BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:	)	DOCKET NO. RCRA-10-2020-0164
The United States Department of the Air Force,	)	**CONSENT AGREEMENT AND FINAL ORDER**
Respondent.	)	
Joint Base Elmendorf-Richardson, Anchorage, Alaska	)	
Facility.	)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928.

1.2. Pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), EPA may 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 State of Alaska has not been authorized pursuant to Section 3006 of RCRA,

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, Washington 98101
(206) 553-1037

42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the federal program. Pursuant to Section 3008(a) of RCRA, EPA may enforce the federal hazardous waste program in the State of Alaska.

1.4. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, 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 the Air Force (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

II. PRELIMINARY STATEMENT

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

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

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

III. ALLEGATIONS

3.1 Respondent is a department, agency, and/or other instrumentality 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) and 40 C.F.R. § 260.10.

3.3 40 C.F.R. § 261.2(a)(1) defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munition. Materials are solid waste under 40 C.F.R. § 261.2 if they are abandoned by being disposed of, burned, or incinerated, or accumulated, stored or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

3.4 Pursuant to 40 C.F.R. § 261.2(c), materials are "solid wastes" if they are recycled – or accumulated, stored, or treated before recycling – where (1) used in a manner constituting disposal, (2) burned for energy recovery, (3) reclaimed, or (4) accumulated speculatively.

3.5 Pursuant to 40 C.F.R. §§ 261.2(c)(4) and 261.1(c)(8), material is "speculatively accumulated" if it is accumulated before being recycled and specific amounts are not recycled within the allowed regulatory timeframe. A material is not accumulated speculatively if the person accumulating the material can demonstrate that the material is potentially recyclable and has a feasible means of being recycled; and that – during the calendar year (commencing January 1) – the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated.

3.6 Pursuant to 40 C.F.R. § 261.2(c), the Agency has identified specific types of materials that are solid wastes when accumulated speculatively. These are: spent materials; sludges listed in 40 C.F.R. § 261.31 or § 261.32; sludges exhibiting a characteristic of hazardous waste; by-products listed in 40 C.F.R. § 261.31 or § 261.32; by-products exhibiting a characteristic of hazardous waste; commercial chemical products listed under 40 C.F.R. § 261.33, and scrap metal that is not excluded under 40 C.F.R. § 261.4(a)(13).

3.7 Pursuant to 40 C.F.R. § 261.1(c)(1), "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

3.8 Pursuant to 40 C.F.R. § 261.2(c), "spent material" is a "solid waste" when "accumulated speculatively."

3.9 Pursuant to 40 C.F.R. § 261.3, a "solid waste" is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and it exhibits any of the characteristics identified in 40 C.F.R. Part 261, Subpart C, or it is listed in 40 C.F.R. Part 261, Subpart D.

3.10 Pursuant to 40 C.F.R. § 261.24, a "solid waste" exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure (TCLP), the extract from the representative sample of the waste exceeds the levels of a toxic contaminant identified by its associated Hazardous Waste No. and listed in 40 C.F.R. § 261.24.

3.11 Pursuant to 40 C.F.R. § 261.24, a "solid waste" exhibits the characteristic of toxicity for lead if the extract from a representative sample exceeds 5.0 mg/L (and is designated as D008).

3.12 40 C.F.R. § 262.11 requires a person who generates solid waste, as defined in 40 C.F.R. § 261.2, to determine if that waste is a hazardous waste using the method provided in 40 C.F.R. § 262.11(a)-(d).

3.13 40 C.F.R. § 260.10 defines a "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.14 40 C.F.R. § 260.10 defines "facility" as all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.15 Elmendorf Airfield and Fort Richardson were constructed in the early 1940s and merged into Joint Base Elmendorf-Richardson (JBER) in 2010. JBER supports a robust training mission and operates 14 live fire ranges.

3.16 At all times relevant to the allegations set forth herein, Respondent is and has been the "owner" and "operator" of JBER, the Facility, as those terms are defined at 40 C.F.R. § 260.10.

