

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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In the Matter of: )  
)  
)

United States Department of Defense )  
Joint Base Elmendorf-Richardson )

Respondent )  
)  
)  
\_\_\_\_\_ )

Docket No. RCRA-10-2013-0125

**CONSENT AGREEMENT AND  
FINAL ORDER**

**I. STATUTORY AUTHORITY**

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 (“RCRA”), 42 U.S.C. § 6928(a).

2. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, or EPA’s regulations promulgated thereunder.

3. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the Federal government in the same manner and under the same circumstances as against any other person.

4. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA administers the RCRA requirements in Alaska because the State of Alaska is not authorized to administer and enforce a hazardous waste program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e.

5. 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 U.S. Department of Defense (“Respondent”) agrees to the issuance of, the Final Order contained in this CAFO.

## **II. PRELIMINARY STATEMENT**

6. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in this CAFO becomes effective.

7. The Administrator has delegated the authority to sign consent agreements memorializing settlements between EPA and the party against whom an administrative penalty is proposed to be assessed pursuant to RCRA Section 3008(a) to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10.

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

9. 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**

10. Respondent, U.S. Department of Defense, is a department, agency, and/or instrumentality of the United States.

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

12. Elmendorf Air Force Base ("Elmendorf AFB") and Fort Richardson were merged to form Joint Base Elmendorf-Richardson in 2010.

13. At all times relevant to the allegations set forth in this CAFO, Respondent is and has been the "owner" and "operator," as those terms are defined at 40 C.F.R. § 260.10, of Joint Base Elmendorf-Richardson, located at 11735 Vandenberg Avenue, Anchorage, Alaska 99506 (the "Facility").

14. The Facility generates and accumulates various types of hazardous, universal, and non-hazardous wastes from vehicle, aircraft, and facilities maintenance.

15. Respondent generates and accumulates "hazardous waste" as that term is defined at 40 C.F.R. § 260.10.

16. Respondent is and has been a "generator" of, and has engaged in the "storage" in "containers" of, hazardous waste, as those terms are defined at 40 C.F.R. § 260.10, at the Facility.

17. In the National Biennial RCRA Hazardous Waste Report for 2009, Elmendorf AFB and Fort Richardson each reported as a Federal Large Quantity Generator ("LQG"), meaning that they each generated in any single month more than 1,000 kg (2,200 pounds or 1.1 tons) of hazardous waste. Elmendorf AFB reported that it generated a total of 37 tons of

hazardous waste in 2009; Fort Richardson reported that it generated a total of 20 tons of hazardous waste in 2009.

18. Elmendorf AFB was permitted as a hazardous waste management facility under RCRA Subtitle C before it merged with Fort Richardson. At the time the bases were merged in 2010, EPA reissued the permit to the new entity Joint Base Elmendorf-Richardson, effective December 1, 2010. The hazardous waste management facility permit allows the Facility to operate a hazardous waste container storage unit in Building 11753, located on the former Elmendorf AFB. No other hazardous waste units are permitted.

19. On September 8-9, 2010, authorized representatives of EPA conducted a RCRA compliance inspection (“2010 inspection”) of the Facility. At the time of the 2010 inspection and at the time each of the violations alleged below, the Facility was an LQG.

20. On July 11-14, 2011, authorized representatives of EPA conducted a RCRA compliance inspection (“2011 inspection”) of the Facility. At the time of the 2011 inspection and at the time each of the violations alleged below, the Facility was an LQG.

21. 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.

22. The Facility’s permit does not cover any unit other than the hazardous waste container storage unit in Building 11753.

23. However, under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that it meets all of the conditions listed therein.

24. The conditions for an LQG to accumulate hazardous waste on-site for 90 days without a permit or interim status include, among other things, that the generator complies with the requirements in 40 C.F.R. §§ 265.16 and 265.174.

25. Based on observations made during the 2010 and 2011 inspections, EPA has identified the following violations of RCRA at the Facility:

**Count 1: Storage of hazardous waste without a permit or interim status in building 17470 - failure to conduct weekly inspections of containers for signs of leakage and/or deterioration caused by corrosion or other factors**

26. Under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status if, among other things, the generator complies with the requirements in Subpart I of 40 C.F.R. Part 265.

27. Subpart I of 40 C.F.R. Part 265 includes 40 C.F.R. § 265.174, which requires the owner or operator of a hazardous waste facility to conduct weekly inspections of containers for signs of leakage and/or deterioration caused by corrosion or other factors.

28. In the 176 MXS/MXMTC Unit in Building 17470, Respondent inspects C-130 aircraft flight control and surface areas for signs of corrosion. Respondent stores hazardous waste generated during this process in containers in a less than 90-day hazardous waste accumulation area.

