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REGION 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

In the Matter of:)	
)	
United States Air Force,)	Docket No. RCRA-10-2012-0077
)	
Respondent)	
)	
Eielson Air Force Base)	
354 Broadway Street)	CONSENT AGREEMENT AND
Eielson Air Force Base, Alaska 99702)	FINAL ORDER
)	
Facility)	
)	
)	

I. STATUTORY AUTHORITY

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a).

2. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, or EPA’s regulations promulgated thereunder.

3. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to 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.

4. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA (“Administrator”) administers the RCRA requirements in Alaska because the State of Alaska is not authorized to administer and enforce a hazardous waste program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e.

5. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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 United States Air Force (“Respondent”) agrees to the issuance of, the Final Order contained in this CAFO.

II. PRELIMINARY STATEMENT

6. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in this CAFO becomes effective.

7. The Administrator has delegated the authority to sign consent agreements memorializing settlements between EPA and the party against whom an administrative penalty is proposed to be assessed pursuant to RCRA Section 3008(a) to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10.

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

9. Part III of this CAFO 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

10. Respondent, United States Air Force, is a department, agency, and/or instrumentality of the United States.

11. Respondent is a "person," as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

12. At all times relevant to the allegations set forth in this CAFO, Respondent is and has been the "owner" and "operator," as those terms are defined at 40 C.F.R. § 260.10, of Eielson Air Force Base, located at 354 Broadway Street, Eielson AFB, Alaska (the "Facility").

13. The Facility generates and stores various types of hazardous, universal, and non-hazardous wastes from vehicle maintenance, aircraft maintenance, and other industrial activities.

14. Respondent generates and accumulates "hazardous waste" as that term is defined at 40 C.F.R. § 260.10.

15. Respondent is and has been a "generator" of, and has engaged in the "storage" in "containers" of, hazardous waste, as those terms are defined at 40 C.F.R. § 260.10, at the Facility.

16. In the National Biennial RCRA Hazardous Waste Report for 2009, the Facility reported as a Federal Large Quantity Generator, meaning that it generated in any single month more than 1,000 kg (2,200 pounds or 1.1 tons) of hazardous waste. The Facility reported that it generated a total of 14 tons of hazardous waste in 2009.

17. On July 26-28, 2010, authorized representatives of EPA conducted a RCRA compliance inspection ("2010 Inspection"). At the time of the 2010 Inspection, the Facility had generated more than 100 kilograms of hazardous waste in that month, making the Facility subject to, at a minimum, the requirements that apply to a small quantity generator.

18. At all times relevant to the allegations set forth in this CAFO, the Facility was not a permitted treatment, storage, or disposal facility, and did not have interim status.

19. Based on observations made during the 2010 Inspection, Complainant has identified a number of RCRA violations at the Facility.

COUNT I

(Failure to Make a Hazardous Waste Determination)

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

21. At the time of the 2010 Inspection, there were several containers of solid waste for which Respondent failed to make a hazardous waste determination, in accordance with the provisions of 40 C.F.R. § 262.11, including the following:

(a) In Bldg. 3213 (Logistics Readiness Squadron), Respondent failed to determine whether the contents of a 55-gallon drum containing parts washer solvent were hazardous waste. After the 2010 Inspection, Respondent tested the contents of the 55-gallon drum for

metals using the Toxicity Characteristic Leaching Procedures (TCLP) method. The analysis found 26.6 milligrams/liter (mg/L) of lead in the waste, making it a hazardous waste.

(b) In Bldg. 3446 (HazMart), several containers of waste from various waste streams were stored, but Respondent failed to determine whether the contents of the containers were hazardous waste. One waste stream included Alodine 1201 and isopropyl alcohol.

According to the Material Safety Data Sheet ("MSDS") for Alodine 1201, waste alodine 1201 would be a D002 corrosive hazardous waste and a D007 toxic for chromium hazardous waste. The MSDS for isopropyl alcohol indicates that isopropyl alcohol has a flash point of 57°F and waste isopropyl alcohol would be a D001 ignitable hazardous waste.

