BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2014-0113
Alaska Department of Transportation and Public Facilities,	)	**CONSENT AGREEMENT AND FINAL ORDER**
Soldotna, Alaska	)	
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) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g).

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

1.3. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 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 Alaska Department of Transportation and

Public Facilities ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is the Alaska Department of Transportation and Public Facilities.

3.2. Respondent is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

3.3. At all times relevant to the allegations set forth herein, Respondent is and has been the "owner" and "operator" of the Alaska Department of Transportation and Public Facilities facility located at 46445 Sterling Highway, Soldotna, Alaska (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10.

3.4. The Facility generated and stored various types of solid waste from operations at the Facility.

3.5. Respondent has been a "generator" of materials that are "hazardous waste" at the Facility, as those terms are defined at 40 C.F.R. § 260.10.

3.6. Respondent has engaged in "storage," "treatment," and/or "disposal" of materials that are "hazardous waste" at the Facility, as those terms are defined at 40 C.F.R. § 260.10.

3.7. At all times relevant to the allegations set forth herein, the Facility was not a permitted treatment, storage, or disposal facility, or an interim status facility under Section 3005 of RCRA, 42 U.S.C. § 6925.

3.8. On September 22, 2009, authorized EPA representatives conducted a RCRA compliance inspection of the Facility ("2009 Inspection").

3.9. EPA issued a Request for Information ("Information Request") to Respondent on July 19, 2012, requesting, among other things, additional information concerning wastes present during the 2009 Inspection. Respondent provided responses to the Information Request, dated August 21, 2012.

3.10. EPA has identified RCRA violations at the Facility based on information collected during and as a result of the 2009 Inspection, including Respondent's responses to the Information Request.

ALLEGED VIOLATIONS

COUNT I

(Failure to Make Hazardous Waste Determinations)

3.11. 40 C.F.R. § 262.11 requires a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, to determine if that waste is a hazardous waste using the method provided in 40 C.F.R. § 262.11(a)-(d).

3.12. Respondent failed to make a hazardous waste determination in accordance with 40 C.F.R. § 262.11 upon generating the following solid waste, which was present at the Facility at the time of the 2009 Inspection:

3.12.1. A mix of about 20 gallons of yellow highway paint and 20 gallons of solvent in an unlabeled green 55-gallon drum, and a mix of about 20 gallons of yellow highway paint and 10 gallons of solvent in a green 55-gallon drum labeled "OK dirty paint solvent" in the Hazardous Waste Storage Area (HWSA). Respondent subsequently determined in February 2010 that the waste in these drums was a D001, D007, and D008 hazardous waste, as defined at 40 C.F.R. §§ 261.22 and 261.24.

3.12.2. Waste contained in two unlabeled 55-gallon drums staged on pallets along the west wall of the Sand Shed. The two drums were not closed or labeled as hazardous waste and the contents of the drums were brownish mixtures of solids and liquids, some containing floating debris. One drum contained about 30 gallons of solidified yellow highway paint and the other contained about 40 gallons of yellow highway paint and 10 gallons of solvent. Respondent subsequently determined in

February 2010 that the waste in the two drums was a D001, D007, and D008 hazardous waste, as defined at 40 C.F.R. §§ 261.22 and 261.24.

3.12.3. Waste placed in a shallow pit lined with plastic in June or July of 2009. Respondent placed approximately 250 gallons of off-spec yellow highway paint in the pit and allowed the material to solidify over the course of approximately 14 months before making a hazardous waste determination.

COUNT II

(Storage of Hazardous Waste Without a Permit or Interim Status)

3.13. At the time of the 2009 Inspection, the hazardous waste identified in Paragraphs 3.12.1 – 3.12.3 above was being stored in containers that were not clearly marked with the date accumulation began or the words "Hazardous Waste." The two unlabeled 55-gallon drums staged on pallets along the west wall of the Sand Shed were not closed and waste was not being added or removed.

3.14. At the time of the 2009 Inspection, the Facility had failed to comply with the 40 C.F.R. § 262.11 waste determination requirement and had accumulated greater than 1,000 kilograms (kg) of hazardous waste as specified above in Count I which, pursuant to 40 C.F.R. § 261.5(g), makes the accumulated waste subject to, at a minimum, the hazardous waste requirements at 40 C.F.R. Part 262 applicable to generators of greater than 100 kg, but less than 1,000 kg, of hazardous waste in a calendar month.