3.17 Respondent operates a Treatment, Storage, and Disposal Facility (TSDF), as those terms are defined in 40 C.F.R. § 260.10 and Part 264, at the Defense Logistics Agency Disposition Services Anchorage Treatment, Storage, and Disposal Facility (DLA TSDF) located at 11735 Vandenberg Avenue at the Facility, under a RCRA Part B permit issued by EPA to Elmendorf Air Force Base on April 1, 1993 (the Permit). Respondent's Permit was renewed for ten years on December 15, 2003, modified on December 1, 2010, to reflect the merger of

Elmendorf Air Force Base with Fort Richardson U.S. Army Base, and has been administratively continued while EPA reviews Respondent's June 3, 2013 RCRA Permit Renewal Application.

3.18 Pursuant to 40 C.F.R. § 270.1(c)(4), EPA may issue permits for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status, or lack thereof, of any unit is not affected by the issuance or denial of a permit to any other unit at the facility.

3.19 At all times relevant to the allegations set forth herein, the only location at the Facility that was permitted to accumulate or store hazardous waste was the DLA TSDF at 11735 Vandenberg Avenue at the Facility. Respondent's RCRA Permit does not now, nor has it ever, authorized storage of hazardous waste at Building 55295. At no time relevant to the allegations contained in this Consent Agreement were any locations at the Facility operating under interim status.

3.20 At all times relevant to the allegations contained in this Consent Agreement, Respondent generated, accumulated, and/or stored hazardous waste at Building 55295.

3.21 In its 2003 RCRA Part B permit renewal application, as well as in its 2010 permit modification and 2013 permit renewal application, Respondent identified as a large quantity generator (LQG) of hazardous waste and a large quantity handler of universal waste.

3.22 At all times relevant to this Consent Agreement and Final Order, Respondent has generated more than 1000 kilograms per month of hazardous waste at the Facility.

3.23 40 C.F.R. § 262.11 requires a person who generates solid waste, as defined in 40 C.F.R. § 261.2, to determine if that waste is a hazardous waste using the method provided in 40 C.F.R. § 262.11(a)-(d).

3.24 Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person that treats, stores, or disposes of hazardous waste must have a permit or interim status. Owners and operators of hazardous waste management units must have a permit during the active life (including the closure period) of the unit.

3.25 40 C.F.R. § 262.15(a) provides that generators may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate (known as satellite accumulation areas) which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. Parts 264 through 267 and 270, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.15(a)(1)-(8).

3.26 40 C.F.R. § 262.17 provides that large quantity generators may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.17(a)(1)-(9).

3.27 On October 7-9, 2019, authorized EPA representatives conducted a RCRA compliance inspection of the Facility.

3.28 EPA has identified RCRA violations at the Facility based on information collected during, and as a result of, the October 7-9 inspection. EPA has also identified violations associated with management of hazardous waste from January 1, 2019 to present based on information provided by Respondent in an October 9, 2019, letter from Dr. Mark Prieksat of the Air Force at JBER to Ms. Jennifer Parker of EPA Region 10.

3.29 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $101,439 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 1A: FAILURE TO PROPERLY MANAGE UNIVERSAL WASTE LAMPS

3.30 The allegations set forth in paragraphs 3.1 through 3.29 are realleged and incorporated by reference herein.

3.31 40 C.F.R. § 273.9 defines a "large quantity handler" of universal waste as an entity that "accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time."

3.32 In its 2003 RCRA Part B permit renewal application, as well as in its 2010 permit modification and 2013 permit renewal application, Respondent identified as a large quantity handler of universal waste.

3.33 40 C.F.R. Part 273, Subpart C specifies the requirements applicable to large quantity handlers of universal waste.

3.34 "Universal waste" includes, among other things, "lamp(s)" as that term is defined at 40 C.F.R. §§ 273.5 and 273.9.

3.35 40 C.F.R. § 273.34(e) requires that large quantity handlers of universal waste who accumulate universal waste lamps in containers or packages must label or mark clearly each lamp or the container or package in which the lamps are contained with any one of the following phrases: "Universal Waste – Lamp(s)," "Waste lamp(s)," or "Used Lamp(s)."

3.36 Respondent failed to clearly label certain universal waste lamps generated at the Facility, in violation of the requirements of 40 C.F.R. § 273.34(e).

3.37 On October 7, 2019, Respondent failed to contain universal waste lamps generated at the Facility in closed and/or structurally sound containers or packages, in violation of the requirements of 40 C.F.R. § 273.33(d)(1).