22. At the time of the 2010 Inspection, during painting operations at Building 1348 (Corrosion Control), Respondent did not capture waste overspray of a primer product which the MSDS indicated contained 25% strontium chromate. The waste overspray went into a drain, which went into an oil/water separator, which then went to the sewer. Respondent failed to determine if the primer residue was a hazardous waste.

23. Respondent's failure to determine if solid waste generated at the Facility is a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT II

(Failure to Comply with the Conditions for Storage of Hazardous Waste without a Permit or Interim Status)

24. Section 3005 of RCRA, 42 U.S.C. § 6925, requires that anyone who treats, stores, or disposes of hazardous waste must have a permit or interim status. However, under 40 C.F.R. § 262.34(d), a small quantity generator may accumulate hazardous waste on-site without a permit or interim status provided that, among other things, the waste is placed in

containers and the generator complies with the requirements of 40 C.F.R. Part 265, Subpart I (§§ 265.170 through 265.178), except for §§ 265.176 and 265.178, and complies with 40 C.F.R. § 262.34(a)(2) and (3).

Failure to Conduct Weekly Inspections

25. 40 C.F.R. § 265.174 requires that the owner or operator of a facility that stores hazardous waste must inspect at least weekly the areas where containers of hazardous waste are stored.

26. At the time of the 2010 Inspection, Respondent had failed to conduct a weekly inspection of certain areas where containers of hazardous waste are stored, including in Bldg. 3446 (Haz Mart).

Failure to Properly Label Hazardous Waste Containers

27. 40 C.F.R. § 262.34(a)(2) and (3) provides that a generator may accumulate hazardous waste without a permit or interim status provided that, among other things, the generator labels containers holding hazardous waste with accumulation start dates and with the words "Hazardous Waste."

28. At the time of the 2010 Inspection, four storage containers (two garbage bags and two 55-gallon drums) of waste aerosol cans were being stored at the new housing construction site, but were not marked with the date accumulation began or the words "Hazardous Waste."

Failure to Comply with Hazardous Waste Training Requirements

29. 40 C.F.R. § 262.34(a)(4) provides that a generator may accumulate hazardous waste without a permit or interim status provided that, among other things, the generator complies with 40 C.F.R. § 265.16.

30. 40 C.F.R. § 265.16(c) provides that facility personnel involved with hazardous waste management must take part in an annual review of the initial hazardous waste training, as required at 40 C.F.R. § 265.16(a).

31. At the time of the 2010 Inspection, there were at least seven personnel at the Facility whose annual hazardous waste training had expired and/or for whom there was no documentation of such training.

Failure to Keep Hazardous Waste Container Closed During Storage

32. Pursuant to 40 C.F.R. § 262.34(c)(1), a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate without a permit or interim status provided, among other things, that the generator complies with 40 C.F.R. § 265.173(a), namely that the container holding the hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

33. At the time of the 2010 Inspection, in Building 1168, Respondent was storing hazardous waste in a satellite accumulation container. The satellite accumulation container contained paint-related waste (personal protection equipment and wipes contaminated with solvent), which was labeled as hazardous waste, but was not closed to prevent releases.

COUNT III

(Failure to Properly Manage Universal Waste)

34. Respondent is a “small quantity handler of universal waste,” as that term is defined at 40 C.F.R. § 273.9.

35. Pursuant to 40 C.F.R. § 273.15(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless certain requirements are met.

36. Pursuant to 40 C.F.R. § 273.15(c), a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

37. At the time of the 2010 Inspection, Respondent was unable to demonstrate the length of time that some universal waste had been accumulated from the date it became a waste or was received, including:

(a) one container of universal waste fluorescent lamps in Bldg. 1140 (RED FLAG-Alaska);

(b) one container of universal waste fluorescent lamps in Bldg. 62035 (Power Plant Warehouse);

(c) one container of universal waste high pressure sodium lamps in Bldg. 62035 (Power Plant Warehouse);

(d) one cardboard container of universal waste fluorescent lamps in Bldg. 3338 (Base Exchange Gas Station); and

(e) one container of universal waste lamps in Bldg. 1338 (Maintenance Support).

