

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

**** FILED ****
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U.S.EPA - Region 09

In the matter of)	U.S. EPA Docket No.
)	RCRA-09-2016-0006
Southern California Edison Company)	
)	
EPA ID No. CAD981689912)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations (“C.F.R.”) Part 22. Complainant is the United States Environmental Protection Agency, Region 9 (“EPA”). Respondent is Southern California Edison Company (“Respondent”).
2. Respondent owns and operates a facility located at 1 Pebbly Beach Road in Avalon, California 90704 on Catalina Island called the Catalina Utility Center (the “Facility”). The Facility’s EPA Identification Number is CAD981689912. At the Facility, Respondent provides utility services to the residents of Catalina Island, including electrical power, drinking water, and propane.
3. On September 23, 2015, inspectors from the EPA conducted an unannounced RCRA Compliance Evaluation Inspection (“CEI”). The purpose of the inspection was to determine the Facility’s compliance with applicable federal environmental statutes and regulations, and in particular RCRA, as amended, and the regulations in 40 C.F.R. Parts 261-265, 268, 273 and 279, and the regulations adopted by the California authorized program under RCRA in the California Code of Regulations (“C.C.R.”)¹, Title 22, Division 4.5 and the California Health and Safety Code, Division 20. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated California

¹ All citations to the “C.C.R.” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. Corresponding federal citations are provided in brackets.

Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.

4. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66262.34(a) and 22 CCR § 66273.35(a) by storing waste without a permit over the accumulation time limits [see also 40 C.F.R. § 262.34(a) and 40 C.F.R. § 273.15] and that Respondent violated the requirements of 22 CCR § 66265.17 by failing to perform adequate weekly inspections of the areas used for hazardous waste container storage or transfer. These are violations of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.

B. JURISDICTION

5. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
6. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
7. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
8. Respondent is a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, paint waste (D001, F002 & F003), soil or solvent contaminate rags (F001, F003 & CA 352), used mineral oil and Universal Waste (fluorescent light tubes, monitors and batteries).
10. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

11. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
12. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty for any past or current violation, or requiring compliance immediately or within a specified time for violation, of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
13. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the signatory.

C. ALLEGED VIOLATIONS

COUNT I

Storage of hazardous waste without a permit

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. 22 C.C.R. § 66262.34(a) allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status, provided that the generator complies with certain requirements [*see also* 40 C.F.R. § 262.34(a)].
16. 22 C.C.R. § 66273.35(a) states a universal waste handler shall accumulate universal waste for no longer than one year from the date the universal waste was generated, or was received from another universal waste handler [*see also* 40 C.F.R. § 273.15].
17. Respondent is a generator of hazardous waste, and accumulates paint waste (Waste Codes D001, F002 & F003), soil or solvent contaminated rags (Waste Codes F001, F003 & CA 352), used mineral oil, and universal waste.
18. At the time of the CEI, EPA inspectors noted two containers of hazardous waste and one container of universal waste. The first container of hazardous waste had been stored 7 days past the 90 day storage limit set forth in 22 C.C.R. § 66262.34(a). The second container was stored 15 days over the 90 day storage limit. Finally, the container of universal waste had been stored 40 days over the one year limit set forth in 22 C.C.R. § 66273.35(a).
19. Therefore, EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66262.34(a) and 22 C.C.R. § 66273.35(a) by storing waste without a permit over the accumulation time limits [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 273.15].

COUNT II

Failure to perform inspections of hazardous waste storage areas

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 22 C.C.R. § 66265.174 provides that an owner or operator shall inspect areas used for container storage or transfer, at least weekly [*see also* 40 CFR § 265.174].
22. During the CEI, EPA inspectors noted that inspection reports indicated that the Facility was performing inspection reports, but none of the reports indicated that the containers had been stored past the deadlines for accumulators of hazardous waste. Subsequent discussions with the Respondent confirmed that, while inspections were being performed, the staff member conducting the inspections had not been adequately trained and was not checking the date labels on the containers.
23. Therefore, EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66265.17 by failing to perform adequate weekly inspections of the areas used for hazardous waste container storage or transfer.

D. CIVIL PENALTY

24. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy (“Penalty Policy”), including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed THIRTY NINE THOUSAND ONE HUNDRED AND TWENTY SEVEN DOLLARS (\$39,127.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

E. ADMISSIONS AND WAIVERS OF RIGHTS

25. For the purposes of this proceeding and in accordance with 40 C.F.R. § 22.18, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

26. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

27. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G; and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
28. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
29. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

30. Respondent consents to the assessment of and agrees to pay a civil penalty of THIRTY NINE THOUSAND ONE HUNDRED AND TWENTY SEVEN DOLLARS (\$39,127.00) in full settlement of the federal civil penalty claims alleged in this CA/FO.
31. Respondent shall submit payment of the THIRTY NINE THOUSAND ONE HUNDRED AND TWENTY SEVEN DOLLARS (\$39,127.00) within thirty (30) calendar days of the Effective Date of this CA/FO in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

US Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

32. At the time payment is made, a copy of the payment transmittal shall be sent to:

Steve Armsey
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Dan Fernandez (ENF 2-2)
Enforcement Division
Waste and Chemical Section
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

33. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

34. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.

35. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
36. All penalties shall be submitted as described in Paragraph 31.
37. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

38. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. CERTIFICATION OF COMPLIANCE

39. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent is currently in compliance with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste management program including 22 C.C.R. § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)] and 22 C.C.R. § 66265.443 [*see also* 40 C.F.R. § 265.443] that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

J. RESERVATION OF RIGHTS

40. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
41. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
42. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

K. OTHER CLAIMS

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41.

Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

L. MISCELLANEOUS

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42.

This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

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The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

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44.

Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

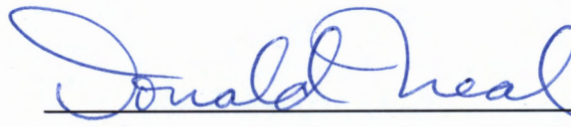
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45.

The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

8/17/16

Date



Donald Neal, Director Environmental Services
Southern California Edison

9/6/16

Date



Doug K. McDaniel, Chief
Waste and Chemical Section
U.S. Environmental Protection Agency, Region 9

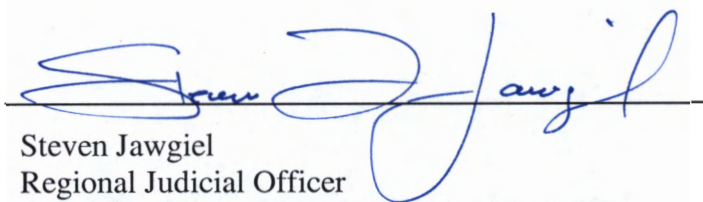
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-2016-0006) be entered and that Southern California Edison Company pay a civil penalty of \$39,127.00 due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/06/16

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of Southern California Edison, with Docket # RCRA-09-2016-0006 has been filed with the Regional Hearing Clerk, Region IX and copies were sent:

By Certified Mail, Return Receipt Requested to Respondent:

Sumner J. Koch
Southern California Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770

Certified Mail Receipt # 7015-0640-0001-1122-0802

Hand Delivered to:

BRIANNA FAIRBANKS
Office of Regional Counsel
U.S. EPA, Region 9, ORC 3
75 Hawthorne Street
San Francisco, CA 94105

9/7/16
Date

Steven Armsey
FOR: Steven Armsey
Acting Regional Hearing Clerk