



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 25 2019

CERTIFIED MAIL RETURN RECEIPT

Ms. Alissa Armstrong
Office of Counsel
U.S. Army Engineer Research and Development Center
3909 Halls Ferry Road
Vicksburg, Mississippi 39180

SUBJ: U.S. Army Corps of Engineers
U.S. Army Engineer Research and Development Center, EPA ID No: MS6 210 809 871
Consent Agreement and Final Order, Docket No.: RCRA-04-2019-9736(b)

Dear Ms. Armstrong:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-referenced matter. Please note that payment of the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk. The timing of all other obligations required by the CA/FO also begins on the effective date of the CA/FO.

Thank you for your assistance in resolving this matter. If you have any questions, please feel free to contact William Kappler at (404) 562-8498 or by email at kappler.william@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Chemical Safety and Land Enforcement
Branch
Enforcement and Compliance Assurance Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-04-2019-9736(b)
)	
United States Army Corps of Engineers)	
)	
Respondent)	
)	
U.S. Army Engineer Research and Development Center)	Proceeding Under Section 3008(a) of the Resource Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
Facility)	
)	
3909 Halls Ferry Road)	
Vicksburg, Mississippi 39180)	
EPA ID No.: MS6 210 809 871)	
)	

USEPA REGION 4
OFFICE OF REGIONAL
ADMINISTRATION
2019 SEP 25 PM 3:05
HEATHER CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Section 17-17-1 *et seq.* of the Mississippi Code of 1972, Miss. Code Ann. § 17-17-1 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Mississippi Hazardous Waste Management Regulations (MHWMR), 11 Miss. Admin. Code Pt. 3, R. 1.1-1.24 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, & 279]. This action seeks injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 17-17-27 of the Mississippi Code of 1972, Miss. Code Ann. § 17-17-27 [Section 3005 of RCRA, 42 U.S.C. § 6925] and 11 Miss. Admin. Code Pt. 3, R. 1.1-1.24 [40 C.F.R. Parts 260 through 270]
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, Chemical Safety and Land Enforcement Branch, Enforcement Compliance and Assurance Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is the United States Army Corps of Engineers (Respondent) a department, agency, or instrumentality of the United States Government. Respondent is the owner and operator of the U.S. Army Engineer Research and Development Center located at 3909 Halls Ferry Road, Vicksburg, Mississippi (the Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Mississippi (the State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at 11 Miss. Admin. Code Pt. 3, R. 1.1-1.24.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Mississippi has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 17-17-27 of the Mississippi Code of 1972, Miss. Code Ann. § 17-17-27 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. Part 262].
12. Section 17-17-27 of the Mississippi Code of 1972, Miss. Code Ann. § 17-17-27 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 11 Miss. Admin. Code Pt. 3, R. 1.7 (permitted) and 11 Miss. Admin.

Code Pt. 3, R. 1.11 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.4(b)].
15. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.21-24] are characteristic hazardous wastes and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of ignitability is a hazardous waste identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste identified with the EPA Hazardous Waste Number D002.
18. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of reactivity is a hazardous waste identified with the EPA Hazardous Waste Number D003.
19. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity for mercury is identified with the EPA Hazardous Waste Number D009.
20. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed hazardous waste if it is listed in 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. Part 261, Subpart D]. Listed hazardous wastes include F listed wastes from nonspecific sources identified in 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.31(a)] with EPA Hazardous Waste Numbers F001 through F039.
21. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.31(a)], spent halogenated solvent methylene chloride is an F listed hazardous waste identified with the EPA Hazardous Waste Number F002.
22. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.31(a)], spent non-halogenated solvents methanol and acetone are F listed hazardous wastes identified with the EPA Hazardous Waste Number F003.
23. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 11

Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.

24. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
25. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10], a “person” includes a Federal Agency; similarly, “Federal Agency” means any department, agency, or other instrumentality of the Federal Government.
26. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
27. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
28. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1) (2016)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where the wastes initially accumulate, which is under the control of the operator of the process generating the waste (Satellite Accumulation Area (SAA)), without a permit or without having interim status, as required by Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a) (2016)], provided that the generator complies with the satellite accumulation conditions listed in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1)(i-ii) (2016)] (hereinafter referred to as the “SAA Permit Exemption”).
29. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1)(ii) (2016)], which is a condition of the SAA Permit Exemption, a generator is required to mark or label its containers either with the words “Hazardous Waste” or with other words that identify the content of the containers.
30. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1)(i) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
31. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).

32. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(2) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.
33. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(3) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that, while accumulated on-site, each container is labeled with the words "Hazardous Waste."
34. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(b) (2016)], an LQG who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of MHWMR, 11 Miss. Admin. Code Pt. 3, R. 1.1-1.20, 1.23, and 1.24 [40 C.F.R. Parts 124, 264 through 268 and Part 270].
35. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.35], and is a condition of the LQG Permit Exemption, a generator is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
36. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.173(a)], and is a condition of the LQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
37. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.42(a)(2)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed § 261.31 or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the region in which the generator is located if he 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.
38. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.16(c)], and is a condition of the LQG Permit Exemption, Facility personnel must take part in an annual RCRA refresher training; and
39. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.16(d)(1) and (2)], and is a condition of the LQG Permit Exemption, the owner or operator must maintain the following documents and records at the Facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (2) A written job description for each position that includes the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.
40. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.37], and is a condition of the

LQG Permit Exemption, a generator must: (a) attempt to make arrangements with the local authorities identified as appropriate for the type of waste handled at the Facility and the potential need for the services of these authorities, and (b) maintain records documenting the arrangements made.

41. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.52 (a)(d)(e)], and is a condition of the LQG Permit Exemption, a generator must have a contingency plan for the Facility and (a) the contingency plan must describe the actions facility personnel must take in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility; (d) the contingency plan must list names and emergency telephone numbers of all persons qualified to act as emergency coordinator, and this list must be kept up to date; (e) the contingency plan must include a list of all emergency equipment at the facility where this equipment is required, the location and a physical description of each item on the list, a brief outline of each item's capabilities, and this list must be kept up to date.
42. Pursuant to 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.174], and is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors.
43. On September 28, 2018, EPA issued a HSWA Permit to Respondent containing HSWA requirements for which Mississippi is not yet authorized. The HSWA Permit requires the Respondent to investigate any releases of hazardous waste or hazardous constituents at the facility regardless of the time at which waste was placed in a unit and to take appropriate corrective action for any such releases. The HSWA Permit also requires the Respondent to comply with all RCRA regulations applicable to the facility.
44. Pursuant to 40 C.F.R. § 270.30(a), a permittee must comply with all conditions of its permit. Any permit noncompliance constitutes a violation of RCRA and is grounds for enforcement action.
45. Pursuant to Condition II.N.2. of the HSWA Permit, all work plans and reports shall be submitted in accordance with the approved schedule as outlined in permit conditions and Appendix D: Schedule of Compliance.

IV. EPA ALLEGATIONS AND DETERMINATIONS

46. Respondent is a "person" as defined in 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10].
47. As a department, agency, or instrumentality of the executive branch of the Federal Government, Respondent is subject to the EPA's administrative enforcement authorities set out in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b).

