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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) Docket No. RCRA-10-2010-0251
)
) U.S. Department of Defense,)
) U.S. Department of the Navy,) CONSENT ORDER
)
) Bremerton Naval Complex,)
) Puget Sound Naval Shipyard and)
) Intermediate Maintenance Facility,)
)
) Respondent.)
)

I. AUTHORITY

1.1. This Consent Order ("CO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 3008(a) and 6001(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6928(a) and 6961(b). The Administrator has delegated the authority to issue the Consent Order to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer and designated Presiding Officer.

1.2. Pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), and in accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and the U.S. Department

of Defense, Department of the Navy, Bremerton Naval Complex, Puget Sound Naval Shipyard and Intermediate Maintenance Facility ("Respondent") hereby agrees to the issuance of this CO.

II. PRELIMINARY STATEMENT

2.1. In accordance with Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), and 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) to (3), issuance of this CO commences this proceeding, which will conclude when this CO becomes effective.

2.2. A concise statement of the factual basis for alleging violations of RCRA, together with specific references to the provisions of RCRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CO.

III. ALLEGATIONS

3.1. EPA has jurisdiction over this matter under Section 3008(a) and (g) and Section 6001(a) and (b) of RCRA, 42 U.S.C. §§ 6928(a), (g) and 6961(a), (b) and the regulations authorized by EPA pursuant to 40 C.F.R. Part 271 by which authority EPA authorized the hazardous waste program in the State of Washington. Those State of Washington regulations authorized by EPA are cited throughout and the federal counterparts are bracketed in this CO for reference.

3.2. "Facility" as defined at WAC 173-303-040 [40 C.F.R. § 260.10] means all contiguous land, and structures, other appurtenances, and improvements on the land, used for

treating, storing, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units.

3.3. "Person" as defined by WAC 173-303-040 [40 C.F.R. § 260.10] means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

3.4. "Generator" as defined by WAC 173-303-040 [40 C.F.R. § 260.10] means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

3.5. "Dangerous waste" as defined by WAC 173-303-040 [40 C.F.R. § 260.10] means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste; and "hazardous waste" as defined by WAC 173-303-040 [40 C.F.R. § 260.10] means those solid wastes designated by 40 C.F.R. Part 261, and regulated as hazardous and/or mixed waste by EPA. The term dangerous waste is used throughout this CO for ease of reference.

3.6. "Management or hazardous waste management" WAC 173-303-040 [40 C.F.R. § 260.10] means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste. "Storage" as defined at WAC 173-303-040 [40 C.F.R. § 260.10] means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of

WAC 173-303-200 and 173-303-201 [40 C.F.R. § 262.34.] However, if the generator does not comply with these applicable requirements, the generator requires a permit to manage dangerous waste.

3.7. Respondent is a person as defined in paragraph 3.4 of this CO.

3.8. The Bremerton Naval Complex, Puget Sound Naval Shipyard and Intermediate Maintenance Facility complex, hereafter referred to as PSNS or PSNS&IMF, is a facility as defined in paragraph 3.2 of this CO. Buildings 873 and 993 are located at PSNS and are treatment, storage, or disposal operational units.

3.9. On January 20 and 21, 2009, Respondent was a person and the owner and operator of PSNS, including Buildings 873 and 993, and subject to the Dangerous Waste regulations [RCRA regulations] as a person managing hazardous waste.

3.10. On January 20 and 21, 2009, EPA and the Washington Department of Ecology (“Ecology”) conducted an inspection of PSNS and observed and sampled, among others, Buildings 873 and 993 and certain units in each building.

3.11. Hexavalent chromium is a D007 characteristic dangerous waste exhibiting the characteristic of toxicity when present in waste at or above the regulatory level of 5.0 milligrams/liter (mg/L).

3.12. On the dates of the inspection, January 20 and 21, 2009, Respondent, at the direction and under the supervision of Ecology inspectors, collected samples of waste from the sub-basement of Building 873. Those samples were analyzed at Respondent’s laboratory.

According to the analysis, the waste was characteristic dangerous waste D007, showing the characteristic of toxicity for chromium.

