



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7007 2560 0001 7660 7402
RETURN RECEIPT REQUESTED

Mr. William L. Mendello, President
Fender Musical Instruments Corporation
8860 E. Chaparral Rd., Suite 100
Scottsdale, AZ 85250-2610

Re: In the matter of Fender Musical Instruments Corporation
U.S. EPA Docket No. RCRA-09-~~0019~~-2009-0019

Dear Mr. Mendello:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Letitia Moore at (415) 972-3892.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosure

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel
2
3 LETITIA D. MOORE
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415)972-3928
6

7 **UNITED STATES**
8 **ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

10 **IN THE MATTER OF:**

Docket No.
RCRA-09-2009-0019

11
12 FENDER MUSICAL INSTRUMENTS CORPORATION,
13 Respondent.

**CONSENT AGREEMENT
AND
FINAL ORDER
PURSUANT TO 40 C.F.R.
SECTIONS 22.13 and 22.18**

14
15 **CONSENT AGREEMENT**

16 Complainant, the United States Environmental Protection Agency, Region IX
17 (“Complainant” or “EPA”), and Respondent, Fender Musical Instruments Corporation
18 (“Respondent” or “Fender”), the parties herein, having agreed that settlement of this matter is in
19 the public interest and that entry of this Consent Agreement and Final Order, pursuant to 40
20 C.F.R. Sections 22.13 and 22.18, (“CA/FO”), without further litigation is the most appropriate
21 means of resolving this matter;

22 NOW, THEREFORE, Complainant and Respondent hereby agree as follows:

23 A. **PRELIMINARY STATEMENT**

- 24 1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)
25 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C.
26 § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
27

28 CA/FO Fender Musical Instruments Corporation

1 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits
2 ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States
3 Environmental Protection Agency, Region IX. Respondent is a corporation organized
4 under the laws of the State of Delaware.

5 2. At the time of the violations alleged, Respondent was managing hazardous waste at a
6 facility located at 311 Cessna Circle, Corona, California 92880, EPA Identification
7 Number CAR 000 045 997 (hereinafter referred to as the "Facility").

8 3. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences
9 and concludes this proceeding, wherein EPA alleges that Respondent managed hazardous
10 waste in violation of the RCRA Hazardous Waste Management requirements, 42 U.S.C.
11 §§ 6921 - 6939e, the implementing regulations, and state regulations adopted pursuant to
12 the federally authorized California hazardous waste management program.

13 4. EPA is enforcing California hazardous waste management program requirements as
14 approved and authorized by the United States.

15 5. On August 1, 1992, the State of California received authorization to administer the
16 hazardous waste management program in lieu of the federal program pursuant to Section
17 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. This authorization was
18 updated on September 26, 2001 (*see* 66 Fed. Reg. 49118, September 26, 2001). The
19 authorized program is established pursuant to the Hazardous Waste Control Law, Chapter
20 6.5 of Division 20 of the California Health and Safety Code ("H&SC"), and the
21 regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of
22 Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for
23 all the regulations referenced in this CA/FO.¹ Citations in this CA/FO are to California

24
25 ¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California
26 Code of Regulations. EPA is enforcing the California hazardous waste management program
27 requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR
32726, July 23, 1992) and the Final Authorization of Revisions to the Hazardous Waste

1 hazardous waste management program requirements, followed by the corresponding
2 federal citations provided in brackets.

3
4 B. GENERAL ALLEGATIONS

5 6. Respondent is, and at all times referred to herein was, a "person" as defined in 22 C.C.R.
6 § 66260.10 [*see also* 40 C.F.R. § 260.10].

7 7. Respondent was the "owner" or "operator" of a facility as defined in 22 C.C.R.
8 § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

9 8. Respondent was a "generator" of "hazardous waste" as defined in 22 C.C.R. § 66260.10
10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

11 9. Respondent was engaged in the "storage" of "hazardous waste" as defined in 22 C.C.R.
12 § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

13 10. At the Facility, Respondent generated and accumulated materials that are "wastes" as
14 defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2
15 for definition of "solid waste"].

