



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

BY ELECTRONIC MAIL

Mr. Patrick J. Kelly, President
Patrick J. Kelly Drums, Inc.
2109 Howell Street
Camden, NJ 08105
Patk6226@hotmail.com

Re: Patrick J. Kelly Drums, Inc. - Notice of Potential Violations and Opportunity to Confer (“NOPVOC”) Concerning Compliance with Resource Conservation & Recovery Act, as amended (“RCRA”) and New Jersey’s EPA Authorized Hazardous Waste Regulations

Dear Mr. Kelly:

The U.S. Environmental Protection Agency (EPA) is charged with the protection of human health and the environment under the Solid Waste Disposal Act, as amended (often referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*).

On or about July 18, 2023, duly authorized representatives conducted an inspection on behalf of EPA of Patrick J. Kelly Drums, Inc. (hereafter “Kelly Drums”) located at 2109 Howell Street, Camden, New Jersey. This inspection was performed pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to evaluate your company’s compliance with RCRA. On or about February 16, 2024, EPA issued Kelly Drums a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding hazardous waste activities at the Kelly Drums Camden facility. On or about March 6, 2024, Kelly Drums sent EPA a certified response to EPA’s combined NOV and IRL (“Response”).

Based on EPA’s July 2023 inspection and the Kelly Drums’ response to the NOV/IRL, the EPA has reason to believe that Kelly Drums failed to:

- Make proper hazardous waste determinations for the waste in two (2) containers, pursuant to 40 C.F.R § 262.11 as incorporated by reference in New Jersey Administrative Code (NJAC) 7:26G-6.1(a), which were sent to and returned by Lone Star Industries; and
- Maintain sufficient aisle space pursuant to 40 CFR § 264.35 as incorporated by reference by NJAC 7:26G-8.1(a).

The EPA currently anticipates issuing an administrative complaint in this matter, seeking a civil penalty. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as modified by the Federal Civil Penalties Inflation Adjustment Act as amended through 2023, any person who

violates RCRA is liable to the United States for a penalty up to \$121,275 for any violation occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023. *See* 88 Fed. Reg. 89309 (December 27, 2023). The precise penalty amount that EPA would seek in a RCRA Subtitle C enforcement action would be consistent with applicable Agency guidance, including the RCRA Civil Penalty Policy, that considers, along with other unique factors, the potential for harm associated with and the extent of deviation represented by the violations alleged by EPA. The policy can be found on the Internet at the following address:

<https://www.epa.gov/sites/default/files/2020-05/documents/june2003rcracivilpenaltypolicyamended050620.pdf>.

This policy indicates the factors EPA considers in calculating penalties, but note that the penalty figures in the 2003 policy do not reflect the subsequent adjustment of these figures to take account of inflation.

At this time, however, the EPA offers you an opportunity to demonstrate why the EPA should not proceed with an administrative enforcement action and/or why EPA should seek no penalty or a lower penalty for the violations. Pursuant to Title 40 of the CFR Section 22.13(b), the parties may enter into and finalize a settlement of this matter without the issuance by the EPA of a formal complaint. The EPA is prepared to discuss such possibility with you during an informal virtual meeting/conference call. If you are interested in engaging in pre-filing settlement discussions, please contact me so that I can arrange a virtual meeting, or a conference call, at a mutually convenient time between Agency representatives and any representative(s) or employee(s) of the facility and/or Kelly Drums. EPA will have legal counsel at this virtual meeting/call, and Kelly Drums similarly can decide if such legal representation would also be warranted. Please come prepared to this virtual meeting/call with documentary evidence in support of any position you might raise, such as: efforts the facility has undertaken to attain and maintain compliance with the applicable hazardous waste requirements; evidence as to why a reduction in the proposed penalty would be warranted (*i.e.*, any evidence that would go to the seriousness of the violation and any good faith efforts you took before the EPA inspection at the facility to comply with the applicable requirements), and any other factors you want EPA to consider.

You may submit information in advance of any virtual meeting/conference call. Any and all information that is provided to EPA in response to this letter or later is not governed by the requirements of the Federal Rule of Evidence 408 and may subsequently be utilized by EPA in support of an enforcement action. If you expect to submit documentation concerning the financial condition of your company or other information you consider to be business confidential, the information must be submitted accompanied by a confidentiality claim in accordance with 40 C.F.R. Section 2.203, including a cover sheet, a stamped or typed legend, or other suitable form of notice employing such language as “Proprietary” or “Confidential” on the information submitted. If you intend to submit information you consider to be business confidential, please contact me in advance of the submission.

Please note that, in determining the appropriate penalty amount in a settlement, EPA may consider the public health and/or environmental benefits of a Supplemental Environmental Project (“SEP”) voluntarily proposed by a violator. A SEP is a new project that is not otherwise legally required, and that is designed to: (1) reduce the likelihood that similar violations will occur in the future, (2) reduce any adverse public health and/or environmental impacts created by the violations, and/or (3) reduce the risk that the affected public and/or environment will experience similar adverse impacts. If Kelly Drums is interested in proposing or discussing

performance of a SEP as a potential part of the settlement of this matter, please review EPA's SEP Policy and visit EPA's SEP website at <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>.

Note that expenditures on a SEP cannot be deducted on federal income taxes.


To informally confer with us, the EPA requests that you and/or your counsel appear or participate on a conference call at a mutually convenient date, time, and place; please contact me within twenty (20) days of your receipt of this letter to schedule such a virtual meeting/conference call.

If the parties are unable to reach an expeditious resolution or if EPA does not hear from you within twenty (20) days to arrange a settlement discussion, the EPA may proceed with an enforcement action.

Please feel free to direct any inquires to me by email at taylor.karen@epa.gov or by phone at (212) 637-3637. Thank you for your prompt attention to this matter.

Sincerely,

KAREN
TAYLOR

 Digitally signed by KAREN
TAYLOR
Date: 2024.06.22 18:12:58
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