29. Respondent did not conduct two weekly inspections of the hazardous waste containers in Building 17470 between June 23 and July 11, 2011.

30. 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(a), by failing to conduct weekly inspections of containers of hazardous 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 2: Storage of hazardous waste without a permit or interim status in building 3829 - failure of facility personnel to participate in an annual review of training**

31. Under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status if, among other things, the generator complies with the requirements in 40 C.F.R. § 265.16.

32. Under 40 C.F.R. § 265.16(c), personnel working in a hazardous waste facility must take part in an annual review of initial training that teaches them to perform their duties in a way that ensures compliance with hazardous waste regulations.

33. On the day of the 2011 inspection, the point of contact (“POC”) for the less than 90-day hazardous waste accumulation area of the AAFES JM Shoppette in Building 3829 was Ms. Kelly San Nicolas. As of that date, Ms. San Nicolas had failed to participate in an annual review of initial training.

34. 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(a), by failing to ensure that personnel took part in an annual review of initial training, 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 3: Storage of hazardous waste without a permit or interim status in building 10694 - failure of facility personnel to participate in an annual review of training**

35. Under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status if, among other things, the generator complies with the requirements in 40 C.F.R. § 265.16.

36. Under 40 C.F.R. § 265.16(c), personnel working in a hazardous waste facility must take part in an annual review of initial training that teaches them to perform their duties in a way that ensures compliance with hazardous waste regulations.

37. On the day of the 2011 inspection, the POCs for the less than 90-day hazardous waste accumulation area of Unit 3 MXS/MXMGL in Building 10694 were Mr. James Jordan and Mr. Troy Witte. As of that date, Mr. James and Mr. Witte had failed to participate in an annual review of initial training.

38. 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(a), by failing to ensure that personnel took part in an annual review of initial training, 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 4: Storage of hazardous waste without a permit or interim status in building 8288 - failure of facility personnel to participate in an annual review of training**

39. Under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status if, among other things, the generator complies with the requirements in 40 C.F.R. § 265.16.

40. Under 40 C.F.R. § 265.16(c), personnel working in a hazardous waste facility must take part in an annual review of initial training that teaches them to perform their duties in a way that ensures compliance with hazardous waste regulations.

41. On the day of the 2011 inspection, the POC for the less than 90-day hazardous waste accumulation area of the 673rd LRS/LGRVH in Building 8288 was Mr. Charles Phillips. As of that date, Mr. Phillips had failed to participate in an annual review of initial training.

42. 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(a), by failing to ensure that personnel took part in an annual review of initial training, 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 5: Storage of hazardous waste without a permit or interim status in building 9898 - failure of facility personnel to participate in an annual review of training**

43. Under 40 C.F.R. § 262.34(a), an LQG may accumulate hazardous waste on-site for 90 days without a permit or interim status if, among other things, the generator complies with the requirements in 40 C.F.R. § 265.16.

44. Under 40 C.F.R. § 265.16(c), personnel working in a hazardous waste facility must take part in an annual review of initial training that teaches them to perform their duties in a way that ensures compliance with hazardous waste regulations.

45. On the day of the 2010 inspection, the POC for the F-22 Corrosion Preventative Maintenance Shop in Building 9898 was Sgt. Stegemoller. As of that date, Sgt. Stegemoller had failed to participate in an annual review of initial training.



46. 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(a), by failing to ensure that personnel took part in an annual review of initial training, 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 6: Failure to conduct weekly general inspection in violation of permit**

47. Permit Condition II.E. of the Hazardous Waste Management Facility permit requires the Permittee to comply with the inspection provisions of 40 C.F.R. § 264.15 and implement the inspection plan in Attachment 7 of the Permit.

48. Attachment 7 of the permit requires the facility to be inspected weekly. 40 C.F.R. § 264.15(d) requires the owner or operator to record the inspection in the inspection log or summary. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

49. At the time of 2010 inspection, at the Facility's permitted hazardous waste management facility, located at the Facility's Defense Reutilization and Marketing Office in Building 11735, two weekly inspection logs, dated June 16, 2009 and July 1, 2009, did not include the time of the inspection. Also, no weekly inspection was conducted for the week of September 6 through 12, 2009.

50. DOD's failure to note the time of a weekly inspection and failure to conduct a weekly inspection are violations of Permit Condition II.E

**Count 7: Failure to file an exception report**

51. Under 40 C.F.R. § 262.42(a)(2), an LQG must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if it has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.