16 11. At the Facility, Respondent generated and accumulated "hazardous waste" as defined in
17 H&SC § 25117 and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA Section
18 1004(5), 42 U.S.C. 6903(5), and 40 C.F.R. §§ 260.10 and 261.3].

19 12. Respondent generated and stored waste ferric chloride (D002, D007), waste paint
20 solvents (D001, F003, F005), waste paint (D001), waste paint related materials (e.g.,
21 paint booth water, paint booth filters), used oil, universal waste lamps, and off-
22 specification paint related wastes materials.

23 13. Respondent is a large quantity generator ("LQG") of hazardous waste.
24

25 _____
26 Management Program as approved and authorized by the United States on September 26, 2001
27 (*see* 66 FR 49118, September 26, 2001). Citations to the federal regulations are included for
informational purposes.

- 1 14. 22 C.C.R. § 66270.1(c) requires that owners and operators of a RCRA hazardous waste
2 treatment, storage or disposal facility must have a permit [*see also* 40 C.F.R. § 270.1(c)].
- 3 15. Respondent does not have a permit or grant of interim status to treat, store or dispose of
4 hazardous waste under 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1].
- 5 16. On May 23, 2008, EPA conducted a RCRA Compliance Evaluation Inspection (“CEI”) at
6 the Facility. Based upon the findings EPA made during the inspection and additional
7 information obtained subsequent to the inspection, EPA determined that Respondent
8 violated RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921 –
9 6939e, and the implementing regulations, and the federally authorized California
10 hazardous waste management program, 22 C.C.R. Division 4.5, and the implementing
11 regulations at the Facility.
- 12 17. EPA alleges that Respondent (1) stored hazardous waste without a permit in violation of
13 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1], (2) failed to make a hazardous waste
14 determination in violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11], (3)
15 failed to properly close containers of hazardous waste in violation of 22 C.C.R.
16 § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)], (4) failed to conduct weekly
17 inspections of hazardous waste storage areas in violation of 22 C.C.R. § 66265.174 [*see*
18 *also* 40 C.F.R. § 265.174], (5) failed to provide adequate aisle space for hazardous waste
19 storage containers in violation of 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35],
20 and (6) failed to complete personnel training in violation of 22 C.C.R. § 66265.16 [*see*
21 *also* 40 C.F.R. § 265.16].
- 22 18. Under Section 3006 of RCRA, 42 U.S.C. § 6926, violations of the State of California’s
23 authorized RCRA Hazardous Waste Management Program are federally enforceable.
24 Respondent is therefore subject to the powers vested in the EPA Administrator by Section
25 3008 of RCRA, 42 U.S.C. § 6928.
- 26 19. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue
27

1 orders assessing a civil penalty for any past or current violation, or requiring compliance
2 immediately or within a specified time for violation of any requirement of Subtitle C of
3 RCRA, Sections 3001 - 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e.

4 20. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of
5 Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of
6 RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to
7 issuing an order under Section 3008 of RCRA in that state. EPA notified the State of
8 California as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

9 21. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA
10 Regional Administrator for Region IX, who has redelegated this authority to the Director
11 of the Waste Management Division.

12
13 C. ALLEGED VIOLATIONS

14 COUNT I

15 (Storage of Hazardous Waste Without a Permit)

16 22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were
17 set forth here in their entirety.

18 23. 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.34] provides that generators of hazardous
19 waste may accumulate hazardous waste onsite for a limited period of time, without a
20 permit or grant of interim status, provided the generator complies with the requirements
21 which are set forth or referenced by 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.34].

22 24. Failure to comply with the time limits or any of the requirements set forth in or referenced
23 by 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.34] subjects the generator to the
24 permitting requirements of 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1].