3.13. The Dangerous Waste regulations [RCRA regulations] require an owner/operator of a facility to obtain a permit or interim status for dangerous waste accumulated on-site unless such waste is accumulated for 90 days or less and the generator manages the dangerous waste through proper placement in containers, in tanks, on drip pads, and/or in containment buildings provided the generator also complies with the accompanying interim status management standards. A generator who accumulates dangerous waste for more than 90 days and/or who does not manage the dangerous waste in accordance with the accompanying interim status management standards is an operator of a storage facility and is subject to the permit requirements of WAC 173-303- 800 [40 C.F.R. Parts 264 and 265 and the permit requirements of Part 270].

3.14. Respondent failed to comply with the Dangerous Waste regulations [RCRA regulations] by failing to recognize that the sub-floor in Building 873 was not equipment ancillary to a permit-by-rule tank, and therefore was not exempt from RCRA. Thus, Respondent failed to properly manage the dangerous waste through proper placement in containers, in tanks, on drip pads, and/or in containment buildings in compliance with the accompanying interim status management standards and through a failure to document the accumulation time of the dangerous waste D007 in the sub-basement of Building 873. Because Respondent did not properly manage the dangerous waste pursuant to the generator requirements, Respondent was required to obtain a permit for storing this dangerous waste in Building 873 and to follow the

regulations for storage of dangerous waste. Respondent did not obtain a permit to store this dangerous waste and did not follow the regulations for the storage of this dangerous waste.

3.15. Persons who manage dangerous waste must operate their facilities to minimize the possibility of any unplanned sudden or non-sudden release of dangerous waste or dangerous waste constituents to air, soil, or surface water which could threaten human health or the environment. WAC 173-303-340 [40 C.F.R. § 265.31].

3.16. At the time of the inspection on January 20 and 21, 2009, dangerous waste characteristic for chromium, D007, was allowed to fall through the grating on the process room floor and accumulate on the light fixtures, walls and piping, in and on drip pans, and on the sub-basement floor of Building 873 without Respondent taking all necessary measures to control the waste to fully minimize the possibility of the dangerous waste being released into the environment. For example, workers entering the sub-basement of Building 873 could have tracked the dangerous waste D007 outside of the building and onto the surrounding soil and into the air when exiting the Building 873 for breaks during the work day and at the end of the day. Failure to operate the facility to minimize the possibility of any unplanned sudden or non-sudden release of dangerous waste or dangerous waste constituents to air, soil, or surface water which could threaten human health or the environment is a violation of the RCRA regulations.

3.17. Persons who manage containers of dangerous waste must keep those containers closed except when they are adding or removing waste. WAC 173-303-630 [40 C.F.R. § 265.173(a)]. If a person fails to keep a container properly closed, that person has failed to meet the conditions set forth at WAC-173-303-200 [40 C.F.R. § 262.34(a)(1)(i)].

3.18. At the time of the inspection, EPA and Ecology inspectors observed an open container of dangerous waste in Building 993. No waste was being added to, or removed from, the container at the time of the inspection. Failing to securely close a container of dangerous waste when no waste is being added to, or removed from, the container is a violation of the RCRA regulations.

3.19. Under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), each failure to comply with a provision of RCRA is a prohibited act under RCRA, and subject to a civil penalty for each day of violation.

IV. CONSENT ORDER

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CO.

4.3. Respondent expressly waives any rights to contest the allegations, to appeal this CO, to request a conference with the Administrator concerning this CO, or to move to reconsider the CO contained herein.

4.4. The provisions of this CO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, and other relevant factors, and in accordance with EPA's *RCRA Penalty*

Policy, EPA has determined and Respondent agrees that an appropriate civil penalty to settle this action is fifty-six thousand dollars (\$ 56,000.00).