3.15. Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste must have a permit or interim status. However, under 40 C.F.R. § 262.34, a generator may accumulate hazardous waste on-site

in containers without a permit or interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. §§ 262.34(a)(2) and (3) and 265.173(a).

3.16. 40 C.F.R. § 262.34(a)(2) and (3) require that a generator clearly label containers holding hazardous waste with the date upon which each period of accumulation begins and with the words "Hazardous Waste." 40 C.F.R. § 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

3.17. Because Respondent failed to comply with the conditions for accumulation of hazardous waste without a permit or interim status at 40 C.F.R. § 262.34, by failing to clearly label containers holding hazardous waste with the date upon which each period of accumulation begins and with the words "Hazardous Waste," and failed to keep containers holding hazardous waste closed except when necessary to add or remove waste. Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

COUNT III

(Storage and Treatment of Hazardous Waste Without a Permit or Interim Status)

3.18. Respondent placed approximately 250 gallons of off-spec liquid yellow highway paint in a pit lined with plastic in June or July of 2009. The paint remained in the pit for 13 to 14 months and solidified. On or about February 23, 2012, Respondent shipped the waste to the Kenai Borough Central Peninsula Landfill for disposal.

3.19. The yellow paint waste placed in the pit was a solid waste as defined at 40 C.F.R. § 261.2, and a D001, D007, and D008 hazardous waste, as defined at 40 C.F.R. §§ 261.22 and 261.24.

3.20. Respondent conducted hazardous waste "storage" and/or "treatment" of the off-spec yellow paint waste in a "surface impoundment" as those terms are defined at 40 C.F.R. § 260.10.

3.21. Respondent operated a treatment, storage, and/or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c)

COUNT IV

(Failure to Operate the Facility to Prevent Releases)

3.22. The Facility is a hazardous waste treatment, storage, and/or disposal facility and subject to 40 C.F.R. § 264.31 pursuant to 40 C.F.R. § 264.30. 40 C.F.R. § 264.31 requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

3.23. The surface impoundment which received approximately 250 gallons of off-spec liquid yellow highway paint hazardous waste in June or July of 2009 was not designed, constructed, maintained, and operated to minimize the possibility of a fire or release of hazardous waste or hazardous waste constituents because:

3.23.1. the surface impoundment lacked adequate freeboard and berms to prevent overtopping from rain and/or snowfall and annual precipitation in Soldotna averages 20 inches per year;

3.23.2. the placement of the paint waste in the surface impoundment failed to minimize the possibility of a fire because the paint was an ignitable hazardous waste; and

3.23.3. the paint waste contained hazardous volatile organic constituents which were released to the air as the paint waste solidified.

3.24. Respondent failed to design, construct, maintain, and operate the hazardous waste surface impoundment at the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 40 C.F.R. § 264.31.

COUNT V

(Failure to Comply with Land Disposal Restriction Treatment Standards)

3.25. Under 40 C.F.R. § 268.2, "land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a surface impoundment. The placement of hazardous waste in the pit at the Facility was land disposal and subject to 40 C.F.R. Part 268 land disposal restrictions.

3.26. Under 40 C.F.R. §§ 268.34 and 268.37, land disposal of D001, D007, and D008 hazardous waste is prohibited unless it meets applicable treatment standards specified at 40 C.F.R. § 268.40.

3.27. Under 40 C.F.R. § 268.40(a), a prohibited waste may be land disposed only if it meets the treatment requirements specified at 40 C.F.R. § 268.40.

3.28. The D001, D007, and D008 hazardous waste placed in the pit was a prohibited waste under 40 C.F.R. §§ 268.34 and 268.37.

3.29. Respondent land disposed of a prohibited waste in a pit that did not meet applicable treatment requirements, including the requirement to deactivate the waste to remove its ignitability characteristic, in violation of 40 C.F.R. §§ 268.34, 268.37 and 268.40(a),.

COUNT VI

(Failure to Make a Land Disposal Restriction Treatment Determination)

3.30. 40 C.F.R. § 268.7(a)(1) requires a generator of hazardous waste to determine if the waste has to be treated before it can be land disposed by determining if the hazardous waste meets the treatment standards in 40 C.F.R. § 268.40, 268.45, or 268.49.

3.31. Respondent land disposed of off-spec yellow highway paint hazardous waste without first determining if the waste had to be treated before it could be land disposed by determining if the hazardous waste met treatment standards, in violation of 40 C.F.R. § 268.7(a)(1).