25 25. Respondent violated several of the requirements set forth or referenced in 22 C.C.R.
26

1 § 66262.34 [*see also* 40 C.F.R. § 262.34] .

2 26. **Storage Over 90 Days.** 22 C.C.R. § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)]
3 provides that generators of hazardous waste may accumulate hazardous waste onsite for
4 up to 90 days, without a permit or grant of interim status.

5 27. On May 23, 2008, EPA's inspector observed that containers of hazardous waste were
6 stored at the Facility for more than 90 days.

7 28. Respondent's accumulation of hazardous waste at the Facility for more than 90 days
8 without a permit or grant of interim status violated the requirements of 22 C.C.R.
9 § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)]. Therefore, Respondent violated 22
10 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1].

11 29. **Labeling Accumulation Start Date.** 22 C.C.R. § 66262.34(a)(2) [*see also* 40 C.F.R.
12 §262.34(a)(2)] requires that generators who accumulate hazardous waste onsite without a
13 permit or grant of interim status shall label containers of hazardous waste with the
14 accumulation period start dates. Generators who fail to label containers of hazardous
15 waste with the accumulation start dates fail to meet the requirements of 22 C.C.R.
16 §66262.34(a)(2) [*see also* 40 C.F.R. §262.34(a)(2)] and are subject to the permitting
17 requirements of 22 C.C.R. §66270.1(c) [*see also* 40 C.F.R. §270.1].

18 30. On May 23, 2008, EPA's inspector observed that Respondent had not marked containers
19 of hazardous waste with the accumulation start date.

20 31. Respondent's storage of hazardous waste without accumulation start dates violated the
21 labeling requirements of 22 C.C.R. §66262.34(a)(2) [*see also* 40 C.F.R. §262.34(a)(2)].
22 Therefore, Respondent violated 22 C.C.R. §§ 66270.1 [*see also* 40 C.F.R. § 270.1]

23 32. **Inadequate aisle space.** 22 C.C.R. §66262.34 [*see also* 40 C.F.R. §262.34] requires that
24 large and small quantity generators who accumulate hazardous waste onsite without a
25 permit or grant of interim status comply with the requirements of 22 C.C.R. § 66265.35
26

27

28

1 [see also 40 C.F.R. § 265.35]. 22 C.C.R. § 66265.35 [see also 40 C.F.R. §265.35]
2 requires that the owner or operator maintain adequate aisle space for the unobstructed
3 movement of personnel, fire protection equipment, spill control equipment, and
4 decontamination equipment.

5 33. On May 23, 2008, EPA's inspector observed that aisle space in the 90-Day Hazardous
6 Waste Storage Area at the Facility was inadequate to provide Respondent with access to
7 the containers as required by 22 C.C.R. § 66265.35 [see also 40 C.F.R. §265.35].

8 34. Respondent's failure to provide adequate aisle space violated 22 C.C.R. § 66265.35 [see
9 also 40 C.F.R. §265.35]. Therefore, Respondent violated 22 C.C.R. §§ 66270.1 [see also
10 40 C.F.R. § 270.1]

11 35. **Failure to Close Containers of Hazardous Waste.** 22 C.C.R. §66262.34 [see also 40
12 C.F.R. §262.34] requires that large and small quantity generators who accumulate
13 hazardous waste onsite without a permit or grant of interim status comply with the
14 requirements of 22 C.C.R. § 66265.173 [see also 40 C.F.R. § 265.173]. 22 C.C.R.
15 §66265.173(a) [see also 40 C.F.R. §265.173(a)] requires that containers holding
16 hazardous waste shall always be closed during transfer and storage, except when it is
17 necessary to add or remove waste.

18 36. On May 23, 2008, EPA inspectors observed containers of hazardous waste that were open
19 at a time when waste was neither being added nor removed from the containers.

20 37. Respondent's failure to close the containers of hazardous waste violated 22 C.C.R.
21 § 66265.173 (a) [see also 40 C.F.R. § 265.173(a)]. Therefore, Respondent has violated
22 22 C.C.R. § 66270.1 [see also 40 C.F.R. § 270.1].

