



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUIRED

August 16, 2023

Jim MacMillan
General Manager
Kaehr Corporation
1425 Candelaria Road NE
Albuquerque, NM 87107

**RE: RESOLUTION OF NOTICE OF VIOLATION
KAEHR CORPORATION
EPA ID# NMD007105711**

Dear Jim MacMillan:

Beginning on July 21, 2020, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Kaehr Corporation ("Kaehr"), located at 1425 Candelaria Road NE, Albuquerque, New Mexico ("Facility"). Based on that Inspection and review of information obtained NMED issued a Notice of Violation ("NOV") dated March 17, 2023.

Enclosed is a copy of the signed Stipulated Final Order to resolve claims of the NMED for civil penalties and other relief for violations specified in the NOV. As of the date August 10, 2023, all civil penalty payments have been received and all corrective actions required to bring Kaehr into compliance have been met. Any action taken in response to this letter does not relieve your facility of its obligation to comply with any and all other applicable laws and regulations.

Jim MacMillan
August 16, 2023
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If you have any questions regarding this letter, please contact Aaron Coffman of my staff at 505-670-5211 or by email at aaron.coffman@env.nm.gov.

Sincerely,

Ricardo Maestas Digitally signed by Ricardo
Maestas
Date: 2023.08.16 11:08:16 -06'00'

Ricardo Maestas
Acting Chief
Hazardous Waste Bureau

RM: ac

cc: Aaron Coffman, NMED HWB
Bruce Baizel, NMED OGC
Kathryn Becker, NMED OGC
Levi Cole, NMED District I Manager

file: Library # 2400

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
)
v.)
)
KAEHR CORPORATION,)
EPA I.D. NMD007105711,)
Respondent)
<hr style="border: 1px solid black;"/>)

STIPULATED FINAL ORDER

The New Mexico Environment Department (“Department”) and Kaehr Corporation (“Kaehr”), (“Party” or “Respondent”), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Notice of Violation (“NOV”) issued by the Department to the Respondents on March 17, 2023. The Parties have agreed on the terms and conditions specified in this Stipulated Final Order (“Order”).

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC, including assessing administrative civil penalties for violations thereof.
2. The Respondent operates a manufacturing facility registered as a Small Quantity Generator of Hazardous Waste (“SQG”), EPA I.D. Number NMD007105711, located at 1425 Candelaria Road NE, Albuquerque, New Mexico (“Facility”).

3. On July 21, 2020, NMED conducted a hazardous waste compliance evaluation inspection (“Inspection”) at the Facility. During the Inspection, the Department observed potential violations of the HWA and the HWMR.

4. As a result of the Inspection and in consideration of the documentation and information provided, the Department issued a Notice of Violation (“NOV”) to the Respondent on March 17, 2023. On April 17, 2023 and April 20, 2023 the Respondent submitted the Department emailed correspondence that responded to the NOV, provided additional information, and detailed the corrective actions taken by Kaehr to address the alleged violations.

ALLEGED VIOLATIONS

5. The Department alleged the following violations in the NOV:

- a) Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.
- b) Failure to label satellite accumulation area (“SAA”) containers storing hazardous waste with the words “hazardous waste”, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i).
- c) Failure to label satellite accumulation area (“SAA”) containers storing hazardous waste with an indication of the hazards of the contents, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(ii).
- d) Failure to maintain proper aisle space for unobstructed movement of personnel and emergency equipment in case of emergency, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(8)(v).

e) Accumulation of hazardous waste on site for greater than 180 days without a permit, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b); and 20.4.1.900 NMAC, incorporating 40 CFR 270.1(c).

f) Failure to conduct weekly inspections, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(2)(iv).

g) Failure to post the following information at the Central Accumulation Area: name and telephone number of the Emergency Coordinator; the location of fire extinguishers, spill control kits, and fire alarms; and the telephone number of the local Fire Department, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii).

COMPROMISE AND SETTLEMENT

6. All actions required to maintain or restore Respondent's compliance have been completed.

7. The Respondent does not admit to any of the allegations in the NOV. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Order to resolve the alleged violations in the NOV.

8. The Respondent admits to the jurisdictional allegations of this Order and consents to the relief specified in the Order including the civil penalty. Entry into this Order shall not constitute an admission or waiver of federal immunity on the part of Respondent or any instrumentality of the United States.

9. Based on a review of the information obtained, the Department hereby rescinds Violation #7 of the NOV.

10. In compromise and settlement of the alleged violations in the NOV, the Parties agree that the Respondent shall owe a civil penalty of \$16,170.00 which shall be paid in a lump sum.

Payment shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico-Hazardous Waste Emergency Fund," and shall be delivered to the Department at the following address by either hand delivery or U.S. Postal Service:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

11. Payments of the civil penalty shall be accompanied by a transmittal letter referencing this Order.
12. If the Respondent fails to make timely and complete payments of the civil penalty, the Respondent shall pay interest on the outstanding balance at the rate established for judgements and decrees under NMSA 1978, § 56-8-4.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

13. Except as provided in Paragraph 16 (Covenants Not to Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any past, present or future violations not addressed in the NOV. In any such action, the Respondent reserves the right to assert any defenses that it may have.
14. The Department retains its right to enforce this Order by administrative or judicial action, and the Respondent reserves the right to assert any defenses that they may have.

15. In the event that the Department elects to file a judicial action to enforce this Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondent will not challenge that jurisdiction or that the venue lies with the First Judicial Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

16. The Department covenants not to sue or take any administrative or civil action against the Respondent under the HWA, HWMR, and Agreement for any of the facts or violations alleged in the NOV or this Order. This covenant not to sue extends to the Respondents and their respective officers, directors, agents, employees, successors, and assigns and does not extend to any other person. This Covenant does not extend to future violations of the same HWA or HWMR requirements or violations of this Order.

17. Respondent covenants not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

18. This Order shall become effective on the date it is approved and signed by the Department Secretary.

INTEGRATION

19. This Order merges all prior written and oral communications between the Department and the Respondent concerning the subject matter of the Order and contains the entire agreement between the Department and the Respondent.

BINDING EFFECT

20. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondent and on its successors.


AUTHORITY OF SIGNATORIES

21. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Order. The Hazardous Waste Bureau Chief signs pursuant to the authority granted by the March 24, 2023 Delegation Order and with concurrence of the Resource Protection Division Director.

For: **NEW MEXICO ENVIRONMENT DEPARTMENT**

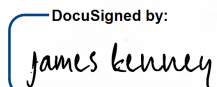
By: **Ricardo Maestas** Digitally signed by Ricardo Maestas
Date: 2023.07.18 10:23:32 -06'00' Date: 07/18/2023
RICARDO MAESTAS
ACTING CHIEF
HAZARDOUS WASTE BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT

For: **KAEHR CORPORATION**

By:  Date: 7/31/2023
JIM MACMILLAN
GENERAL MANAGER
KAEHR CORPORATION

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER.

DocuSigned by:

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JAMES C. KENNEY
SECRETARY OF ENVIRONMENT

Date: July 31, 2023