

Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and LeRoy and Katherine Howell (Respondents) hereby agree to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of RCRA.

2.3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Idaho final authorization to administer and enforce a hazardous waste program. EPA last approved revisions to Idaho’s approved hazardous waste program on February 26, 2007, (72 Fed. Reg. 8283). Before that, EPA approved revisions to Idaho’s approved hazardous waste program on July 22, 2005 (70 Fed. Reg. 42273). Idaho’s regulations incorporate by reference the used oil management provisions of 40 C.F.R. Part 279 in IDAPA 58.01.05.015, and are part of the state program EPA authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926.

2.4. In the case of a violation in a state that is authorized to carry out a hazardous waste program, in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA notifies the state in which such violation has occurred prior to issuing an order. Although the State of Idaho is not authorized to carry out a hazardous waste program in certain Indian

Country, including where Respondent's facility is located, EPA has notified the State of Idaho of this action.

III. ALLEGATIONS

3.1. At all times relevant to the violations alleged in this action, Respondents were the owners and operators of a scrapyard that generated used oil located at 1638 Canyon Road, on Highway 162 at Seven Mile Creek, in Kamiah, Idaho. The scrapyard is a "facility" as defined in 40 C.F.R. § 260.10.

3.2. Respondents are "persons" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, and are transacting business in the State of Idaho. «

3.3 Respondents are "used oil generators," as defined at 40 C.F.R. § 279.20(a).

3.4. EPA conducted inspections of Respondents' facility on August 14, 2006, and October 24, 2006.

COUNT I. Failure To Clean Up and Properly Manage Used Oil Released To the Environment

3.5. Under 40 C.F.R. § 279.22(d)(3), a generator of used oil must, upon detection of a release of used oil to the environment, clean up and properly manage the released used oil and other materials.

3.6. During the August 14, 2006, and October 24, 2006, inspections of Respondents' facility, the inspectors observed that used oil had been released into the environment and that Respondents had not cleaned up and managed properly the released used oil and other materials as follows:

(a) During both inspections the inspectors observed a large trailer on the property, the front of which was supported by a piece of dimensional lumber that had been placed on the top of two 55-gallon containers. The distance between the two containers was roughly the width of the trailer. The containers appeared to be partly crushed by the weight of the trailer. Large dark stains were on the ground around the base of these containers. Sampling performed during the October inspection showed 8,900 mg/kg of motor oil range organics in the soil around one container and 10,700 mg/kg of motor oil range organics in the soil around the other container.

(b) During the October inspection, the inspectors observed dark stained soil under a saddle tank of a red truck that was located on the parcel of land north of the gravel pit. Analysis of a soil sample showed the soil in this area contained 36,000 mg/kg of motor oil range organics.

(c) During the October inspection, the inspectors observed a large red container in the middle of the field located north of the pond. Samples were taken of the soil under the container. The sample contained 9,600 mg/kg of motor oil range organics.

(d) During both inspections, the inspectors observed at the rear west side of the shop building, numerous five-gallon containers. Some of the containers were open and contained an oily substance; many of the containers were cracked or otherwise broken. The soil beneath these containers was stained a dark, oily color.

(e) During the August inspection, the inspectors observed stained soil on the

ground in front of the shop building near an engine that was on the ground.

(f) During the August inspection, the inspectors observed four 55-gallon containers near the tire piles on the northern parcel of land. The ground under these containers was stained a dark oily color.

(g) During both inspections, the inspectors observed stained soil under the engine areas of many of the pieces of equipment on the southern parcels of land, located between the gravel pit and the pond.

3.7. Respondents' failure, upon the detection of the release of used oil into the environment, to clean up and manage properly the released used oil and other material is a violation of 40 C.F.R. § 279.22(d)(3).

COUNT II. Failure To Store Used Oil In Containers That Are In Good Condition

3.8. Under 40 C.F.R. § 279.22(b)(1) and (2), containers used to store used oil at generator facilities must be in good condition (no severe rusting, apparent structural defects, or deterioration) and must not be leaking (no visible leaks).

3.9. During the August 14, 2006 and October 24, 2006, inspections of Respondents' facility, the inspectors observed that used oil was stored in containers that were not in good condition and that were leaking as follow:

(a) During both inspections, the inspectors observed a large trailer on the property, the front of which was supported by a piece of dimensional lumber that had been placed on the top of two 55-gallon containers. The distance between the two containers was

roughly the width of the trailer. The containers appeared to be partly crushed by the weight of the trailer. Large dark stains were on the ground around the base of these containers. Sampling performed during the October inspection showed 8,900 mg/kg of motor oil range organics in the soil around one container and 10,700 mg/kg of motor oil range organics in the soil around the other container.