COUNT 1B: FAILURE TO PROPERLY MANAGE UNIVERSAL WASTE BATTERIES

3.38 The allegations set forth in paragraphs 3.1 through 3.37 are realleged and incorporated by reference herein.

3.39 40 C.F.R. Part 273, Subpart C specifies the requirements applicable to large quantity handlers of universal waste.

3.40 "Universal waste" includes, among other things, "batteries" as that term is defined at 40 C.F.R. §§ 273.2 and 273.9.

3.41 40 C.F.R. § 273.34(a) requires that large quantity handlers of universal waste who accumulate universal waste batteries in containers or packages must label or mark clearly each battery or the container or package in which the lamps are contained with any one of the following phrases: "Universal Waste – Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)."

3.42 Respondent failed to clearly label certain universal waste batteries generated at the Facility, in violation of the requirements of 40 C.F.R. § 273.34(a).

COUNT 2: STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS

3.43 The allegations set forth in paragraphs 3.1 through 3.42 are realleged and incorporated by reference herein.

3.44 Air Force and Army missions at JBER produce expended small arms cartridge casings ("ESACCs") during training exercises. Since early 2008, ESACCs have been collected

after training events and recycled – under a contract with the Defense Logistics Agency– Disposition Services (DLA-DS) – with the proceeds used to fund recycling efforts on JBER. In 2017, DLA-DS terminated reimbursements, which caused Respondent to cease recycling in 2017 while still continuing to accumulate ESACCs from Air Force and Army missions. While JBER did not maintain an accurate inventory of ESACCs being accumulated, it is clear that, because recycling ceased the year prior, in 2018, 75% of the ESACCs which were accumulated in 2017 were not recycled.

3.45 In its October 9, 2019, letter to EPA, Respondent provided the information in paragraph 3.44 – that, prior to 2017, it recycled its ESACCs; that, in 2017, this recycling activity ceased; and that Respondent thereafter increasingly accumulated ESACCs on site. According to Respondent's ESACC inventory, at the end of calendar year 2017, 97,000 lbs of cartridge casings remained stored at the facility. Additionally, according to that inventory, at the end of calendar year 2018, another 98,600 lbs of ESACCs were also added to the storage inventory.

3.46 Because it ceased recycling in 2017, ESACCs have been speculatively accumulated starting at least on January 1, 2019, within the meaning of RCRA 40 C.F.R. §§ 261.2(c)(4) and 261.1(c)(8).

3.47 Since the ESACCs were speculatively accumulated beginning on January 1, 2019, they became a regulated solid waste pursuant to 40 C.F.R. § 261.2(c).

3.48 In July 2019, JBER sampled and had a TCLP analysis performed on the ESACCs. The sampling and analysis results received on August 7, 2019, indicated that the ESACCS of 5.56 caliber blank, 5.56 caliber – Japanese, 9 mm caliber, 40 caliber, and 300 Win Mag exhibited the Toxicity Characteristic for lead, and, therefore, the ESACCS are a characteristic hazardous

waste pursuant to 40 C.F.R. § 261.24. Analytic results indicated that the 5.56 caliber, 5.56 caliber – aluminum, 7.62 caliber, 7.62 caliber blank, 50 caliber, and 50 caliber blank did not exhibit the Toxicity Characteristic for lead.

3.49 Complainant and Respondent acknowledge that JBER has continued to generate ESACCs since self-reporting on October 9, 2019.

3.50 Respondent has never had a permit for the storage of hazardous waste in Building 55295 and has therefore illegally stored hazardous waste at the Facility from January 1, 2019, until present.

3.51 Respondent violated RCRA Section 3005(a), 42 U.S.C. § 6925(a), and 40 C.F.R.§ 270.1(c) when it failed to have a permit for storage of hazardous waste during calendar years 2019 and 2020.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is $61,554 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 60 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the checks the title and docket number of this action. Respondent's Treasury Account Symbol is 057X3400. Inquiries concerning this payment can be made to Dr. Mark Prieksat. Dr. Prieksat can be reached at mark.prieksat@us.af.mil or (907) 384-3092.

4.6. Concurrently with payment, Respondent must serve photocopies of the checks, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following email addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Melanie Garvey
U.S. Environmental Protection Agency
Federal Facilities Enforcement Office
Garvey.melanie@epa.gov

Please note that because EPA's offices are currently affected due to the COVID-19 outbreak, we are requesting that you submit documentation by email.

