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BEFORE THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK
EPA - REGION 10

In the Matter of:)	
)	
U.S. Department of Energy)	Docket No.: RCRA-10-2013-0113
Richland, Washington)	
)	
Respondent.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Proceeding under Section 3008(a) of the)	
Resource Conservation and Recovery)	
Act, 42 U.S.C. § 6928(a))	
_____)	

I. 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 (“RCRA”), 42 U.S.C. § 6928(a).

1.2 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.

1.3 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.

1.4 Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Washington final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.5 Notification of this action has been given to the Washington State Department of Ecology (“Ecology”) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), but Ecology is not a party to this CAFO.

1.6 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 Energy (“Respondent”) agrees to the issuance of, the Final Order contained in Section V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13 and 22.18(b)(2) and (3), 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 to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed pursuant to RCRA Section 3008(a).

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 and permit requirements that Respondent is alleged to have violated.

2.4 Respondent has entered into this CAFO in order to resolve EPA’s allegations asserted herein. Nothing in this CAFO, or in the execution and implementation of this CAFO, shall be

taken as an admission of liability by Respondent and Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO. For the purpose of avoiding litigation between the Parties, however, Respondent agrees to the requirements identified in Part IV of this CAFO.

III. ALLEGATIONS

3.1 Respondent is a department of the United States.

3.2 Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

3.3 At all times relevant to the allegations set forth herein, Respondent is and has been the “owner” and “operator” of the Hanford Facility, located on approximately 586 square miles in southeastern Washington State (the “Facility”), as those terms are defined at 40 C.F.R. § 260.10 and as “operator” is defined in the Washington Administrative Code (“WAC”) at 173-303-040.

3.4 The Facility generated and stored various types of solid waste resulting from, among other things, the production and management of special nuclear materials for the national defense.

3.5 Respondent has been a “generator” of, and has engaged in “storage” in “containers” of, materials that are “dangerous waste” at the Facility, as those terms are defined at WAC 173-303-040.

3.6 The Facility submitted a “Notification of Hazardous Waste Activity” to EPA on or about August 14, 1980, which identified the Facility as a hazardous waste generator, hazardous waste transporter, and owner and operator of a hazardous waste treatment, storage and disposal (“TSD”) facility.

3.7 In 1994, Ecology issued the Hanford Facility RCRA Permit, which was issued in conjunction with the Hazardous and Solid Waste Amendments portion of the permit issued by EPA.

3.8 In March 2011, authorized representatives of EPA's National Enforcement Investigations Center conducted a RCRA compliance inspection ("2011 Inspection").

3.9 EPA has identified violations of the authorized state RCRA program at the Facility's Solid Waste Operations Complex ("SWOC") based on information collected during the 2011 Inspection and other information.

Count 1: Storage of Hazardous Waste without a Permit

3.10 An owner and operator of a RCRA-regulated dangerous waste TSD facility must have a permit or interim status as required by Section 3005 of RCRA, 42 U.S.C. § 6925, and WAC 173-303-800. In addition, Condition I.A. of the Hanford Facility RCRA Permit, which was issued in 1994 and remains in effect, prohibits any treatment, storage, or disposal of dangerous waste at the Hanford Facility that is not authorized by the permit or by WAC 173-303-400.

3.11 The Hanford Facility RCRA Permit does not now and never has authorized the storage of dangerous waste in the units listed below. Respondent conducted storage of RCRA-regulated dangerous waste in the units listed below without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, WAC 173-303-800, and Condition I.A. of the Hanford Facility RCRA Permit.

- a. T-Plant 271 T cage;
- b. T-Plant 211 T pad;
- c. T-Plant 221 T sand filter pad;
- d. T-Plant 221 T – R5 waste storage area;

- e. T-Plant 277T outdoor storage area;
- f. Central Waste Complex (“CWC”) outside storage A;
- g. CWC outside storage area B; and
- h. Lower Level Burial Grounds (“LLBG”), FS1, south of Trench 34, outdoor container storage area.

Count 2: Failure to Meet Closure Plan Requirements

3.12 WAC 173-303-600(2) provides that the final facility standards, including those for closure plans at WAC 173-303-610, apply to owners and operators of all facilities which treat, store, and dispose of dangerous waste unless otherwise exempted. Respondent’s closure plan for the SWOC is not exempted and did not include a detailed description of how each of the dangerous waste management units identified in paragraph 3.11 above will be closed, as required by WAC 173-303-610(3).

