

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental Protection Agency
2016 SEP -8 PM 12:30
REGIONAL ELECTRONIC
CLERK

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In the Matter of: :
Veolia ES Technical Solutions :
Middlesex, New Jersey :
NJD002454544 :
:
:
Respondent. :
:
Proceeding Under Section 3008 :
of the Solid Waste Disposal Act, :
as amended. :
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**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. RCRA-02-2016-7101

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6901 *et seq.* (collectively referred to as "RCRA" or the "Act").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Veolia ES Technical Solutions, L.L.C.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey

Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” to Respondent on or about April 26, 2016. The Complaint alleged Respondent violated specific provisions of its New Jersey issued hazardous waste permits. Complainant and Respondent conducted settlement negotiations which led to this agreement.

By entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. § 22.18, the parties agree that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent and its Regulatory Status

1. Respondent is Veolia ES Technical Solutions, L.L.C. (hereafter “Veolia” or “Respondent”).
2. Respondent is a corporation and a subsidiary of Veolia North America.
3. Since on or about January 1, 2008 Respondent has owned and operated a facility located at 125 Factory Lane, Middlesex, New Jersey (hereinafter the “Middlesex facility”) which provides hazardous and non-hazardous waste disposal services to industrial and municipal customers in the United States. Its services include fuels blending, solvent recovery, lab packing, transportation, and on-site technical services. The Middlesex facility was previously owned and operated by Marisol Incorporated (“Marisol”).
4. Respondent is and has been a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
5. Respondent is and has been a “generator” of “hazardous waste” as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
6. Respondent stores organic hazardous waste in tanks at the Middlesex facility.
7. The Middlesex facility is and has been a “facility” as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
8. Respondent is and has been the “owner” of the facility as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
9. Respondent is and has been the “operator” of the facility as that term is defined in 40 C.F.R.

§ 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).

Hazardous Waste Notifications and Permits

10. On or about October 22, 2007, Respondent submitted a Notification of Hazardous Waste Activity to EPA indicating that it would be assuming legal ownership of the Middlesex facility from Marisol. Pursuant to EPA policy, Respondent assumed EPA Identification Number NJD002454544, which had been previously assigned to Marisol.
11. Marisol operated the Middlesex facility pursuant a RCRA permit issued by the New Jersey Department of Environmental Protection (NJDEP) in 1997. Pursuant to a permit modification request, the NJDEP RCRA permit was transferred to Respondent on or about December 27, 2007.
12. The 1997 NJDEP RCRA permit was modified on November 27, 2008 with Permit HWP12005. Permit HWP12005 was set to expire in November 27, 2013 but, based on Respondent's submission of a permit renewal application in May 2013, Permit HWP12005 was extended until the issuance of a new RCRA permit.
13. On or about September 30, 2014, the State of New Jersey issued a new NJDEP RCRA permit, Permit HWP150001, to Respondent for its continued operation of the Middlesex facility. Permit HWP150001 became effective on October 30, 2014 and is set to expire on October 30, 2019.
14. Marisol also operated the facility pursuant to a Hazardous and Solid Waste Amendments of 1984 (HSWA) permit issued by EPA, covering the HSWA requirements for which New Jersey was not authorized. This permit was transferred to Respondent on or about December 27, 2007 and remains in effect.

Failure to Perform Monthly Emission Monitoring on Pumps

15. Pursuant to 40 C.F.R. § 264.1052(a)(1), as referenced by Subject Item: HWSG807524 – 120 of the facility's RCRA Permit HWP120005, each pump in light liquid service is required to be monitored monthly to detect leaks by the methods specified in § 264.1063(b).
16. Pursuant to 40 C.F.R. § 264.1052(a)(1), as referenced by Subject Item: HWSG807524 – 120 of the facility's RCRA Permit HWP150001, each pump in light liquid service must be monitored monthly to detect leaks by the methods specified in § 264.1063(b).
17. Respondent failed to perform monthly emission monitoring on twenty (20) pumps in light liquid service on thirty (30) occasions between April 2012 and March 2015.
18. Respondent's failure to conduct monthly emission monitoring on the pumps referenced above from April 2012 through October 29, 2014 is a violation of RCRA Permit HWP120005.

19. Respondent's failure to conduct monthly emission monitoring on the pumps referenced above from October 30, 2014 through March 2015 is a violation of RCRA Permit HWP150001.

Failure to Keep Hazardous Waste Containers Closed

20. Pursuant to 40 C.F.R. § 264.173(a), as referenced by Subject Item: HWSG807523 – 89 of the facility's RCRA Permit HWP150001, containers storing hazardous waste must be closed except when adding or removing waste.

21. On July 29, 2015, some of Respondent's hazardous waste drums had open bung caps while waste was not being added or removed.

22. The Respondent's failure to keep all of its hazardous waste containers closed except when adding or removing waste is violation of RCRA Permit HWP150001.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Within ten (10) days of the effective date of this CA/FO, Respondent shall comply with all requirements set forth in its current RCRA permit including: conducting monthly emission monitoring on all pumps in light liquid service pursuant to 40 C.F.R Part 264, Subpart BB as referenced in Respondent's NJDEP RCRA permit; and keeping all hazardous waste containers closed except when adding or removing waste.

2. Within thirty (30) days of the effective date of this CA/FO, Respondent shall submit a Compliance Report to EPA detailing its present compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Mr. John Wilk
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint applicable to it and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.

4. Respondent shall pay a civil penalty to EPA in the total amount thirty-six thousand

and six hundred dollars (\$36,600). Such payment shall be paid in full within forty-five (45) days of the effective date of this CA/FO. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payment is made by check(s), then the check(s) shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check(s) shall be identified with a notation thereon: **In the Matter of Veolia ES Technical Solution, L.L.C.** and shall bear thereon the Docket Number: **RCRA-02-2016-7101**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Veolia ES Technical Solution, L.L.C.**
- 7) Case Number: **RCRA-02-2016-7101**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

5. Payment must be received pursuant to the provisions above.

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the deadline described in Paragraph 4 above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the deadline through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the deadline in which a balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the deadline in Paragraph 4.
 - c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understand its terms, find it to be reasonable and consent to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent further agrees that all the terms of the settlement are set forth herein.
6. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
 7. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
 8. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the accompanying Final Order, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law set out above.
 9. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
 10. Each party shall bear its own costs and fees in this matter.
 11. The representative of the Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

12. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of settlement are set forth herein.

13. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

14. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

15. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT: Veolia ES Technical Solutions, L.L.C.

BY: 

Name (print): Kevin B. Anderson

Title: General mgr.

Date: 8/26/16

COMPLAINANT: U.S. Environmental Protection Agency, Region 2

BY: for 

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE: 8/30/16

**In the Matter of Veolia ES Technical Solutions, L.L.C.
Docket No. RCRA-02-2016-7101**

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The Effective Date of this Order shall be the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY: Helen Ferrara
Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency -
Region 2

DATE: Sept 7, 2016

In the Matter of Veolia ES Technical Solutions, L.L.C.
Docket No. RCRA-02-2016-7101

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Karen Maples
Regional Hearing Clerk
Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Christine Donelian Coughlin
Administrative Law Judge
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Washington D.C. 20460-2001

John P. Schantz,
Environmental, Health, and Safety Manager
Veolia ES Technical Solutions, L.L.C
1 Eden Lane
Flanders, New Jersey 07836

Dated: September 8, 2016
New York, New York

Yolanda Majette
Yolanda Majette