48. Respondent is the “owner/operator” of a “facility” located at 3909 Halls Ferry Road, Vicksburg, Mississippi, as those terms are defined in 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10].
49. Respondent is a “generator” of “hazardous waste” as those terms are defined in 11 Miss. Admin. Code Pt. 3, R. 1.1 [40 C.F.R. § 260.10] and 11 Miss. Admin. Code Pt. 3, R. 1.2 [40 C.F.R. § 261.3].
50. Respondent specializes in the experimental testing and research projects that includes beach erosion, re-deposition, re-nourishment, and wave action research, structural assessments for hurricanes, soil and water contamination reduction, soil and water remediation processes, concrete testing, asphalt research and testing, soil hydraulics, and maintenance or fabrication activities. Respondent operates an instrument technology laboratory, a structural laboratory, a coastal engineering research and hydraulics laboratory, engineering and chemistry laboratories, and an information technology laboratory.
51. Respondent, through its operations, generates ignitable hazardous waste (D001), corrosive hazardous waste (D002), reactive hazardous waste (D003), toxic hazardous waste (D009 mercury), and listed hazardous wastes (F002 methylene chloride, F003 methanol and acetone).
52. On February 26, 2018, Respondent notified the Mississippi Department of Environmental Quality (MDEQ) as an LQG of hazardous waste.
53. On September 28, 2018, EPA issued Respondent a HSWA Permit requiring corrective action at the Facility. The HSWA permit is effective until September 28, 2028.
54. On November 1, 2018, the EPA and the MDEQ conducted a compliance evaluation inspection (CEI) at Respondent’s Facility. The EPA’s findings of the CEI were documented in a report mailed to Respondent, dated February 27, 2019.
55. Subsequent to the November 1, 2018, CEI, the EPA did a record review of documents that have been submitted to the EPA pursuant to the requirements of the HSWA Permit.
56. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing containers of hazardous waste in SAAs that were not labeled with the words “Hazardous Waste”. These containers included: a one quart container in the Chemical Oxidation Laboratory Room 204, one 10-gallon container in the ICP Laboratory, two 5-gallon containers and two 20-gallon containers in the Inorganic Instrument Laboratory Room 131B, three 5-gallon containers in the ICP Instrument Laboratory, a two-liter, a one-gallon and three 20-gallon containers in the Quality Assurance Laboratory Room 127, one 20-gallon container in the Organic Prep Laboratory Room 128, and two 20-gallon containers in the Inorganic Prep Laboratory Room 129.
57. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the container labeling requirements of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1)(ii) (2016)].

58. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing containers of hazardous waste in SAAs that were open when the waste was not being added or removed. These containers included: two 5-gallon containers and one 20-gallon container in the Inorganic Instrument Laboratory Room 131B, three 5-gallon containers in the ICP Instrument Laboratory, and a two-liter container and two 20-gallon containers in the Quality Assurance Laboratory Room 127.
59. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(c)(1)(i) (2016)], by not complying with the container management requirements of 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.173(a)].
60. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing hazardous waste in containers that were not marked with accumulation start dates. These containers included: one 55-gallon container in the ICP Laboratory, one 20-gallon container in the Inorganic Instrument Laboratory Room 131B, and one 20-gallon container in the Building 3299 Environmental Chemistry 90-Day or Less Accumulation Area.
61. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(2) (2016)].
62. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing hazardous waste in one 20-gallon container in the Building 3299 Environmental Chemistry 90-Day or Less Accumulation Area that was not marked or labeled with the words "Hazardous Waste".
63. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the marking or labeling requirements of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(3) (2016)].
64. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing hazardous waste in containers for more than 90 days. These containers included: one 5-gallon container dated 5/2/18 (on-site for 183 days), four 20-gallon containers dated 5/15/18 (on-site for 170 days), one 20-gallon container dated 5/30/18 (on-site for 155 days), one 20-gallon container dated 6/29/18 (on-site for 125 days), one 30-gallon container dated 5/1/18 (on-site for 184 days), and one 30-gallon container dated 5/15/18 (on-site for 170 days) in the Building 3299 Environmental Chemistry 90-Day or Less Accumulation Area.
65. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste in excess

of 90 days without a permit or interim status, in violation of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(b) (2016)].

66. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing hazardous waste in containers without aisle space in the Building 3299 Environmental Chemistry 90-Day or Less Accumulation Area.
67. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with aisle space requirements of 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.35].
68. During the November 1, 2018, CEI, the inspectors observed that Respondent was storing hazardous waste in one 20-gallon container that was open when the waste was not being added or removed in the Building 3299 Environmental Chemistry 90-Day or Less Accumulation Area.
69. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in of 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(1)(i) (2016)], by not complying with the container management requirement of 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.173(a)].
70. During a file review conducted during the November 1, 2018, CEI, the inspectors observed that Respondent failed to submit an Exception Report for five hazardous waste manifests (016156979 JJK, 016156980 JJK, 016156982 JJK, and 016156966 JJK, dated September 12, 2017, and manifest number 016156914 JJK, dated April 18, 2017) where the Respondent did not receive 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.
71. The EPA therefore alleges that Respondent violated 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.42(a)(2)] by not submitting an Exception Report to the EPA Regional Administrator for the region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the designated facility within 45 days of the date the waste was accepted by the initial transporter.
72. During a file review conducted during the November 1, 2018, CEI, the inspectors observed that Respondent failed to provide annual hazardous waste refresher training to two employees.
73. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34

(a)(4) (2016)], by not complying with the personnel training requirements of 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.16(c)].