52. A copy of manifest number 000297703, dated June 12, 2009 (by the initial generator), was not received by Elmendorf AFB until August 7, 2009, more than 45 days after it was accepted by the initial transporter. No Exception Report was filed with the Regional Administrator.

53. DOD's failure to file an exception report is a violation of 40 C.F.R. § 262.42(a)(2).

#### IV. CONSENT AGREEMENT

54. Respondent admits the jurisdictional allegations contained in this CAFO and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this CAFO.

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

56. Respondent hereby waives its right to a judicial or administrative hearing or appeal and its opportunity to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this CAFO.

57. Respondent consents to the issuance of this CAFO and agrees to comply with its terms, including the assessment of a civil penalty.

58. Respondent agrees to pay a civil penalty in the amount of TWENTY-ONE THOUSAND TWO HUNDRED FORTY-FIVE DOLLARS (\$21,245) in satisfaction of all claims for civil penalties which EPA may have under RCRA Section 3008(a) for the violations alleged in this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent. The aforesaid settlement amount was based upon EPA's consideration of the statutory assessment factors, including the seriousness of the violations and any good faith efforts to comply with applicable requirements, in accordance with RCRA and the RCRA Civil Penalty Policy.

59. Payment of the penalty as required by this CAFO may be made by sending a certified or cashier's check, made payable to the order of "Treasurer, United States of America," to the following address:

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

60. Payment by Respondent shall reference the name of the facility, Respondent's name and address, and the EPA Docket Number of this CAFO. Respondent shall send a simultaneous notice of such payment, including a copy of the cashier's check or certified check, to the following:

Regional Hearing Clerk  
U.S. EPA Region 10, ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

and

Xiangyu Chu  
U.S. EPA Region 10, OCE-127  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

61. Payment of the penalty as required by this CAFO may also be made by electronic wire transfer to the credit of EPA. Respondent may contact EPA for wire transfer instructions.

62. Respondent shall seek all existing funds to meet the requirements of this CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or this CAFO. Nothing in this CAFO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

63. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

64. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are

no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

65. The undersigned representative of Respondent certifies that he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

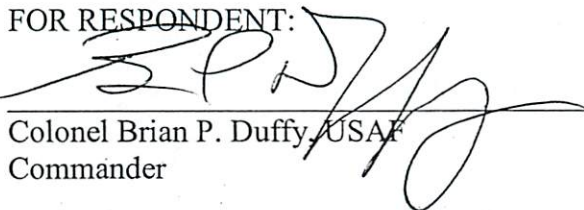
66. This CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, successors, and assigns including, but not limited to, subsequent purchasers.

67. The parties shall bear their own costs and attorneys' fees.

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


**STIPULATED AND AGREED BY:**

FOR RESPONDENT:

  
Colonel Brian P. Duffy, USAF  
Commander

Dated: 21 AUG 13

FOR EPA:

  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement  
EPA Region 10

Dated: 9/5/2013

## V. FINAL ORDER

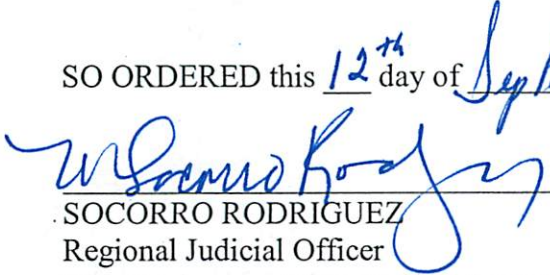
1. This Consent Agreement and Final Order is hereby adopted and issued pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

2. It is hereby ORDERED that Respondent pay a penalty of TWENTY-ONE THOUSAND TWO HUNDRED FORTY-FIVE DOLLARS (\$21,245), in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement.

3. It is hereby further ORDERED that Respondent comply with all terms of the foregoing Consent Agreement.

This Order disposes of this matter pursuant to 40 C.F.R. § 22.18. The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

SO ORDERED this 12<sup>th</sup> day of September, 2013

  
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 the Matter of : United States Department of Defense, Joint Base Elmendorf-Richardson Docket No.: RCRA-10-2012-10-2013-0125**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

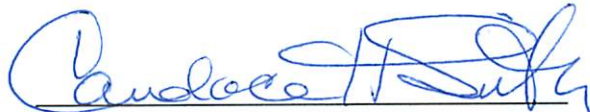
The undersigned certifies that a true and correct copy of the document was delivered to:

Meg Silver, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 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 to:

Colonel Brian Duffy, USAF  
Joint Base Elmendorf-Richardson  
6326 Arctic Warrior Drive  
Anchorage, Alaska 99506

DATED this 13<sup>th</sup> day of September, 2013



Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10