(b) During both inspections, the inspectors observed at the rear west side of the shop building, numerous blue, five-gallon containers. Some of these containers held an oily substance; many of the containers were cracked or otherwise broken. The soil beneath these containers was stained a dark, oily color which is consistent with oil having been released from the cracked and broken containers.

(c) During the October inspection, the inspectors observed a 55-gallon container located just off the southwest corner of the shop building. The container was approximately half-full of liquid that the Respondents said was used oil.

3.10. Respondents' failure to maintain containers used to store used oil in good condition and that were not leaking is a violation of 40 C.F.R. § 279.22(b)(1) and (2).

COUNT III. Failure To Label Containers With The Words "Used Oil"

3.11. 40 C.F.R. § 279.22(c)(1) requires that containers used to store used oil must be labeled or marked clearly with the words "Used Oil."

3.12. During the August 14, 2006 and October 24, 2006, inspections of Respondents' facility, EPA observed containers used to store used oil that were not labeled or marked with the words "Used Oil" as follows:

(a) During both inspections, the inspectors observed numerous five-gallon containers located in the shop; some of the containers were not labeled with the words "Used Oil."

(b) During both inspections, the inspectors observed a 55-gallon container in the shop into which used oil filters were drained. The 55-gallon container was not labeled with the words "Used Oil."

(c) During both inspections, the inspectors observed a heater at the back of the shop building. Respondent Katherine Howell told the inspector that they burned used oil in the burner to heat the shop. The burner was not labeled with the words "Used Oil."

(d) During the October inspection, the inspectors observed a rusted, 55-gallon container located just off the southwest corner of the shop building. The container was approximately half-full of liquid. The container was not labeled with the words "Used Oil."

(e) During the August and the October inspections, the inspectors observed, on the parcel of property located just north of the gravel pit, a drip pan under a vehicle. The drip pan was about the size of one-third of a 55-gallon container. The drip pan was approximately one-third full of oil that appeared to have drained from the vehicle engine. The drip pan was not labeled with the words "Used Oil."

(f) During the October inspection, the inspectors observed in front of the shop building one yellow, five-gallon container labeled as petroleum naphtha solvent. The container was approximately one-third full. When questioned about the contents of the container, Mrs. Howell said that nothing but used oil was in any of the containers on their property. The yellow, five-gallon container was not labeled with the words "Used Oil."

(g) During the October inspection, near the access road located south of the shop building, the inspectors noticed a red, 55-gallon container on a pallet. The container appeared to be full of liquid. There was a badly faded, unreadable label on one side of the container. There were no other words or markings on the container. The container was not labeled with the words "Used Oil."

3.13. Respondents' failure to store used oil in containers that were labeled or marked with the words "Used Oil" is a violation of 40 C.F.R. § 279.22(c)(1).

3.14. When EPA determines that any person has violated or is in violation of Subtitle C of RCRA, EPA may, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issue an order assessing a civil penalty for any past or current violation of Subtitle C of RCRA, and require compliance immediately or within a specified time period.

IV. CONSENT AGREEMENT

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in Part III of this CAFO.

4.3. Respondents expressly waive any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of the CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11., below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), and based on the allegations above, the seriousness of the violations, and any good faith efforts to comply with applicable requirements, Complainant has determined and Respondents agree that an appropriate penalty to settle this action is THIRTY TWO THOUSAND EIGHT HUNDRED EIGHTY TWO DOLLARS (\$32,882.00).

4.7. In settlement of the violations alleged in Section III above, Respondents consent to the issuance of the Final Order set forth in Part V below and agree to pay the total civil penalty set forth in Paragraph 4.6 above within 30 days of the effective date of the Final Order, and to undertake the following actions immediately upon issuance of the Final Order:

- (a) Respondents shall ensure that containers and above ground tanks used to

store used oil at the facility are in good condition (no severe rusting, apparent structural defects or deterioration); and are not leaking (no visible leaks) as required by 40 C.F.R. § 279.22(b)(1) and (2).

(b) Respondents shall label or mark clearly all containers and above-ground tanks used to store used oil at the facility with the words "Used Oil," as required by 40 C.F.R. § 279.22(c)(1).

(c) Respondents shall clean up and manage properly the release of used oil and other materials as required by 40 C.F.R. § 279.22(d)(3) at the locations identified in Paragraph 3.6.

