

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX



IN THE MATTER OF: )  
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Kern Steel Fabrication, Inc. )  
EPA ID No. CAR000233247 )  
Respondent. )  
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U. S. EPA Docket No.  
RCRA--09-2022-0035  
EXPEDITED SETTLEMENT  
AGREEMENT AND  
FINAL ORDER

**EXPEDITED SETTLEMENT AGREEMENT**

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”) and 40 C.F.R. § 22.13(b). By copy of this letter, the EPA is providing the State of California with notice of the referenced violations of Subtitle C of RCRA as required by Section 3008(a)(2).
  
2. Kern Steel Fabrication, Inc. (“Respondent”) is the owner or operator of the facility at 627 William Street, Bakersfield, California (“Facility”). EPA inspected the Facility on July 28, 2021. EPA alleges that Respondent violated the following requirements of RCRA, and of the EPA approved and authorized California hazardous waste management program:<sup>1</sup>
  - a. Respondent stored hazardous without a permit in violation of 22 CCR 22 CCR §§ 66262.34(a); 662270.1(c). Storage without a permit because of failures to meet the conditions for an exemption from the permit requirements for generators including failing to adequately label containers as required by 22 CCR §§ 66262.34(a)(3); 66262.34(f) [40 CFR § 262.17(a)(5)] for Central Accumulation Areas (“CAAs”) and 22 CCR §§ 66262.34(e)(1)(C); 66262.34(e)(1)(E); 66262.34(f)(3) [40 CFR § 262.15(a)(5)] for Satellite Accumulation Areas (“SAAs”). There were at least two containers of RCRA hazardous waste located within the CAA that were not labeled properly. One five-gallon container with flammable liquid, D001 waste, located within the CAA was not labeled and a second 55-gallon metal container of D001, D035, F003 waste was missing the accumulation start date. There were two satellite accumulation containers observed at the Facility that were not properly labeled. One 55-gallon metal container of D007 and D008 waste containers did not have the accumulation start date marked on the label. The second 5-gallon container was marked "old gas," and not marked or labeled, as required (e.g., hazardous waste, start date of accumulation).

<sup>1</sup> All citations in this report refer to the California Code of Regulations (CCR) refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (see 57 Fed. Reg. 32726, July 23, 1992), September 26, 2001 (66 Fed. Reg. 49118, September 26, 2001), October 7, 2011 (see 76 Fed. Reg. 62303, October 7, 2011), January 14, 2020 (see 85 Fed. Reg. 2038, January 14, 2020) and June 1, 2021 (see 86 Fed. Reg. 29207). Corresponding federal citations are provided as a convenience in brackets.

- b. Respondent has not made accurate hazardous waste determinations in violation of 22 CCR § 66262.11 [40 CFR § 262.11]. Specifically, in a cargo container, abandoned, discarded, or expired shelf-life coatings containers were observed by EPA during the CEI.
  - c. Respondent has failed to keep hazardous waste accumulation or satellite accumulation containers closed in violation of 22 CCR §§ 66262.34(a)(1)(A); 66262.34(e)(1)(D); 66265.173(a); 66279.21(a) [40 CFR §§ 262.15(a)(4); 262.17(a)(1)(iv)]. In the outside coatings area, two open 55-gallon containers of D001, D035, F003 wastes were observed. Additionally, outside the main sandblast area, an open container of D007, D008 hazardous waste was observed. No Respondent personnel were observed adding or removing hazardous wastes from the open containers.
  - d. Respondent was accumulating hazardous waste in a satellite accumulation container that was not in good condition in violation of 22 CCR §§ 66262.34(e)(1)(D); 66265.171 [40 CFR § 262.15(a)(1)]. A severely damaged satellite accumulation container was observed in the outside main sandblast area by EPA during the July 28, 2021 compliance evaluation inspection.
  - e. Respondent has failed to maintain and operate the facility to minimize the possibility of a hazardous waste release impacting human health or the environment in violation of 22 CCR §§ 66262.34(a)(4); 66265.31 [40 CFR § 262.251]. In the outside coatings area underneath an acetone container that was placed on a stand was a pan used to collect U002 wastes. EPA observed that the U002 waste collected in the pan was allowed to evaporate (i.e., not collected for proper disposal). In the same area, two 55-gallon containers of D001, D035, F003 paint wastes were observed on top of two secondary containment pallets. EPA observed that the secondary containment pallets contained debris and D001, D035, F003 wastes. The wastes were not being collected when generated and placed in a proper hazardous waste accumulation container (i.e., allowed to evaporate and accumulate).
  - f. Respondent failed to perform adequate weekly inspections in violation of 22 CCR §§ 66262.34(a)(1); 66265.174 [40 CFR § 262.17(a)(1)(v)]. At the time of the CEI, Respondent was not documenting its weekly inspections. Based on the violations listed above, Respondent's personnel were not performing weekly inspections, as required.
  - g. Respondent failed to locate emergency response equipment in or near the central accumulation in violation of 22 CCR §§ 66262.34(a)(4); 66265.32 [40 CFR § 262.252]. EPA did not observe an eye wash station, fire extinguisher(s) nor spill response equipment (e.g., non-sparking shovel, overpack container, absorbent pads) in or near the CAA.
  - h. Respondent failed to develop an effective hazardous waste management training program in violation of 22 CCR §§ 66262.34(a)(4); 66265.16(a) [40 CFR § 262.17(a)(7)]. Based on violations identified above, Respondent's hazardous waste management training program is not effective.
3. EPA and Respondent agree that settlement of this matter for a penalty EIGHTEEN