Count 3: Failure to Submit Closure Notice and Closure Plans

3.13 The 221T railroad tunnel TSD unit at T Plant did not store waste from January 4, 2010 through February 15, 2011. Building 2401W at CWC was used to store dangerous waste in the past, but had not been used for container storage for well over one year at the time of the 2011 Inspection.

3.14 Under Condition I.A. of the Hanford Facility Dangerous Waste Permit, these units are subject to interim status closure requirements at 40 C.F.R. Part 265, Subpart G, as specified at WAC 173-303-400(3).

3.15 40 C.F.R. § 265.112(d)(1), as modified by WAC 173-303-400(3), requires that written notice be provided to Ecology at least 45 days prior to the date on which the facility

expects to begin closure of the tank or container storage unit. This date may be no later than one year after the date on which the unit received the most recent volume of dangerous waste.

3.16 40 C.F.R. § 265.112(d)(1), as modified by WAC 173-303-400(3), requires that the closure plan also be submitted to Ecology at least 45 days prior to the date on which the facility expects to begin closure of a tank or container storage unit.

3.17 Respondent failed to provide a written notice and closure plan to Ecology at least 45 days prior to the date on which the Respondent expected to begin closure of the 221 T railroad tunnel TSD unit at T Plant and Building 2401W at CWC, as required by 40 C.F.R.

§ 265.112(d)(1), as modified by WAC 173-303-400(3).

Count 4: Failure to Comply with Land Disposal Restriction Requirements

3.18 On December 17, 2010, Respondent land disposed of 52 mixed dangerous waste/low level waste (“MLLW”) high-temperature gas reactor (“HGTR”) drums by placing them in Trench 34, without first satisfying applicable treatment standards, in violation of 40 C.F.R. § 268.45, which is incorporated into WAC 173-303-140(2)(a) by reference. Respondent commenced macroencapsulation of the waste on February 14, 2011.

3.19 On March 3, 2011, Respondent land disposed eight MLLW HGTR boxes and two MLLW drums by placing them in Trench 34 without first satisfying applicable treatment standards, in violation of 40 C.F.R. § 268.45. Macroencapsulation of the waste was completed on March 24, 2011.

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

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

4.3 In light of the seriousness of the violations, Respondent's good faith efforts to comply, Respondent's actions to correct the violation after having been notified by Complainant, Respondent's willingness to settle this matter without litigation, and in accordance with the RCRA Civil Penalty Policy, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is ONE HUNDRED THIRTY-SIX THOUSAND DOLLARS (\$136,000).

4.4 In settlement of the violations alleged in Part III above, Respondent consents to the issuance of the Final Order set forth in Part V below and agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order, and to undertake the following actions upon issuance of the Final Order as set forth below:

a. Respondent shall immediately cease the receipt of additional dangerous waste in the TSD units listed above in Paragraph 3.11 until such time as the treatment, storage, and/or disposal of dangerous waste in those units is duly authorized by a dangerous waste permit issued pursuant to WAC 173-303-800 through 173-303-840.

b. Within 120 days of the effective date of the Final Order, Respondent shall submit to Ecology a permit modification request in accordance with WAC 173-303-830 for the units listed above in Paragraph 3.11 that includes a written closure plan that satisfies the closure plan requirements at WAC 173-303-610 or, in the event that one or more of the units is duly authorized by a permit for the treatment, storage, and/or disposal of dangerous waste within 120 days of the effective date of the Final Order, then Respondent shall submit a closure plan for those units to Ecology within 120 days of the effective date of the Final Order that satisfies applicable closure plan permit requirements. Respondent also must submit a copy of the closure plan submittals and all subsequent revisions to EPA.

c. Respondent shall immediately comply with all applicable final facility standards for the management of dangerous waste identified at WAC 173-303-600(1) for the units identified above in Paragraph 3.11 including, but not limited to, the following requirements: general waste analysis at WAC 173-303-300, security provisions at WAC 173-303-310, general inspections at WAC 173-303-320, personnel training at WAC 173-303-330, preparedness and prevention at WAC 173-303-340, contingency plan and emergency procedures at WAC 173-303-350, and use and management of containers at WAC 173-303-630. Respondent shall continue to comply with these requirements until closure of the units has been completed, or until the units become authorized under a permit for the treatment, storage, and/or disposal of dangerous waste in which case Respondent shall comply with the applicable permit requirements.