COUNT VII

(Failure to Send a Land Disposal Restriction Notice)

3.32. 40 C.F.R. § 268.7(a)(2) requires a generator of hazardous waste to provide a one-time written notice with the initial shipment of waste to each treatment or storage facility receiving the waste that includes the information specified at 40 C.F.R. § 268.7(a)(2) if the waste

does not meet the treatment standards, or if the generator chooses not to make the determination whether the waste must be treated.

3.33. The solidified off-spec yellow highway paint in the pit was a non-wastewater and did not meet applicable treatment standards for lead at 40 C.F.R. §§ 268.40 and 268.48. The waste contained 2.89 milligrams per liter ("mg/L") of lead under the Toxicity Characteristic Leaching Procedure ("TCLP") and the applicable treatment standard is 0.75 mg/L using the TCLP.

3.34. On or about February 23, 2012, Respondent shipped the solidified off-spec yellow highway paint to the Kenai Borough Central Peninsula Landfill for disposal without having provided the one-time notice required by 40 C.F.R. § 268.7(a)(2).

COUNT VIII

(Failure to Timely Obtain an EPA RCRA Generator Identification Number)

3.35. 40 C.F.R. § 262.12(a) provides that a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without first having received an EPA identification number. 40 C.F.R. § 260.10 defines "generator" as any person by site who produces hazardous waste.

3.36. At the time of the 2009 Inspection, and until June 15, 2010 when an EPA identification number was assigned to the Facility, Respondent was using an EPA identification number assigned to a different site.

3.37. Respondent was a generator at the time of the 2009 Inspection and subject to the identification number requirement of 40 C.F.R. § 262.12(a), and treated, stored, disposed of,

transported, or offered for transportation, hazardous waste without first having received an EPA identification number for the Facility, in violation of 40 C.F.R. § 262.12(a).

COUNT IX

(Failure to Label a Tank Containing Used Oil)

3.38. 40 C.F.R. § 279.22(c) requires that tanks and containers used by used oil generators to store used oil subject to regulation under 40 C.F.R. Part 279, Subpart C, be labeled or clearly marked with the words "Used Oil."

3.39. At the time of the 2009 Inspection, there were two 225-gallon tanks in the Maintenance & Operations Shop at the Facility that were being used to store used oil generated by Respondent that was subject to regulation. One of the tanks was not labeled or clearly marked with the words "Used Oil" as required by 40 C.F.R. § 279.22(c).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $117,974.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO, and to undertake the actions specified in the Final Order.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and 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.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 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

Kristin McNeill
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, 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(a) and (g), 42 U.S.C. § 6928(a) and (g), together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)

from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

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

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.11. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

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

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

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

DATED: 7-3-14

FOR RESPONDENT:

Robert A. Campbell, Central Region Director
Alaska Department of Transportation and Public Facilities

DATED: 7/17/2014

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

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

5.2. Based on the findings contained in the Consent Agreement, Respondent is also ordered to comply with the following requirement pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

5.2.1. Within thirty (30) days after the effective date of this Compliance Order, Respondent shall certify to EPA that it has taken steps to ensure compliance with 40 C.F.R. §§ 262.11, 262.34, 268.7(a)(1) and (2), and 279.22(c).

5.2.2. The certification required by Paragraph 5.2.1 must be as follows and signed by a responsible officer of Respondent:

> I certify that the Alaska Department of Transportation and Public Facilities has taken steps to ensure compliance with 40 C.F.R. §§ 262.11, 262.34, 268.7(a)(1) and (2), and 279.22(c). As to portions of this certification for which I cannot personally verify its accuracy, I certify under penalty of law that this certification was prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information necessary to make the certification submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, this certification is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

5.3. Respondent shall provide compliance documentation required to the following address:

Kristin McNeill
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

5.4. This CAFO constitutes a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III. 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 and regulations promulgated or permits issued thereunder.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 22nd day of July, 2014.

M. SOCORRO RODRIGUEZ
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**: **Alaska Department of Transportation and Public Facilities, Docket No. RCRA-10-2014-0113,** was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Andrew Boyd
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Jeffrey P. Stark
Chief Assistant Attorney General
State of Alaska, Department of Law
1031 W. 3rd Ave., Suite 200
Anchorage, AK 99501

and

Robert Campbell
Central Regional Director
Alaska Department of Transportation and Public Facilities
P.O. Box 196900
MS– 2525
Anchorage, AK 99519

23rd July 2014
Dated

Candace H. Smith
Regional Hearing Clerk
EPA Region 10