4.7. Respondent is responsible for full payment of the Assessed Penalty within 60 days of the effective date of this Consent Agreement.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty shall become immediately due and owing.

4.9. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take actions within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

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

4.10.1. For each solid waste generated at the Facility, Respondent shall determine if that solid waste is a hazardous waste in accordance with 40 C.F.R. § 262.11.

4.10.2. Respondent shall not accumulate, store, or treat hazardous waste at the Facility except in accordance with a permit to operate a treatment, storage, or disposal facility pursuant to 40 C.F.R. Part 270, under interim status pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or by complying with the conditions for accumulation in 40 C.F.R. § 262.17 at each location where hazardous waste is generated, accumulated, or treated.

4.10.3. Within 30 days after the effective date of the Final Order, and during the duration of storing the hazardous waste referenced in Count 2 at Building 55295 prior to recycling, Respondent shall store the waste in closed containers and comply with all of the provisions of 40 C.F.R.

§§ 262.17(a)(1)(i)-(v) and (a)(5)-(7). However, the 90-day limit for accumulation of waste under 40 C.F.R. § 262.17(a) shall not apply to the hazardous waste referenced in Count 2 during the recycling effort.

4.10.4. Within 30 days of the effective date of the Final Order, and prior to beginning recycling of the hazardous waste referenced in Count 2, Respondent shall seek Minor Source Specific (MSS) permit authorization from Alaska Department of Environmental Conservation (ADEC) for operation of a safety certification unit (SCU). Respondent shall notify EPA once MSS permit authorization is issued by ADEC and shall begin recycling operations of the waste referenced in Count 2 immediately, but not before submission of the detailed plan for recycling in Paragraph 4.10.6.

4.10.5. Within 60 days of the effective date of the Final Order, Respondent shall submit to EPA a written decontamination plan for Building 55295. The decontamination plan shall describe how Respondent will test for contamination resulting from storage of the hazardous waste referenced in Count 2 and shall satisfy the requirements of 40 C.F.R. § 262.17(a)(8)(iii)(A)(1)-(3).

4.10.6. Within 60 days of the effective date of the Final Order, Respondent shall submit to EPA a detailed plan for recycling the hazardous waste referenced in Count 2. That plan should, among other things, (1) describe the use of a SCU to deem the material as safe (MDAS), (2) describe the

processing of the material using a deformer to meet Department of Defense Instruction 4715.23, Integrated Recycling and Solid Waste Management, 31 August 2018, requirements, and (3) describe the process for soliciting bids from vendors for direct sales to recycle the ESACCs. During the recycling effort, Respondent shall follow management methods as outlined in JBER's Integrated Solid Waste Management Plan and Brass Deforming Operations - Standard Operating Procedures.

4.10.7. Respondent shall seal and secure all deformed ESACCs in a container with the MDAS form as the Qualified Recycling Program (QRP) Manager sends out requests for proposals to buyers for purchase, collection, and transportation of the scrap ESACCs for off-site recycling. In the event that Respondent does not receive bids for the deformed ESACCs within 30 calendar days, Respondent will instead transfer it to DLA for sale. All personnel handling the hazardous waste referenced in Count 2 must have RCRA training in accordance with 40 C.F.R. § 262.17(a)(7). Respondent shall maintain weekly progress reports which it shall make available to EPA upon request.

4.10.8. Semi-annually, beginning 180 calendar days after the effective date of the Final Order, Respondent shall provide to EPA Semi-Annual Progress Reports regarding implementation of the Consent Agreement and Final Order which include, at a minimum, the following information: (1) Progress in starting up the recycling operation; (2) Progress in recycling

the waste referenced in Count 2, including total amounts of waste remaining onsite and total amounts of waste recycled to date; (3) Updates on any changes to the recycling program; (4) Updates on the estimated time of completion; (5) Information on any problems or delays which may affect safe and timely completion of the recycling effort; (6) Information on how the problems or delays were or are being addressed; (7) Information on whether there were any personnel changes associated with the recycling program; and (8) Information on implementing the decontamination plan for Building 55295 under Paragraph 4.10.5.

4.10.9. Within 700 days of obtaining MSS permit authorization as identified under Paragraph 4.10.4., Respondent shall complete recycling of the hazardous waste referenced in Count 2.