23 38. **Failure to Conduct Weekly Inspections.** 22 C.C.R. §66262.34 [see also 40 C.F.R.
24 §262.34] requires that large and small quantity generators who accumulate hazardous
25 waste onsite without a permit or grant of interim status comply with the requirements of
26
27

1 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174]. 22 C.C.R. § 66265.174 [*see also*
2 40 C.F.R. § 265.174] requires that the owner or operator inspect areas at least weekly
3 where containers of hazardous waste are stored for leaks from and deterioration in the
4 containers from corrosion or other factors.

5 39. Respondent maintained a 90-Day Hazardous Waste Storage (Accumulation) Area for
6 storage of spent acetone, waste paints and coatings, universal waste lamps, and other
7 unidentified hazardous wastes at the Facility.

8 40. Respondent maintained weekly inspection logs at the Facility.

9 41. On May 23, 2008, the EPA inspector observed that the last weekly inspection of the 90-
10 Day Hazardous Waste Storage Area at the facility was December 29, 2007.

11 42. Respondent's failure to conduct weekly inspections of hazardous waste storage areas at
12 the Facility violated 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174]. Therefore,
13 Respondent has violated 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

14 COUNT II

15 (Failure to Make a Hazardous Waste Determination)

16 43. Paragraphs 1 through 42 above are incorporated herein by this reference as if they were
17 set forth here in their entirety.

18 44. 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11] requires that a person who generates
19 solid waste determine if that waste is a hazardous waste.

20 45. Respondent generated waste paints and waste coatings in rusted and damaged containers
21 in the Paint Well at the Facility.

22 46. On May 23, 2008, Respondent had not completed a hazardous waste determination for
23 the wastes stored in the Paint Well at the Facility.

24 47. Respondent's failure to make a waste determination violated 22 C.C.R. § 66262.11 [*see*
25 *also* 40 C.F.R. § 262.11].
26

1 the Facility violated 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174].

2 COUNT V

3 (Failure to Provide Adequate Aisle Space)

4 58. Paragraphs 1 through 57 above are incorporated herein by this reference as if they were
5 set forth here in their entirety.

6 59. 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. §265.35] requires that the owner or operator
7 maintain adequate aisle space for the unobstructed movement of personnel, fire protection
8 equipment, spill control equipment, and decontamination equipment.

9 60. On May 23, 2008, EPA's inspector observed that aisle space in the 90-Day Hazardous
10 Waste Storage Area at the Facility was inadequate to provide Respondent with access to
11 the containers as required by 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. §265.35].

12 61. Respondent's failure to provide adequate aisle space violated 22 C.C.R. § 66265.35 [*see*
13 *also* 40 C.F.R. §265.35].

14 COUNT VI

15 (Failure to Complete and Maintain Records of Personnel Training)

16
17 62. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were
18 set forth here in their entirety.

19 63. 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16] requires that the owner or operator
20 ensure that facility personnel successfully complete training related to hazardous waste
21 management requirements and maintain records that the training required has been given
22 to and completed by facility personnel.

23 64. As of May 23, 2008, Respondent had not provided facility personnel with the training
24 required and facility personnel had not completed any of the required training since
25 May 3, 2006.

1 65. Respondent's failure to ensure that facility personnel successfully complete training
2 related to hazardous waste management requirements violated 22 C.C.R. § 66265.16 [*see*
3 *also* 40 C.F.R. § 265.16].
4

5 D. CIVIL PENALTY

6 66. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection
7 Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to
8 THIRTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$32,500) per day for
9 each violation of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*

