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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 10  
Seattle, Washington**

HEARINGS CLERK  
EPA -- REGION 10

IN THE MATTER OF:	)	
	)	Docket No. RCRA-10-2008-0168
Colville Tribal Enterprise Corporation	)	
Inchelium, Washington	)	
RCRA ID No. WAD 980977847	)	
Respondent	)	CONSENT AGREEMENT AND FINAL ORDER
_____	)	

**I. AUTHORITY**

1.1 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 of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928. The Administrator has delegated the authority to negotiate and sign Consent Agreements and to issue compliance orders for RCRA violations to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Director of the Office of Compliance and Enforcement ("Complainant") and his representatives. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.2 Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), EPA hereby issues and the Colville Tribal Enterprise Corporation ("CTEC" or "Respondent") hereby agrees 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) and 22.45(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. A concise statement of the factual basis for each RCRA violation alleged, together with specific references to the provisions of RCRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

2.3. 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 Washington is not authorized to carry out a hazardous waste program on certain Indian Country, including where Respondent's Inchelium Wood Treating Plant is located, EPA has notified the State of Washington of this action.

2.4. 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.

## **III. ALLEGATIONS**

3.1 Respondent is Colville Tribal Enterprise Corporation ("CTEC" or "Respondent"), a tribally chartered governmental corporation of the Confederated Tribes of the Colville Reservation.

3.2. The United States owns the property in trust for the benefit of the Confederated Tribes of the Colville Reservation and Respondent operates a facility located at 18 Blackbird Drive, Inchelium, WA 99138 ("Facility").

3.3. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903, and is the “owner or operator” of a facility as defined at 40 C.F.R. § 260.10.

3.4. Respondent began wood-treating operations at the Facility in 1985.

3.5. Pursuant to 40 C.F.R. § 261.31(a), wastewaters, process residuals, preservative drippage, and spent formulations from wood-preserving processes generated at plants that use copper chromated arsenate (CCA) formulations are “hazardous wastes” and are assigned the number F035.

3.6. EPA conducted an inspection of the Facility on October 24, 2005.

3.7. At the time of the October 24, 2005 inspection, Respondent accumulated and generated F035 listed hazardous wastes; therefore Respondent was a “generator” as defined in 40 C.F.R. § 260.10, of “hazardous wastes” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

3.8. On May 13, 1985, Respondent notified EPA that it was a generator of hazardous waste D004 (arsenic) and D007 (chromium).

3.9. At the time of the October 24, 2005 inspection, Respondent used CCA to preserve wood at its Facility.

3.10. Respondent pressure treated wood in a retort at its Facility.

3.11. Respondent has a drip pad that is located immediately outside of the opening end of the retort. Treated wood is moved to a drip pad after treatment in the retort. The treated wood is later moved from the drip pad to the treated wood storage yard.

**COUNT I: Storage and disposal of hazardous waste without a permit or interim status**

3.12. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the owner or operator of a hazardous waste facility that treats, stores or disposes of hazardous waste to obtain a permit.

3.13. Respondent has not been issued a permit to treat, store or dispose of hazardous waste nor does it have interim status pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

**I.a. Disposal of hazardous waste without a permit or interim status**

3.14. During the inspection, evidence of run-off from the drip pad was observed at least off of the south and west sides of the drip pad.

3.15. Run-off from the drip pad is F035 listed hazardous waste.

3.16. At the time of the inspection, Respondent had disposed of F035 listed hazardous waste on the ground off of its drip pad.

3.17. At the time of the inspection, Respondent had disposed of F035 listed hazardous waste at its Facility without a permit or interim status.

**I.b. Failure to comply with conditions for accumulation of hazardous waste without a permit or interim status**

3.18. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the owner or operator of a hazardous waste facility that treats, stores or disposes of hazardous waste to obtain a permit. However, in accordance with 40 C.F.R. § 262.34, a generator may accumulate hazardous waste on-site without a permit for ninety (90) days or less, after the date of generation, provided that:

- a. Where the waste is placed on a drip pad, the generator complies with 40 C.F.R. Part 265, Subpart W and certain other requirements specified in 40 C.F.R. § 262.34(a)(iii);
- b. The waste is placed in containers and the generator complies with 40 C.F.R. Part 265, Subparts I, AA, BB and CC; and
- c. The generator otherwise complies with 40 C.F.R. § 262.34.

3.19. At the time of the inspection, Respondent accumulated hazardous waste without complying with the following conditions:

**Clean drip pad and associated collection system once every 90 days**

3.20. The regulation at 40 C.F.R. § 262.34(a)(1)(iii)(A) and (B) requires that the generator maintain a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety (90) days;

and that the generator maintain documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system, and the date and time of removal.

3.21. At the time of the inspection, the area between the rail tracks was filled with pieces of wood and dirt and much of the area was an oily dark brown color; some places between the tracks had a greenish tint. The sump under the retort door was also filled with pieces of wood and liquid. A metal grate that formed a type of bridge over the sump from the drip pad to the retort was filled with dirt, pieces of wood and other debris.

3.22. At the time of the inspection, there was no documentation of how wastes were removed from the drip pad and associated collection system or documentation of each waste removal as required.

#### **Infrequent and incidental drippage in the storage yard**

3.23. The regulation at 40 C.F.R. § 265.440(c)(1)(i) – (iv) states that the requirements of 40 C.F.R. Part 265, Subpart W are not applicable to the management of infrequent and incidental drippage in storage yards provided that the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the facility will do the following: clean up the drippage; retain documents regarding cleanup for three years; and manage the contaminated media in a manner consistent with federal regulations.