74. During a file review conducted during the November 1, 2018, CEI, the Respondent failed to provide the inspectors with documents that include:
- a. The job title for each position at the facility related to hazardous waste management, the name of the employee filling each job; and
 - b. A written job description for each position that includes the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.
75. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the personnel training requirements of 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.16(d)(1) and (2)].
76. During a file review conducted during the November 1, 2018, CEI, the inspectors observed that Respondent failed to document an attempt to make arrangements with the local authorities identified as appropriate for the type of waste handled at the Facility and the potential need for the services of these authorities.
77. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the local authority arrangement requirements in 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.37].
78. During a file review conducted during the November 1, 2018, CEI, the inspectors observed the Respondent's contingency plan:
- a. Did not describe the actions facility personnel must take in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility, fire spills;
 - b. Did not have current names and emergency telephone numbers of all persons qualified to act as emergency coordinator;
 - c. Did not have a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required; and
 - d. Did not include the location and a physical description of each item on the list, or a brief outline of its capabilities.
79. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(4) (2016)], by

not complying with the contingency plan requirement in 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.52 (a)(d)(e)].

80. During a file review conducted during the November 1, 2018, CEI, the inspectors reviewed the weekly container inspection records from December 30, 2015, to October 2, 2018, in the Building 3297 Environmental Engineering 90-Day or Less Area and observed inspections were missing between April 27, 2016, to August 2, 2016. Inspectors also reviewed the weekly container inspection records from September 25, 2017, to February 6, 2018, in the Building 3299 Environmental Chemistry 90-Day or Less Area and observed inspections prior to September 25, 2017, were not conducted.
81. The EPA therefore alleges Respondent violated Mississippi Code of 1972, Miss. Code Ann. § 17-17-27(4) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 11 Miss. Admin. Code Pt. 3, R. 1.3 [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not inspecting its hazardous waste containers as required by 11 Miss. Admin. Code Pt. 3, R. 1.11 [40 C.F.R. § 265.174].
82. During the record review performed subsequent to the CEI, the EPA found that not all work plans and reports were submitted in accordance with Condition II.N.2. of the HSWA Permit and the approved schedule as outlined in the permit conditions and Appendix D: Schedule of Compliance. The following deliverables have not been submitted in accordance with the approved schedule:
 - a. Pursuant to Permit Condition II.H.5. and II.J.3., the Respondent shall submit the “Annual Corrective Measures Implementation and Effectiveness Report” annually, no later than March 31 of each year.
 - b. Pursuant to Permit Condition II.J.1., the Respondent shall submit the “Corrective Measures Implementation Plan” to address groundwater remediation and groundwater monitoring at SWMU 11 and AOC B within ninety (90) calendar days of the effective date of this Permit. The effective date of the HSWA Permit is September 28, 2018, and the deliverable was due December 28, 2018.
 - c. Pursuant to Permit Condition II.K.2., the Respondent shall submit the “Land Use Control Implementation Plan” within ninety (90) calendar days of the effective date of this Permit. The effective date of the HSWA Permit is September 28, 2018, and the deliverable was due December 28, 2018.
83. The EPA therefore alleges Respondent violated 40 C.F.R. § 270.30(a), by not complying with Permit Condition II.N.2., including Permit Condition II.H.5. and II.J.3., Permit Condition II.J.1., and Permit Condition II.K.2.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

84. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

85. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
86. Respondent expressly waives any right to contest the allegations contained in this CA/FO and to appeal the Final Order accompanying the Consent Agreement, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this CA/FO.
87. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
88. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
89. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
90. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
91. Respondent consents to the issuance of this compliance order.
92. Respondent consents to the conditions specified in this CA/FO.
93. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program, and its HSWA Permit, except for the work required below, in Section VI. INJUNCTIVE RELIEF.
94. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged in this CA/FO.
95. Each party will pay its own costs and attorneys' fees.
96. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

VI. INJUNCTIVE RELIEF

97. By no later than thirty (30) days after the Effective Date of this CA/FO, pursuant to Permit Condition II.N.2. of the HSWA Permit, Respondent shall submit all the deliverables listed below:

- a. Annual Corrective Measures Implementation and Effectiveness Report (See Permit Condition II.H.5. and II.J.3.);
- b. Corrective Measures Implementation Plan to address groundwater remediation and groundwater monitoring at SWMU 11 and AOC B (See Permit Condition II.J.1.);
- c. Land Use Control Implementation Plan (See Permit Condition II.K.2.).
- d. A certification that by submitting the deliverables listed above, Respondent is in compliance with its HSWA Permit

VII. PAYMENT OF CIVIL PENALTY

98. Respondent consents to the payment of a civil penalty in the amount of **SEVENTY-TWO THOUSAND ONE HUNDRED DOLLARS (\$72,100.00)**, which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
99. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.
100. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street

New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

101. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

And to:

William Kappler, Physical Scientist
Land, Asbestos and Lead Section
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

102. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VIII. PARTIES BOUND

103. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
104. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
105. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

IX. RESERVATION OF RIGHTS

106. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
107. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
108. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

X. OTHER APPLICABLE LAWS

109. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XI. SERVICE OF DOCUMENTS

110. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
RCRA/FIFRA/TSCA Law Office
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9544

111. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Alissa Armstrong
Office of Counsel
U.S. Army Engineer Research and Development Center
3909 Halls Ferry Road
Vicksburg, Mississippi 39180

XII. SEVERABILITY

112. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XIII. EFFECTIVE DATE

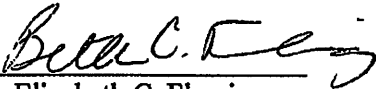
113. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

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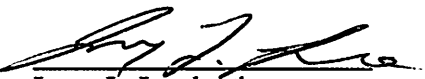
In the matter of United States Army Corps of Engineers, U.S. Army Engineer Research and Development Center, Docket No. RCRA-04-2019-9736(b):

AGREED AND CONSENTED TO:

**United States Army Corps of Engineers
U.S. Army Engineer Research and Development Center**

By:  Dated: 9/23/19
Dr. Elizabeth C. Fleming
United States Army Corps of Engineers
ERDC Deputy Director
U.S. Army Engineer Research and Development Center

United States Environmental Protection Agency

By:  Dated: 09/25/19
Larry L. Lamberth
Chief
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-04-2019-9736(b)
)	
United States Army Corps of Engineers)	
)	
Respondent)	
)	
U.S. Army Engineer Research and)	
Development Center)	Proceeding Under Section 3008(a) of the
)	Resource Conservation and Recovery Act,
Facility)	42 U.S.C. § 6928(a)
)	
3909 Halls Ferry Road)	
Vicksburg, Mississippi 39180)	
EPA ID No.: MS6 210 809 871)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 25th day of September, 2019.

BY: Tanya Floyd
Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of U.S. Army Engineer Research and Development Center, Docket Number: RCRA-04-2019-9736(b), and have served the parties listed below in the manner indicated:

Joan Redleaf Durbin
Associate Regional Counsel
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

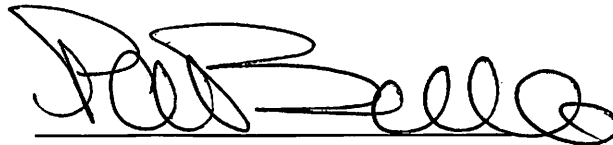
Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Alissa Armstrong
Office of Counsel
U.S. Army Engineer Research and Development Center
3909 Halls Ferry Road
Vicksburg, Mississippi 39180

(Via Certified Mail – Return Receipt Requested)

Date: 9-25-19



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511