10 67. Based upon the facts alleged herein and upon those factors which EPA must consider
11 pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil
12 Penalty Policy, including the seriousness of the violations, any good faith efforts by
13 Respondent to comply with applicable requirements, and any economic benefit accruing
14 to Respondent, as well as such other matters as justice may require, EPA proposes that
15 Respondent be assessed **SEVENTY-EIGHT THOUSAND AND EIGHT HUNDRED**
16 **AND SIXTY-ONE DOLLARS (\$78,861)** as the civil penalty for the violations alleged
17 herein. The proposed penalty is consistent with the "RCRA Civil Penalty Policy," dated
18 June 2003, as adjusted by the Debt Collection Improvement Act.
19

20 E. ADMISSIONS AND WAIVERS

21 68. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations
22 set forth in Sections A and B of this CA/FO. Respondent consents to and agrees not to
23 contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce
24 its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel
25 compliance with this CA/FO in any enforcement proceedings, either administrative or
26
27

1 judicial, or to impose sanctions for violations of this CA/FO.

2 69. Respondent neither admits nor denies any allegations of fact or law set forth in Section C
3 of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the
4 allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing
5 on any issue relating to the factual allegations or legal conclusions set forth in this
6 CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42
7 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without
8 adjudication. In addition, Respondent hereby waives any rights Respondent may have to
9 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.
10

11 F. PARTIES BOUND

12 70. This CA/FO shall apply to and be binding upon Respondent and its agents, successors
13 and assigns and upon all persons acting under or for Respondent, until such time as the
14 civil penalty required under Section D has been paid in accordance with Section G, all
15 compliance tasks have been completed, and any delays in performance and/or stipulated
16 penalties have been resolved. At such time as those matters are concluded, this CA/FO
17 shall terminate and constitute full settlement of the civil violations alleged herein.

18 71. No change in ownership or corporate, partnership or legal status relating to the Facility
19 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

20 72. The undersigned representative of Respondent hereby certifies that he is fully authorized
21 by Respondent to enter into this CA/FO, to execute and to legally bind Respondent.
22

23 G. PAYMENT OF CIVIL PENALTY

24 73. Respondent hereby consents to the assessment of a civil penalty in the amount of
25 **SEVENTY-EIGHT THOUSAND AND EIGHT HUNDRED AND SIXTY-ONE**
26
27

1 **DOLLARS (\$78,861)** in settlement of the civil penalty claims of the United States for
2 the violations of the federally authorized California hazardous waste management
3 program established pursuant to the California Hazardous Waste Control Law, Chapter
4 6.5 of Division 20 of the California H&SC, and 22 C.C.R. § 66270.1 [*see also* 40 C.F.R.
5 § 270.1], 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11], 22 C.C.R. § 66265.173(a)
6 [*see also* 40 C.F.R. § 265.173(a)], 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174],
7 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35] and 22 C.C.R. § 66265.16 [*see also*
8 40 C.F.R. § 265.16], as alleged in Section C above.

9 74. Respondent shall submit payment of the civil penalty of **SEVENTY-EIGHT**
10 **THOUSAND AND EIGHT HUNDRED AND SIXTY-ONE DOLLARS (\$78,861)**
11 within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date
12 of this CA/FO is the date that the Final Order contained in this CA/FO, having been
13 approved and issued by either the Regional Judicial Officer or Regional Administrator, is
14 filed.

15 75. Payment shall be made by wire transfer to the account of the U.S. Treasury at the Federal
16 Reserve Bank of New York.

17 Federal Reserve Bank of New York
18 ABA: 021030004
19 Account Number: 68010727
20 SWIFT address: FRNYUS33
21 33 Liberty Street
22 New York NY 10045
23 Field Tag 4200 of the Fedwire message should read:
24 "D 68010727 Environmental Protection Agency"

25 *See also*, http://www.epa.gov/cfo/finservices/make_a_payment_cin.htm.

