

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)

United States Army Cold Regions)
Research and Engineering Laboratory)
72 Lyme Road)
Hanover, New Hampshire 03755)

Respondent)

Proceeding under Section 3008(a))
of the Resource Conservation Act,)
42 U.S.C. § 6928(a))
_____)

EPA Docket Number
RCRA-01-2008-0060

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint herein against Respondent, the United States Cold Regions Research and Engineering Laboratory; and Complainant and Respondent (together, “the Parties”) having agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“Consent Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law and without the admission or denial of liability, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to

Section 3008(a) of the Resource Conservation and Recovery Act (RCRA).

2. The Complaint alleges that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922; Chapter 147-A of the New Hampshire Revised Statutes Annotated; the New Hampshire Hazardous Waste Rules promulgated thereunder, codified at the New Hampshire Code of Administrative Rules, Chapters Env-Wm 100 - 1000; and the New Hampshire Requirements for Universal Waste Management, codified at Chapter Env-Wm 1100.

3. The Complainant and Respondent subsequently entered into negotiations to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations and resolves the liability of the Respondent for matters alleged in the Complaint.

4. This Consent Agreement shall apply to and be binding upon Respondent, its successors and assigns.

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Final Order.

6. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives its right to appeal the Final Order.

II. TERMS OF SETTLEMENT

7. Respondent states that it is operating its facility located at 72 Lyme Road,

Hanover, New Hampshire in compliance with RCRA and the federal and state regulations promulgated thereunder with respect to the generation, treatment, transport, storage and disposal of hazardous waste.

III. PENALTY

8. After consideration of the nature of the RCRA violations alleged in the Complaint and other relevant factors, EPA has determined that an appropriate civil penalty to settle the action is \$89,500.

9. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty as set out in the foregoing paragraph.

10. Within thirty (30) days of the effective date of this Consent Agreement, Respondent shall submit the required payment of eighty-nine thousand five hundred dollars (\$89,500) by directing the funds via electronic wire transfer to:

Federal Reserve Bank of New York
ABA No. 021030004
Credit EPA Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read: D 68010727
"Environmental Protection Agency"

The required payment shall reference Respondent's name and address, as well as the EPA Docket Number (RCRA-01-2008-0060) of this Consent Agreement. Documents sufficient to demonstrate that such transfer has occurred shall be sent simultaneously to:

Wanda Santiago
Regional Hearing Clerk
United States Environmental Protection Agency
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

and

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023.

Interest and late charges, if applicable, shall be paid as specified in Paragraph 10 below.

11. Failure by Respondent to pay the total penalty in full by the due date may subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of the Final Order. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid, in accordance with 31 C.F.R. § 901.9(d).

12. The penalty specified in Paragraphs 8 and 10, above, shall represent a civil

penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

IV. GENERAL PROVISIONS

13. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 3008(a) of RCRA for the violations alleged in the Complaint. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA for violations subsequent to those alleged in the complaint. It is the responsibility of the Respondent to comply with such laws and regulations. This Consent Agreement in no way relieves Respondent or its employees of any criminal liability. Nothing in the Consent Agreement shall be construed to limit the authority of the EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

14. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

15. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement.

16. This Consent Agreement does not constitute a waiver, suspension or

modification of the requirements of RCRA, 42 U.S.C. § 6901 et seq., or any regulations promulgated thereunder.

FOR RESPONDENT:

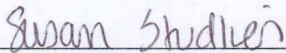


Robert Davis, Ph.D
Director
United States Army
Cold Regions Research and Engineering Laboratory
72 Lyme Road
Hanover, New Hampshire 03755

3/23/09

Date

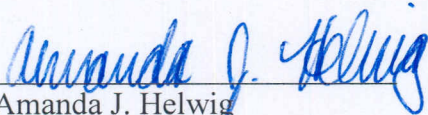
FOR COMPLAINANT:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

03/31/09

Date



Amanda J. Helwig
Enforcement Counsel
U.S. EPA, Region I

3/31/09

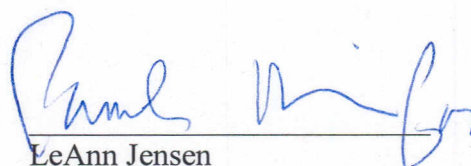
Date

VI. FINAL ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and in accordance with 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective upon filing with the Regional Hearing Clerk.

Date:

3/31/09



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region I