d. Within 120 days of the effective date of the Final Order, Respondent shall submit a written closure plan to Ecology for the 221T railroad tunnel TSD unit at T Plant and Building 2401W TSD unit at CWC that satisfies the closure plan requirements at 40 C.F.R. § 265.112, unless prior to the date that the closure plan is due, Ecology approves an extension pursuant to 40 C.F.R. § 265.112(d)(2), as incorporated and modified by WAC 173-303-400, upon a demonstration that the dangerous waste management unit has the capacity to receive additional dangerous wastes and that Respondent will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable requirements. Respondent also must submit a copy of the closure plan and all subsequent revisions to EPA.

e. Respondent must immediately cease the placement of prohibited dangerous waste in Trenches 31 and 34 without first satisfying applicable treatment standards in accordance with WAC 173-33-140.

4.5 All work to be performed pursuant to this CAFO shall be under the direction and supervision of qualified personnel. Respondent shall provide a copy of the CAFO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this CAFO.

4.6 Payment under this CAFO must be made payable to the order of "Treasurer, United States of America" by cashier's check, certified check, or by Automated Clearinghouse (ACH) for receiving U.S. currency.

a. Payment by cashier's check or certified check shall be delivered to the following address:

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

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

b. Payment by ACH must be accompanied by a statement identifying the title and docket number of this action. Payment must be made to:

PNC Bank
808 17th Street NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

4.7 In the event payment is made by cashier's check or certified check, Respondent must serve photocopies of the check described in Paragraph 4.6 on the Regional Hearing Clerk and

EPA Region 10 at the following addresses:

In the Matter of: U.S. Department of Energy
Docket Number: RCRA-10-2013-0113
Consent Agreement and Final Order
Page 9 of 12

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

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

and a copy to:

Scott Downey
U.S. Environmental Protection Agency
Region 10, Mail Stop: OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

In the event payment is made by ACH, Respondent must send a notice by email to acctreceivable.cinwd@epa.gov demonstrating that payment has been made and referencing the title and docket number of this action, and serve photocopies of the notice on the Regional Hearing Clerk and Scott Downey, EPA Region 10, at the addresses provided above.

4.8 If Respondent fails to pay the penalty assessed by this CAFO in full by the due dates set forth in Paragraph 4.4, the entire unpaid balance of the penalty shall become immediately due and owing.

4.9 The penalty described in Paragraph 4.3 represents an administrative civil penalty assessed by EPA.

4.10 Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Scott Downey
U.S. Environmental Protection Agency
Region 10, Mail Stop: OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.11 This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.12 Under section 3008(c) of RCRA, 42 U.S.C. §6928(c), a failure to take corrective action within the time specified in the Final Order may subject Respondent to additional civil penalties for each day of continued noncompliance.

4.13 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.

4.14 Except as described in Subparagraph 4.7(b), above, each party shall bear its own fees and costs in bringing or defending this action.

4.15 Respondent hereby expressly waives any right to contest the allegations and/or 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 of fact set forth in this CAFO, and waives any right to appeal the Final Order set forth in Part V.

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

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

STIPULATED AND AGREED BY:

FOR RESPONDENT


Signature

6/20/13
Date

MATT McCormick
Printed Name

Manager, Richland operations office
Title/Position

U.S. DEPARTMENT OF ENERGY

STIPULATED AND AGREED BY:
FOR COMPLAINANT


Signature

6/24/2013
Date

Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
Region 10

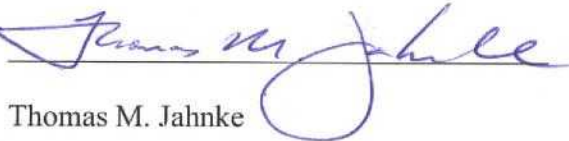
V. **FINAL ORDER**

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 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular 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 and permits issued thereunder.

5.3 This Final Order shall become effective upon filing.

SO ORDERED this 26th day of June 2013.


Thomas M. Jahnke

Regional Judicial Officer

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : U.S. Department of Energy, Richland, Washington, Docket No.: RCRA-10-2013-0113**, 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:

Andrew Boyd 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:

Matthew S. McCormick, Manager
U. S. Department of Energy, Richland Operations Office
PO Box 550
Richland, Washington 99352

DATED this 26th day of June, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