38. There was no accumulation start date listed on any of the containers listed in the previous paragraph and no records were available to document the accumulation start date.

39. Failure to document the length of time that universal waste had been accumulated from the date it became a waste or was received is a violation of 40 C.F.R. § 273.15(c).

40. Pursuant to 40 C.F.R. § 273.14(e), a small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste. Each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste – Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

41. At the time of the 2010 Inspection, there were containers of universal waste lamps that were not labeled or marked as required, listed below:

(a) In Bldg. 1140 (RED FLAG-Alaska), a container of universal waste fluorescent lamps;

(b) In Bldg. 3338 (Base Exchange Gas Station), a cardboard container of universal waste fluorescent lamps.

42. Failure to label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: “Universal Waste-Lamp(s),” “Waste Lamp(s),” or “Used Lamp(s),” is a violation of 40 C.F.R. § 273.14(e).

43. Pursuant to 40 C.F.R. § 273.15(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless certain requirements set forth at § 273.15(b) are met.

44. On July 27, 2010, a container of universal waste fluorescent lamps in Bldg. 1161 (Aircrew Flight Equipment Shop) had an accumulation start date marked on the container as “2/6/2009.”

45. Accumulating universal waste fluorescent lamps for more than a year is a violation of 40 C.F.R. § 273.15(a).

46. Pursuant to 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

47. At the time of the 2010 Inspection, there was an open cardboard container of universal waste fluorescent lamps in Bldg. 3338 (Base Exchange Gas Station).

48. During a multi-media inspection of the Facility on July 23-24, 2008, the inspector identified violations of these same universal waste requirements, including failure to label a universal waste container, failure to close a universal waste container, and accumulating universal waste for longer than one year. The Facility was notified by EPA Region 10 of these violations in writing on March 20, 2009.

IV. CONSENT AGREEMENT

49. Respondent admits the jurisdictional allegations contained in this CAFO and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this CAFO.

50. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

51. Respondent hereby waives its right to a judicial or administrative hearing or appeal and its opportunity 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 CAFO.

52. Respondent consents to the issuance of this CAFO and agrees to comply with its terms, including the assessment of a civil penalty.

53. Respondent agrees to pay a civil penalty in the amount of FORTY-FIVE THOUSAND AND SEVEN HUNDRED DOLLARS (\$45,700) in satisfaction of all claims for civil penalties which Complainant may have under RCRA Section 3008(a) for the violations alleged in this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent. The aforesaid settlement amount was based upon Complainant's consideration of the statutory assessment factors, including the seriousness of the violation and any good faith efforts to comply with applicable requirements, in accordance with RCRA and the RCRA Civil Penalty Policy.

54. Payment of the penalty as required by this CAFO may be made by sending a certified or cashier's check, made payable to the order of "Treasurer, United States of America," to the following address:

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

55. Payment by Respondent shall reference the name of the facility, Respondent's name and address, and the EPA Docket Number of this CAFO. Respondent shall send a simultaneous notice of such payment, including a copy of the cashier's check or certified check, to the following:

Carol Kennedy
Regional Hearing Clerk
US EPA Region 10
1200 Sixth Avenue, M/S ORC-158

Suite 900
Seattle, WA 98101

Jack Boller
US EPA Region 10
1200 Sixth Avenue M/S 122
Suite 900
Seattle, WA 98101

56. Payment of the penalty as required by this CAFO may also be made by electronic wire transfer to the credit of EPA. Respondent may contact EPA for wire transfer instructions.

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

58. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CAFO, following its filing with the Regional

Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

59. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

60. The undersigned representative of Respondent certifies that he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

61. This CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, successors, and assigns including, but not limited to, subsequent purchasers.

62. The parties shall bear their own costs and attorneys' fees.

IV. COMPLIANCE ORDER

63. Based on the foregoing findings, Respondent is hereby ordered to take the following actions, and provide evidence of compliance within the time period specified below, pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

64. Within thirty (30) days after the effective date of this CAFO, Respondent shall certify and provide documentation to EPA which will verify that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent makes a hazardous waste determination on all solid waste streams at the Facility, and that all hazardous waste streams are managed in compliance with the relevant Federal requirements.