THOUSAND-SEVEN HUNDRED-FIFTY dollars (\$18,750) is in the public interest.

4. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA; and (7) consents to electronic service of the filed ESA.
5. By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violations have been corrected, and (2) Respondent is submitting proof of payment of the civil penalty with this Agreement.
6. Upon the effective date of this Agreement, payment of the civil penalty shall constitute full settlement of the civil claim alleged herein.
7. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
9. Upon signing and returning this Agreement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 3008(b) of RCRA.
10. Each party shall bear its own costs and fees, if any.
11. This Agreement is binding on the parties signing below, and in accordance with 40 CFR § 22.31(b), is effective upon filing.

#### FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. §6938(a), and according to the terms of this Expedited Settlement Agreement and Final Order, IT IS HEREBY ORDERED THAT:

12. Respondent shall pay a civil penalty of EIGHTEEN THOUSAND-SEVEN HUNDRED-FIFTY dollars (\$18,750) within 30 days of its receipt of the letter setting forth the opportunity for expedited settlement. Such payment shall identify Respondent by name and docket number and be paid in accordance with the Penalty Collection Procedures provided to Respondent.

13. A copy of the certified or cashier's check or other information confirming payment shall simultaneously be sent via e-mail to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 9  
R9HearingClerk@epa.gov

And to:

John Schofield  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 9  
[schofield.john@epa.gov](mailto:schofield.john@epa.gov)

14. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

15. Upon signing and returning this Agreement to the EPA, the Respondent waives the opportunity for a hearing or appeal pursuant to section 9006(b) of RCRA or 40 C.F.R. part 22. In addition, if the Respondent is a Federal agency, the Respondent waives its right to confer with the Administrator pursuant to section 6001(b)(2) of RCRA.

16. This Expedited Settlement Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 9. Unless otherwise stated, all time periods state herein shall be calculated in calendar days from such date.

IT IS SO AGREED,

Name (print): SCOTT ELLIS

Title (print): PLANT MANAGER

Signature: 

Date 3/25/2022

APPROVED BY EPA:

**AMY MILLER-  
BOWEN**

Digitally signed by  
AMY MILLER-BOWEN  
Date: 2022.03.31  
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Date: \_\_\_\_\_

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Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region IX

IT IS SO ORDERED:

**STEVEN  
JAWGIEL**

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STEVEN JAWGIEL  
Date: 2022.04.04  
15:09:32 -07'00'

Date: \_\_\_\_\_

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA Region IX

**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the original copy of the foregoing Expedited Settlement Agreement and Final Order in the matter of Kern Steel Fabrication, Inc. (RCRA-09-2022-0035) was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by:

Electronic mail to:

**RESPONDENT**

Scott Ellis, Plant Manager  
Kern Steel Fabrication, Inc.  
627 Williams Street  
Bakersfield, CA 93305-5437  
[scott@kernsteel.com](mailto:scott@kernsteel.com)  
661-237-9588, ext. 218

**COMPLAINANT**

Andrew Helmlinger  
Assistant Regional Counsel  
U. S. EPA – Region 9  
[Helmlinger.Andrew@epa.gov](mailto:Helmlinger.Andrew@epa.gov)

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Ponly Tu  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX

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Date