26 76. At the time payment is so made, a copy of the transmittal form shall be sent to:

27 Regional Hearing Clerk (RC-1)
28 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 and

2 John Schofield (WST-3)
3 Waste Management Division
4 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

5 77. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM
6 6-8000), the payment must be received within thirty (30) calendar days of the effective
7 date of this CA/FO to avoid additional charges. If payment is not received within thirty
8 (30) calendar days, interest will accrue from the effective date of this CA/FO at the
9 current rate published by the United States Treasury as described at 40 C.F.R. §13.11(a).
10 Additionally, administrative costs for collecting the overdue debt will be assessed
11 monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any
12 principal amount not paid within ninety (90) calendar days of the due date. See 40 C.F.R.
13 §13.11(b) and (c). Furthermore, Respondent will be liable for stipulated penalties as set
14 forth below for any payment not received by its due date.

15
16 H. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

17 78. In addition to the interest and per annum penalties described above, in the event that
18 Respondent fails to pay the full amount of the penalty within the time specified in
19 Section G, Respondent agrees to pay Complainant a stipulated penalty in the amount of
20 up to FIVE THOUSAND DOLLARS (\$5,000.00) for each day the default continues.

21 79. All penalties shall begin to accrue on the date that performance is due or a violation
22 occurs, and shall continue to accrue through the final day of correction of the
23 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
24 penalties for separate violations.

25 80. All penalties owed to EPA under this Section shall be due within thirty (30) days of
26
27

1 receipt of a notification of noncompliance. Such notification shall describe the
2 noncompliance and shall indicate the amount of penalties due. Interest at the current rate
3 published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to
4 accrue on the unpaid balance at the end of the thirty-day period.

5 81. All penalties under this Section shall be made payable by certified or cashier's check to
6 "Treasurer of the United States" and shall be remitted to:

7 US Environmental Protection Agency
8 Fines and Penalties
9 Cincinnati Finance Center
10 PO Box 979077
11 St. Louis, MO 63197-9000

12 82. All payments shall indicate the name of the Facility, any EPA identification number of
13 the Facility, Respondent's name and address, and the EPA docket number of this action.
14 At the time payment is made, Respondent shall send a copy of the payment transmittal to:

15 John Schofield (WST-3)
16 Waste Management Division
17 U.S. Environmental Protection Agency - Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105

20 83. The payment of stipulated penalties shall not alter in any way Respondent's obligation to
21 complete the performance required hereunder.

22 84. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
23 other remedies or sanctions which may be available to EPA by reason of Respondent's
24 failure to comply with any of the requirements of this CA/FO.

25 I. CERTIFICATION OF COMPLIANCE

26 85. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the
27 Respondent has fully complied with the requirements of the federally authorized
28 California hazardous waste management program, including and 22 C.C.R. § 66270.1
[see also 40 C.F.R. § 270.1], 22 C.C.R. § 66262.11 [see also 40 C.F.R. § 262.11], 22

1 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)], 22 C.C.R. § 66265.174 [*see*
2 *also* 40 C.F.R. § 265.174], 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35] and 22
3 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16], that formed the basis for the violations
4 alleged in this CA/FO.

- 5 86. This certification of compliance is based upon true, accurate and complete information,
6 which the signatory can verify personally or regarding which the signatory has inquired of
7 the person or persons directly responsible for gathering the information.

8
9 J. RESERVATION OF RIGHTS

- 10 87. EPA expressly reserves all rights and defenses that it may have.

- 11 88. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
12 remedies, both legal and equitable, including the right to require that Respondent perform
13 tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory
14 and regulatory powers, authorities, rights and remedies, both legal and equitable, which
15 may pertain to Respondent's failure to comply with any of the requirements of this
16 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)
17 of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to
18 sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or
19 criminal, which EPA has under RCRA, the Comprehensive Environmental Response,
20 Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other
21 statutory, regulatory or common law enforcement authority of the United States.

- 22 89. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of
23 its obligations to comply with any applicable local, state, or federal laws and regulations.

- 24 90. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
25 preclude EPA from taking additional enforcement actions should EPA determine that
26 such actions are warranted except as they relate to Respondent's liability for federal civil
27

1 penalties for the specific alleged violation and facts as set forth in Section C of this
2 CA/FO.