4.10.10. Within 30 days of completing recycling of the hazardous waste referenced in Count 2, Respondent shall complete the implementation of the decontamination plan for Building 55295.

4.10.11. Within 45 days of completing recycling of the hazardous waste referenced in Count 2 and the decontamination of Building 55295, Respondent shall provide a final Summary Report to EPA. The final Summary report shall include, at a minimum, the following information: (1) Summary of actions taken to recycle the hazardous waste referenced in Count 2, including total amounts recycled through QRP and total amounts turned into DLA; (2) Actual dates of major milestones as described in the

Consent Agreement; (3) Description of the decontamination of Building 55295 to include any variances from the original plan submitted under Paragraph 4.10.5; and (4) Information on management methods and control measures associated with the recycling program to avoid reoccurrence of speculative accumulation of ESACCs.

4.10.12. Unless otherwise instructed in writing by EPA, Respondent shall submit all written notices and reports required by this Consent Agreement and Final Order by email to:

U.S. Environmental Protection Agency
Region 10
R10enforcement@epa.gov

4.10.13. All written notices and reports to EPA shall include the following form signed by a responsible official: "**I certify under penalty of law that, based on information and belief formed after a reasonable inquiry, the statements and information contained in this document accurately reflect the compliance status of this facility and are true, accurate, and complete.**"

By: Date / Signature / Title /Printed Name of Responsible Official

4.10.14. The Respondent's point of contacts for EPA regarding the requirements pursuant to Count 2 are:

Mr. Scott Tarbox
Hazardous Waste Program Manager
Joint Base Elmendorf-Richardson
Scott.Tarbox@us.af.mil

Mr. Lucas Oligschlaeger
Alt. Hazardous Waste Program Manager
Joint Base Elmendorf-Richardson
lucas.oligschlaeger.1@us.af.mil

4.10.15. Pursuant to 40 C.F.R. § 261.1(c)(8), materials will no longer be considered speculatively accumulated "once they are removed from accumulation for recycling." Therefore, at the time Respondent recycles the waste referenced in Count 2 pursuant to the above requirements, the waste will no longer be deemed speculatively accumulated.

4.10.16. Complainant acknowledges that Building 55295 is currently being utilized – and will continue to be utilized – to accumulate ESACCs that are generated throughout JBER's operational ranges. Complainant acknowledges that JBER is not required to complete recycling or disposal of the waste referenced in Count 2 prior to becoming eligible to accumulate new ESACCs for recycling. However, when accumulating new ESACCs for recycling, JBER must comply with 40 C.F.R. § 261.1(c)(8). Specifically, JBER must demonstrate that the material is potentially recyclable, that it has a feasible means of being recycled, and that – during the calendar year (commencing January 1) – the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be

placed in a storage unit with a label indicating the first date that the material began to be accumulated.

4.11. The Assessed Penalty represents an administrative civil penalty assessed by EPA.

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

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

4.14. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

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

4.16. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order 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 or fact set forth in this Consent Agreement and the Final Order.

4.17. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

4.18. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.19. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

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

DATED: 2Sep2020

FOR RESPONDENT:

Colonel Kirsten G. Aguilar, Commander
673d ABW and Joint Base Elmendorf-Richardson

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI

Digitally signed by EDWARD KOWALSKI
Date: 2020.09.04 16:35:10 -07'00'

Ed Kowalski, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2020-0164
The United States Department of the Air Force,	)	**FINAL ORDER**
Respondent.	)	
Joint Base Elmendorf Richardson, Anchorage, Alaska	)	
Facility.	)	

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

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, Washington 98101
(206) 553-1037

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK

Digitally signed by RICHARD MEDNICK
Date: 2020.09.10 17:30:45 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Joint Base Elmendorf Richardson, Docket No.: RCRA-10-2020-0164**, 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:

Nicholas Vidargas
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
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:

Col Kirsten G. Aguilar, Commander
673d ABW and Joint Base Elmendorf-Richardson
10471 20th Street, Suite 139
Joint Base Elmendorf-Richardson, Alaska 99506

DATED this _____ day of _____, 2020.

Young, Teresa L.
Digitally signed by Young, Teresa L.
Date: 2020.09.16 08:45:04 -07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10