeast
Minneapolis, Minnesota 55421
jstahl@reviva.com

REPLY TO THE ATTENTION OF:

Re: Consent Agreement and Final Order
Reviva Corporation, MND006256861
Docket No: **RCRA-05-2019-0010**

Dear Mr. Stahl:

Attached please find a signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on April 26, 2019, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$7,463.00 in the manner prescribed in paragraph 46 of the CAFO and reference all checks with the docket number **RCRA-05-2019-0010** our payment is due on within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions regarding this letter, please contact me at (312) 886-8121 or ireland.scott@epa.gov, or Mr. Dan Chachakis, of my staff, at (312) 886-9871 or chachakis.daniel@epa.gov.

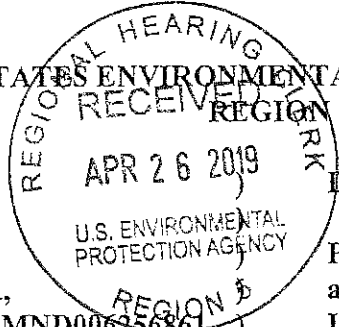
Sincerely,

D. Scott Ireland
Acting Chief, RCRA Branch
Land and Chemicals Division

Attachment

cc: Mr. John Elling, MPCA, john.elling@state.mn.us w/CAFO
Ms. Laura Schmidt, Anoka County, laura.schmidt@co.anoka.mn.us w/CAFO
Mr. Mike Schweitzer, Reviva, mschweitzer@reviva.com w/CAFO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of:

Reviva Corporation,
Minneapolis, Minnesota,
RCRA Facility I.D. No. MND006256361)

Respondent.)

Docket No. RCRA-05-2019-0010

Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and 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) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. U.S. EPA provided notice of commencement of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Reviva Corporation, a corporation doing business in the State of Minnesota.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective February 11, 1985. 50 Fed. Reg. 3756 (January 28, 1985).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$97,229.00 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, where penalties are assessed after January 15, 2018, see 83 Fed. Reg. 1193 (January 10, 2018), and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations

16. On or about April 19, 2017, Respondent was a "person" as defined by Minn. R. 7045.0020, Subpart 66, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent was the "owner" or "operator," as those terms are defined under Minn. R. 7045.0020, Subparts 64 and 62, and 40 C.F.R. § 260.10, of a facility located at 5130 Main Street, N.E., Minneapolis, Minnesota.

18. On April 19, 2017, U.S. EPA conducted an inspection of the facility.

19. The facility consisted of land and structures, other appurtenances, and improvements on the land used to treat, store, or dispose of hazardous waste.

20. Respondent remanufactured diesel engines and components for regional and

national fleets.

21. At all times relevant to this CAFO, Respondent generated solid wastes.

22. Respondent's processes at the facility generated several hazardous wastes which included wash tank sodium hydroxide evaporator sludge, intake sludge, mart sludge, and spent solvent identified or listed in Minn. R. 7045.0131 - 7045.0135.

23. Respondent was a "generator," as that term is defined in Minn. R. 7045.002, Subpart 31.

24. Respondent generated more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2016 and 2017, prior to the inspection, and was a large quantity generator.

25. Respondent was subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Minnesota regulations as part of the applicable state hazardous waste management program for the state of Minnesota, or both.

26. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at Minn. R. 7001.0520, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

27. Pursuant to Minn. R. 7045.0292, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions of Minn. R. 7045.0292.

28. At all times relevant to this CAFO Respondent stored the hazardous waste generated at the facility in drums and in a tank prior to shipment off-site for disposal.

29. Respondent failed to comply with the conditions of Minn. R. 7045.0292 necessary

to exempt it from the requirement to obtain interim status or a permit for the storage of hazardous waste.

30. Respondent failed to apply for an operating permit to treat, store, or dispose of hazardous waste pursuant to Minn. R. 7001.0050 to 7001.0070.

31. The State of Minnesota has not issued to Respondent a permit to treat, store, or dispose of hazardous waste at the facility.

32. Respondent did not have interim status to treat, store, or dispose of hazardous waste at the facility.

33. Therefore, Respondent stored hazardous waste at its facility without a permit or interim status, in violation of 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at Minn. R. 7001.0520.