3 91. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
4 not relieve Respondent of any obligation to obtain and comply with any local, state, or
5 federal permits. Compliance by Respondent with the terms of this CA/FO shall not
6 relieve Respondent of any obligations to comply with RCRA or any other applicable
7 local, state, or federal laws and regulations.

8 92. EPA reserves its right to seek reimbursement from Respondent for any additional costs
9 incurred by the United States which may result or arise from the alleged counts set forth
10 in Section C. Notwithstanding compliance with the terms of this CA/FO, Respondent is
11 not released from liability, if any, for the costs of any response actions taken by EPA.

12
13 K. OTHER CLAIMS

14 93. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
15 cause of action or demand in law or equity by or against any person, firm, partnership,
16 entity or corporation for any liability it may have arising out of or relating in any way to
17 the generation, storage, treatment, handling, transportation, release, or disposal of any
18 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
19 contaminants found at, taken to, or taken from the Facility.

20
21 L. MISCELLANEOUS

22 94. This CA/FO may be amended or modified only by written agreement executed by both
23 EPA and Respondent.

24 95. The headings in this CA/FO are for convenience of reference only and shall not affect
25 interpretation of this CA/FO.

26 96. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
27 proceeding.

1 M. EFFECTIVE DATE

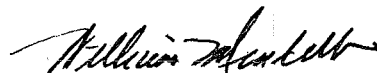
2 97. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
3 on the date that the Final Order contained in this CA/FO, having been approved and
4 issued by either the Regional Judicial Officer or Regional Administrator, is filed.
5

6 **IT IS SO AGREED,**

7
8 For Respondent **FENDER MUSICAL INSTRUMENTS CORPORATION**

9
10
11 August 6, 2009

12 Date

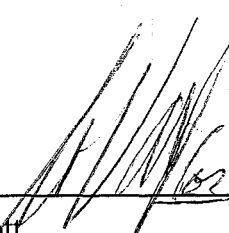


13 William L. Mendello
14 Chief Executive Officer
15 Fender Musical Instruments Corporation

16
17
18 For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

19
20
21
22 7805

23 Date


24 Jeff Scott
25 Director
26 Waste Management Division
27 United States Environmental Protection Agency,
28 Region IX

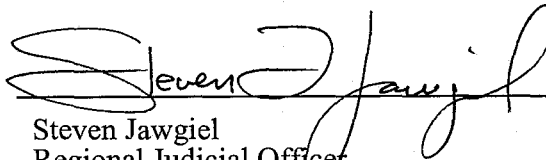
1
2 **FINAL ORDER**
3

4 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ((U.S. EPA Docket
5 No. RCRA-09-2009-00 19) be entered and that Respondent pay a civil penalty in the amount
6 of **SEVENTY-EIGHT THOUSAND AND EIGHT HUNDRED AND SIXTY-ONE**
7 **DOLLARS (\$78,861)** by wire transfer to the account of the U.S. Treasury at the Federal
8 Reserve Bank of New York, within thirty (30) days after the Effective Date of this Consent
9 Agreement and Final Order. A copy of the wire transfer form shall be sent to the EPA Region IX
10 addresses specified in Section G of this Consent Agreement and Final Order within such 30-day
11 period.
12

13 **This Final Order shall be effective upon filing.**
14
15

16
17 09/11/09

18 Date

19 
20

21 Steven Jawgiel
22 Regional Judicial Officer
23 United States Environmental Protection Agency,
24 Region IX
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by:

Certified Mail, Return Receipt Requested to:

Mr. William L. Mendello, President
Fender Musical Instruments Corporation
8860 E. Chaparral Rd., Suite 100
Scottsdale, AZ 85250-2610

and, Regular Mail to:

Christopher Norton, Esq.
Latham & Watkins, LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

9/17/09

Date



Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel, Region IX