4.7. Respondent consents to the issuance of this CO and to payment of the penalty cited in Paragraph 4.6. Within 30 days of signing this CO, Respondent will forward a Military Interdepartmental Purchase Request for fifty-six thousand dollars (\$56,000.00) to the EPA Finance Office. Payment under this CO shall be made by electronic funds transfer (EFT) to the EPA through the Intra-Governmental Payment and Collection (IPAC) system and shall be delivered to EPA's account unless the CO is signed between September 27 and September 30, 2010.

a. If the signing of this CO occurs between September 27 and September 30, 2010, a Miscellaneous Obligation Reimbursement Document will be obligated by Respondent and a payment will be made from this document to EPA via U.S. Treasury Check made payable to EPA. Respondent shall note on the check the title and docket number of this case.

b. If a Miscellaneous Obligation Reimbursable Document is required to be obligated because of end of the fiscal year 2010 processing, then the U.S. Treasury Check under this CO shall be mailed to:

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

4.8. Respondent shall submit a photocopy of the EFT or check described above to:

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

RCRA Compliance Officer
U.S. Environmental Protection Agency
Region 10, OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

- 4.9. Upon the effective date of this CO, Respondent shall take the following actions:
- a. Within 10 days of the effective date of this CO, submit the revised Standard Operating Procedures (SOP) for the plating shop which is intended to minimize to the maximum extent practicable routine drippage and spillage through the main floor grating and into the sub-basement of Building 873 to EPA for review and comment.
 - b. Within 10 days of the effective date of this CO, provide to EPA for review and comment a copy of the SOP for the plating shop which is intended to ensure that all drippage and spillage into the sub-basement of Building 873 is cleaned as soon as possible.
 - c. Within 10 days of the effective date of this CO, provide EPA with the scheduled completion date and a copy of the preliminary design included in the specification for the contract awarded by PSNS&IMF for the replacement of the ventilation system that will eliminate routine drippage of condensate, a dangerous waste, into the sub-basement of Building 873 for EPA review and comment. Within 45 days of

the effective date of this CO, provide EPA with a general schedule for completion of that contract.

d. Within 120 work days of the effective date of this CO, submit to EPA and Ecology a closure plan in accordance Ecology's *Guidance for Clean Closure of Dangerous Waste Units and Facilities*, Publication #94-111, Revised May 2005, for the sub-basement of Building 873 which is subject to closure as a result of the violations alleged in this CO. Such closure plan is expected to meet the closure performance standard for clean closure. Upon approval by Ecology of the closure plan, Respondent shall implement the closure plan as approved. Within sixty (60) days of completion of clean closure activities addressed in the closure plan, Respondent must submit to both EPA and Ecology certification of closure as required by the appropriate state and federal regulations.

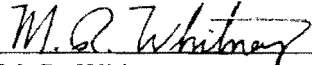
e. Within 10 days of execution of this CO, ensure that all containers of dangerous waste being accumulated at the facility are closed, except when adding or removing waste, so as to ensure that all containers are, at a minimum, vapor-tight and spill proof, and provide documentation of the closure to EPA.

4.10. Respondent represents that it is duly authorized to agree to the signing of this CO and that the party agreeing to the signing this CO on its behalf is duly authorized to bind Respondent to the terms of this CO. This CO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

4.11. Compliance with all the terms and conditions of this CO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

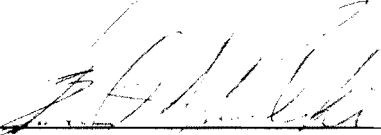
Respondent



M. R. Whitney
Captain, U.S. Navy
Commander
Puget Sound Naval Shipyard &
Intermediate Maintenance Facility

Dated: 9/28/10

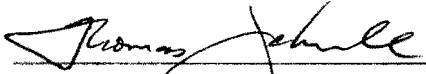
Complainant



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 9/28/10

**ORDERED:
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10**



Thomas Jahnke, Regional Presiding Officer
U.S. Environmental Protection Agency, Region 10

Dated: 9/29/10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT ORDER** in **In the Matter of: U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF THE NAVY, BREMERTON NAVAL COMPLEX, PUGET SOUND NAVAL SHIPYARD AND INTERMEDIATE MAINTENANCE FACILITY, DOCKET NO.: RCRA-10-2010-0251** was filed with the Regional Hearing Clerk on September 29, 2010.

On September 29, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:


Mary Queitzsch, 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 September 29, 2010 to:

M.R. Whitney
Captain, U.S. Navy
Commander
Puget Sound Naval Shipyard &
Intermediate Maintenance Facility
Code 100
1400 Farragut Avenue
Bremerton, WA 98314

Wendy Kelly, Esq.
Legal Office
PSNS & IMF
Code 107
1400 Farragut Avenue
Bremerton, WA 98314

DATED this 29th day of September 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10