Count I

34. Complainant incorporates into Count I the paragraphs above as though set forth in Count I.

35. On April 19, 2017, Respondent failed to label three totes of hazardous waste corrosive sludge in the satellite accumulation area with the words "Hazardous Waste" or other content-identifying words in noncompliance with Minn. R. 0745.0292, Subpart 1.

36. On April 19, 2017, Respondent failed to keep closed during storage seven 55-gallon drums and one tote of hazardous waste corrosive sludge, and waste was not being added or removed at the time, in noncompliance with Minn. R. 0745.0292, Subpart 1.B and 7045.0626, Subpart 4.

37. On April 19, 2017, Respondent failed to maintain a written hazardous waste storage tank assessment for two of its corrosive sludge hazardous waste storage tanks, in noncompliance

with Minn. R. 0745.0292, Subpart 1.C and 7045.0628, Subpart 2.

38. On April 19, 2017, Respondent failed to mark one 55-gallon drum of hazardous waste corrosive sludge in the less than 90-day hazardous waste storage area with the date the accumulation began, in noncompliance with Minn. R. 0745.0292, Subpart 2.

39. On April 19, 2017, Respondent failed to mark three totes of hazardous waste corrosive sludge in or near the less than 90-day hazardous waste storage area with the date the accumulation began, in noncompliance with Minn. R. 0745.0292, Subpart 2.

Count II

40. On April 19, 2017, Respondent failed to have, and was unable to provide in response to a request, a written description for each position related to hazardous waste management at the facility. Job titles and job descriptions did not match the actual duties and responsibilities of facility personnel. Respondent did not have, and was unable to provide in response to a request, records that documented that the training or job experience described above was in fact provided to, and completed by, nine facility personnel. Respondent, therefore, was in noncompliance with Minn. R. 7045.0292, Subpart 1.G., and 7045.0558.

41. On April 19, 2017, Respondent's list of emergency equipment failed to include a description of the capabilities of its emergency equipment, in noncompliance with Minn. R. 7045.0292, Subpart 1.G., and 7045.0572, Subpart 4.E.

Count III

42. On April 19, 2017, Respondent failed to mark or label one container (a tray) holding used oil with the words "Used Oil," and failed to mark another container of used oil with the words "Used Oil," but rather "Waste Oil," in noncompliance with Minn. R. 7045.0855, Subpart 2.C.

43. On April 17, 2017, Respondent failed to close one container of used waste lamps, and there was no one present adding or removing the waste lamps, in noncompliance with Minn. R. 7045.1400.

44. On April 17, 2017, Respondent stored two separate containers of universal waste bulbs for more than one year (675 and 519 days respectively), in noncompliance with Minn. R. 7045.1400.

Civil Penalty

45. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$7,463.00. In determining the penalty amount, Complainant considered the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,463.00 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state "Reviva Corporation," and the Docket Number of this CAFO.

47. A transmittal letter stating "Reviva Corporation," and the Docket Number of this CAFO must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk.(E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590;

Dan Chachakis (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590; and,

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

51. Respondent must expend at least \$100,000.00 within 270 days of the effective date of this CAFO to purchase, install, and begin to operate at its facility, as a Supplemental Environmental Project (SEP), a Wastewater Treatment System to treat its 5000 gallons per month of hazardous wastewater, to reduce it to non-hazardous wastewater, which it will send to its local Publicly-Owned Treatment Works (POTW) pursuant to a Clean Water Act Section 402 National Pollution Discharge Emission System Permit, 33 U.S.C. § 1342. Respondent must expend \$435,000.00 to operate its SEP Wastewater Treatment System for 5 years from the date it begins full operation.

52. Respondent must operate the equipment for the SEP for at least five years from the effective date of this CAFO.

53. Respondent must not use any treatment chemical for its SEP that is more toxic or hazardous than the chemicals in its hazardous wastewater.

54. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

55. U.S. EPA may inspect Respondent's facility at any time to monitor its compliance with this CAFO's SEP requirements.

56. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

57. Respondent must submit to U.S. EPA no later than thirty days after the Wastewater Treatment System is placed into operation a SEP Wastewater Treatment System Completion Report which includes the following information:

- a. A detailed description of the Wastewater Treatment System as completed and operated;
- b. A description of any operating problems and the actions taken to correct the problems;
- c. The itemized costs of goods and services used to complete, operate, and repair the Wastewater Treatment System, as documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. A description of any sludge generated by the Wastewater Treatment System, a statement of whether the sludge is a hazardous waste, and Respondent's sludge disposal methods;
- e. A copy of the Wastewater Treatment System NPDES Permit;
- f. A certification that it completed and is operating its Wastewater Treatment System in compliance with this CAFO; and,
- g. A description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

58. Respondent must submit to U.S. EPA no later than the one-year anniversary date of its SEP completion date, SEP Annual Reports for SEP years 1, 2, 3, 4, and 5, to include the information required by CAFO Paragraphs 57(b) - (g), for the past year.

59. Respondent must submit all notices and reports required by this CAFO by first class or overnight mail to:

Michael Cunningham (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590; and,

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

60. Respondent's Notices and Reports must certify that they are true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

61. Following receipt of Respondent's Final SEP Annual Report U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP Report;
- b. There are deficiencies in the SEP as completed or in the SEP Report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or,
- c. Respondent failed to complete the SEP or the SEP Report satisfactorily, and U.S. EPA will seek stipulated penalties under paragraph.

62. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated

penalties to the United States pursuant to the paragraph below.

63. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$22,390.00.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the \$535,000, Respondent will not be liable for a stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but expended less than 90 percent of the \$535,000, Respondent must pay a penalty of \$2,500.00.
- d. If Respondent did not timely submit the SEP Completion Report, or did not timely submit any other Report required by this CAFO, Respondent must pay penalties in the following amounts for each day after each Report was due and until it submits the Report:

<u>Days of Violation</u>	<u>Penalty Per Day of Violation</u>
1 – 14	\$100.00
15 – 30	\$150.00
30 and Beyond	\$200.00

64. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

65. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

66. Any public statement that Respondent makes referring to the SEP must include the following language, "Reviva Corp. undertook this SEP as part of a settlement of the United

States Environmental Protection Agency's enforcement action against Reviva, Corp. for violations of the Resource Conservation and Recovery Act.”

67. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

68. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

69. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: trevino.jeffery@epa.gov for Complainant and jstahl@reviva.com for Respondent. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

70. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

71. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

72. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

73. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

74. The terms of this CAFO bind Respondent, its successors, and assigns.

75. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

76. Each party agrees to bear its own costs and attorney's fees in this action.

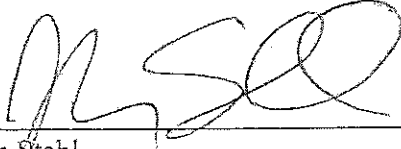
77. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Reviva Corporation, Minneapolis, Minnesota
Docket No. RCRA-05-2019-0010

Reviva Corporation, Respondent.

4/25/2019

Date

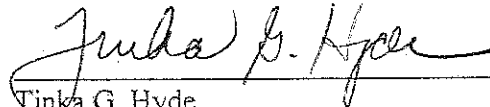


Josh Stahl
President

Region 5, United States Environmental Protection Agency, Complainant.

4/25/19

Date



Tinka G. Hyde
Director
Land and Chemicals Division

In the Matter of: Reviva Corporation, Minneapolis, Minnesota
Docket No. RCRA-05-2019-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/26/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Certificate of Service

I certify that today I filed with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (Mail Code (C-19J)), Chicago, Illinois, 60604-3590, the original of this Consent Agreement and Final Order and served the following parties in the following manners at the following addresses a true and correct copy.

Josh Stahl, President
Reviva Corporation

Copy by Electronic Mail to
jstahl@reviva.com

Jeffery M. Trevino
Counsel to Complainant

Copy by Electronic Mail to
trevino.jeffery@epa.gov

Ann Coyle
Regional Judicial Officer

Copy by Electronic Mail to
coyle.ann@epa.gov

Daniel Chachakis
Enforcement Officer

Copy by Electronic Mail to
chachakis.daniel@epa.gov

April 26, 2019
Date



LaDawn Whitehead
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-19J)
Chicago, Illinois 60604-3590