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HEARINGS CLERK

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	DOCKET NO: RCRA-10-2010-0164
)	
Port of Tacoma)	CONSENT AGREEMENT AND
3400 Taylor Way)	FINAL ORDER
Tacoma, WA 98421)	
)	
Respondent.)	
_____)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) (“RCRA”).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the Port of Tacoma (“Respondent”) consents to issuance of, the Final Order contained in Part IV of this CAFO.

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II. PRELIMINARY STATEMENT

2.1. On May 26, 2009, EPA initiated this proceeding against Respondent pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), by issuing an administrative Complaint and Compliance Order requiring Respondent's compliance with Section 3004 of RCRA, 42 U.S.C. § 6924, and the EPA-authorized Washington state regulations set forth in the Washington Administrative Code ("WAC") 173-303-400, which incorporate the financial assurance requirements of 40 C.F.R. Part 265, Subpart H by reference at WAC 173-303-400(3)(a).

2.2. The Complaint and Compliance Order alleged that Respondent's violations of the financial assurance requirements of RCRA and the WAC had subjected Respondent to civil penalties.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and Compliance Order and is incorporated herein by reference.

2.4. The Parties have engaged in settlement discussions regarding the alleged violations. The Parties agreed that settlement of this matter is in the public interest, and that entry of the CAFO without further litigation, is an appropriate means of resolving this matter. This CAFO resolves the violations alleged in the Complaint and Compliance Order.

III. CONSENT AGREEMENT

3.1. Respondent admits the jurisdictional allegations in the Complaint and Compliance Order.

3.2. Respondent neither admits nor denies the specific factual allegations set forth in the Complaint and Compliance Order.

3.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and in accordance with the RCRA Civil Penalty Policy, EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements, and determined and Respondent agrees that an appropriate civil penalty to settle this action is in the amount of ONE HUNDRED AND THIRTY-SEVEN THOUSAND DOLLARS (\$137,000.00).

3.4. Respondent consents to the assessment of the civil penalty and to the issuance of this CAFO, and agrees to pay the total civil penalty set forth in Paragraph 3.3 within thirty (30) days of the effective date of the Final Order.

3.5. Payment under this CAFO shall be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

3.6. Respondent must serve photocopies of the check described in Paragraph 3.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Peter Magolske
Office of Compliance and Enforcement
U.S. EPA Region 10, Suite 900
1200 Sixth Avenue, OCE-127
Seattle, Washington 98101

3.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), together with interest, handling charges, and additional non-payment penalties including those described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.7.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

3.7.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15) shall be paid if any portion of the assessed penalty is more than thirty (30) days past due.

3.7.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 3.3, Respondent shall pay a nonpayment penalty in an amount equal to six percent (6%) per annum on any portion of the assessed penalty that is more than ninety (90) days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of taxes.

3.9. The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

3.10. Except as described in Paragraph 3.7, above, each party to this action shall bear its own fees and costs in bringing or defending this action.

3.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part IV.


3.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

August 19, 2010

FOR RESPONDENT:



JOHN G. WOLFE
Chief Executive Officer
Port of Tacoma

DATED:

August 31, 2010

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and
Enforcement

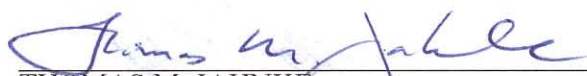
IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations alleged in the Complaint and Compliance Order. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA, the WAC, and regulations or permits issued thereunder or with any other applicable legal requirement.

4.3. This Final Order is effective upon filing.

SO ORDERED this 2nd day of Sept. 2010.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Port of Tacoma, DOCKET NO.: RCRA-10-2010-0164** was filed with the Regional Hearing Clerk on Sept. 2, 2010.

On Sept. 2, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Sept. 2, 2010, to:

John G. Wolfe, Chief Executive Officer
Port of Tacoma
P.O. Box 1837
Tacoma, WA 98401

and

Kimberly Seely, Esquire
Coastline Law Group PLLC
740 N. Stadium Way
Tacoma, WA 98403

DATED this 2nd day of September 2010.

Sharon Eng

Signature
Print Name: Sharon Eng
Regional Hearing Clerk
EPA Region 10