65. Within thirty (30) days after the effective date of this CAFO, Respondent shall certify and provide documentation to EPA which will verify that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent complies with the conditions for storage of hazardous waste without a permit or interim status at the Facility, including conducting weekly inspections where containers of hazardous waste are stored, properly labeling hazardous waste containers, and keeping hazardous waste containers closed during storage, except when it is necessary to add or remove waste.

66. Within thirty (30) days after the effective date of this CAFO, Respondent shall certify and provide documentation to EPA which will verify that Respondent has developed and implemented a hazardous waste training plan that complies with 40 C.F.R. § 265.16 for personnel who manage hazardous waste including, but not limited to, documenting and maintaining the job titles, written job descriptions, and training requirements for personnel who handle hazardous waste.

67. Within thirty (30) days after the effective date of this CAFO, Respondent shall certify and provide documentation to EPA which will verify that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent properly manages universal waste at Respondent's Facility.

68. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a responsible officer of Respondent:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to

assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

69. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any others specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Jack Boller
US EPA Region 10
1200 Sixth Avenue M/S 122
Suite 900
Seattle, WA 98101

70. Any violation of this Compliance Order or further violation of RCRA Subtitle C may subject Respondent to further administrative, civil, and/or criminal enforcement action, including the imposition of civil penalties and criminal fines and/or imprisonment, as provided in RCRA Section 3008, 42 U.S.C. § 6928.

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

STIPULATED AND AGREED BY:

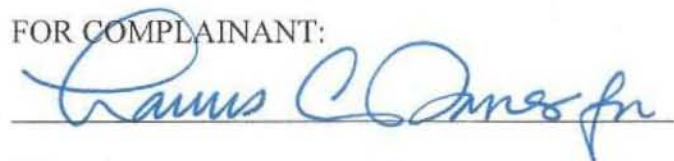
FOR RESPONDENT:



Dated: 10 MAR 12

JAMES N. POST III
Brigadier General, USAF
Commander

FOR COMPLAINANT:



Dated: March 9, 2012

Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

In the Matter of:)	
)	
)	
United States Air Force,)	Docket No. RCRA-10-
)	
Respondent)	
)	
Eielson Air Force Base)	
2310 Central Ave.,)	
Eielson Air Force Base, Alaska 99702)	
)	
Facility)	
)	
)	

FINAL ORDER

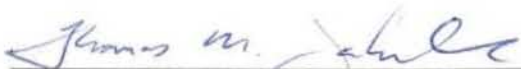
This Consent Agreement and Final Order is hereby adopted and issued pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

It is hereby ORDERED that Respondent pay a penalty of forty-five thousand seven hundred dollars (\$45,700.00), in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement.

It is hereby further ORDERED that Respondent comply with all terms of the foregoing Consent Agreement.

This Order disposes of this matter pursuant to 40 C.F.R. § 22.18. The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

SO ORDERED this 12th day of March, 2012



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: United States Air Force, Docket No. RCRA-10-2012-0077** was filed with the Regional Hearing Clerk on March 12, 2012.

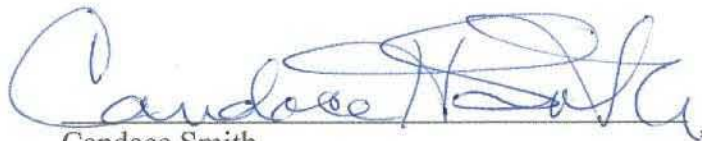
On March 12, 2012, the undersigned certifies that a true and correct copy of the document was delivered to:

Jack Boller
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, AWT-112
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 March 12, 2012, to:

James N. Post III
Brigadier General, USAF
Commander
Eielson Air Force Base
354 Broadway Street
Eielson Air Force Base, AK 99702

DATED this 12th day of March 2012.



Candace Smith
Acting Regional Hearing Clerk
EPA Region 10