(d) Within 60 days of the effective date of this CAFO, Respondents shall submit a plan for approval to sample all areas of the facility listed in Paragraph 3.6, and remove all constituents of used oil in the soil in these areas that are above the initial default target levels found in the Idaho Department of Environmental Quality (IDEQ) Risk Evaluation Manual.

(e) All work to be performed pursuant to the CAFO shall be under the directions and supervision of qualified personnel. Respondents shall provide a copy of the CAFO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this CAFO. Respondents shall provide a copy of this CAFO to any successor(s) in interest prior to any transfer of ownership or operation of the Facility.

(f) Attached to this CAFO is a Certificate of Completion which must be executed by one or both Respondents and returned to EPA at the address set forth in Paragraph 4.9 below within fourteen (14) days after full compliance with all of the provisions of Paragraph. 4.7.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

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

Respondents shall note on the check the title and docket number of this case.

4.9. Respondents shall submit a photocopy of the check described above to:

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

Cheryl Williams
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900 (OCE-127)
Seattle, Washington 98101

4.10. If Respondents fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondents fails to pay the penalty assessed, Respondents may be subject to a civil

action to collect the assessed penalty, together with interest, fees, costs, and additional penalties described below.

4.11. If Respondents fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.7, Respondents shall be responsible for payment of the amounts described below:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12 The penalty described Paragraph 4.6 above, including any additional costs incurred under Paragraph 4.11 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representative of Respondents represents that he or she is duly authorized to enter into the terms and conditions of this CAFO and to bind Respondents to the terms of this CAFO.

4.15. The above provisions are STIPULATED AND AGREED UPON by Respondents and Complainant.

FOR RESPONDENTS LEROY AND KATHERINE HOWELL

Leroy Howell
Signature

Dated: 4-22-09

Print Name: LEROY HOWELL

Title: Owner

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Robert Hartman
Robert Hartman
Assistant Regional Counsel

Dated: 4/27/09

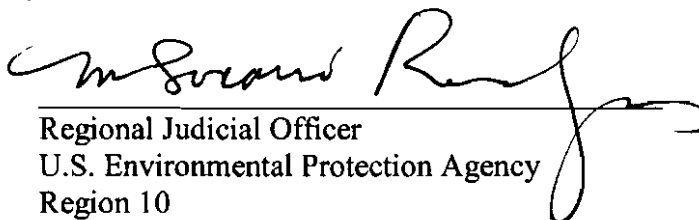
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 29th day of April, 2009.


Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
LeRoy and Katherine Howell,) Docket No. RCRA-10-2009—0124
)
Kamiah, Idaho) CERTIFICATION
)
Respondent.)
)
_____)

_____ certifies under penalty of
perjury that the following statement are true, accurate and correct:

Each and every one of the requirements contained Paragraph 4.7 in the
Consent Agreement and Final Order issued on _____ to the
above named Respondents has been fully and timely complied with.

EXECUTED this _____ day of _____ 2009.

(Signature)

(Print or type name)

(Title)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: LeROY AND KATHERINE HOWELL, DOCKET NO.: RCRA-10-2009-0124** was filed with the Regional Hearing Clerk on April 30, 2009.

On May 1, 2009, the undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 on May 1, 2009, to:

LeRoy and Katherine Howell
P.O. Box 1136
Kamiah, ID 83536

DATED this 1st day of May 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

May 1, 2009

Reply to
Attn Of: ORC-158

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

LeRoy and Katherine Howell
P.O. Box 1136
Kamiah, Idaho 83536

Re: Settlement of RCRA violations
RCRA ID # IDE 00000 0017

Dear Mr. and Mrs. Howell:

I have enclosed a conformed copy of the fully-executed Consent Agreement and Final Order (CAFO) for the resolution of this matter. The original has been filed with the United States Environmental Protection Agency's (EPA) Region 10, Hearing Clerk. It is important to remember that the CAFO requires that you pay the proposed penalty of \$32,882 within 30 days of the effective day of the CAFO, certify that you are compliance with RCRA regulations regarding the management of used oil, and that you clean up and manage properly the released used oil and other materials. The CAFO provides instructions on the cleanup of the contaminated soil.

At the time you submitted the signed CAFO, you also submitted a signed Certification stating that you had completed all the requirements contained in Paragraph 4.7 of the CAFO. The Certification statement should not be submitted until you have completed all the requirements contained in Paragraph 4.7. Enclosed with the CAFO is a blank Certification for you to submit to EPA upon completion of those requirements.

Please call me at (206) 553-0029 if you have any questions regarding the enclosed document. Thank you for your help in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Hartman".

Robert Hartman
Assistant Regional Counsel

Enclosure