3.24. At the time of the inspection, the Facility had a document entitled *Inchelium Tribal Wood Treatment Plant Storage Yard Drippage Plan* (“Storage Yard Drippage Plan”) that was dated December 2000. The document included a form called the “Yard Drippage Removal Form.” The form was blank.

3.25. At the time of the inspection, there was no documentation showing that

Respondent's employees maintained and complied with the Storage Yard Drillage Plan at the Facility.

3.26. During the inspection, the inspector observed staining in the storage yard indicating that drillage had occurred.

**Obtain and keep on file a Professional Engineer ("PE") certification of the drip pad; review, update, and recertify annually**

3.27. The regulation at 40 C.F.R. § 265.441(a) requires that, for each existing drip pad, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 40 C.F.R. Part 265, Subpart W, except the requirements for liners and leak detection systems in 40 C.F.R. § 265.443(b).

3.28. The owner or operator is required to obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered PE that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of 40 C.F.R. § 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of 40 C.F.R. § 265.443 except the standards for liners and leak detection systems in 40 C.F.R. § 265.443(b).

3.29. At the time of the inspection, there was no documentation of the required evaluation by an independent, qualified registered PE that the drip pad met all the requirements of 40 C.F.R. Part 265, Subpart W, nor that the assessment had been reviewed, updated and recertified annually.

**Submittal of as-built drawings of drip pad along with PE certification**

3.30. The regulation at 40 C.F.R. § 265.441(c) requires that upon completion of all upgrades, repairs and modifications, the owner or operator must submit to the Regional Administrator the as-built drawings for the drip pad together with a certification by an

independent, qualified registered PE attesting that the drip pad conforms to the drawings.

3.31. Roof supports were added to the drip pad after the drip pad was initially built; therefore Respondent modified the drip pad.

3.32. At the time of the inspection, Respondent did not have an as-built drawing for the drip pad modifications certified by an independent, qualified registered PE attesting that the drip pad conformed to the drawings. Also, no such documentation was found in the EPA files for the Facility.

#### **Drip pads sloped to free drain**

3.33. The regulation at 40 C.F.R. § 265.443(a)(2) requires drip pads to be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes, to the associated collection system.

3.34. At the time of the inspection, the west edge of the section of the drip pad that had the tracks leading to the retort was flush with the surrounding soil and was not sloped to allow treated wood drippage, rain and other waters, or solution of drippage and water or other wastes to free drain to the associated collection system from the western side of the drip pad. Rather, it appeared that any such waters or drippage that fell in the area between the end of the rail tracks and the west end of the drip pad would run off the drip pad onto the adjacent soil.

3.35. At the time of the inspection, the roof and/or gutter on the south side of the drip pad leaked in at least three places (two on the south end of the drip pad and one on the west end of the drip pad). Water from the leaking roof was falling on the drip pad. Some of the water that dripped from the south edge of the roof ran toward the rail tracks that extended from the retort door, and some of the water ran off the drip pad onto the soil abutting the drip pad.

3.36. At the time of the inspection, the northern section of the drip pad appeared flat, i.e., it did not appear to slope or free-drain to the sump located under the retort door or any other collection system. Rather, much of the perimeter of the northern section of the drip pad was

overgrown with weeds and the adjacent soil was flush with the surface of the drip pad.

**Curb or berm around the perimeter of the drip pad**

3.37. The regulation at 40 C.F.R. § 265.443(a)(3) requires drip pads to have a curb or berm around the perimeter.

3.38. At the time of the inspection, there was no curb or berm around the perimeter of the southern section of the drip pad.

3.39. At the time of the inspection, the west end of the southern section of the drip pad, out from the rail tracks, appeared to be flush with the surrounding soil and liquid from the drip pad appeared to run off the drip pad onto the adjacent soil.

3.40. At the time of the inspection, there was no curb or berm around the northern section of the drip pad. Much of the perimeter of the northern section of the drip pad was overgrown with weeds and the adjacent soil was flush with the surface of the drip pad. Along the northern edge of this section of the drip pad there were stains that began on the drip pad and continued off the drip pad to the adjacent soil.

**Drip pad hydraulic conductivity; drip pad surface maintained free of cracks and gaps**

3.41. The regulation at 40 C.F.R. § 265.443(a)(4)(i) requires that existing concrete drip pads must be sealed, coated or covered with a surface material with a hydraulic conductivity of less than or equal to  $1 \times 10^{-7}$  centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad.

3.42. At the time of the inspection, seams around some of the squares of the new concrete were not sealed so that there were cracks or gaps between the new and the old concrete.

Because there were cracks or gaps where the new and the old concrete met in the areas of the new roof supports, the hydraulic conductivity of the drip pad was adversely affected.

**Drip pads maintained free of cracks, gaps, corrosion or other deterioration**

3.43. The regulation at 40 C.F.R. § 265.443(c) requires that drip pads must be maintained such that they remain free of cracks, gaps, corrosion or other deterioration that could cause hazardous waste to be released from the drip pad.

3.44. At the time of the inspection, seams around some of the squares of the new concrete were not sealed so that there were cracks or gaps between the new and the old concrete. Because there were cracks or gaps where the new and the old concrete met in the areas of the new roof supports, hazardous waste could be released from the drip pad.

3.45. At the time of the inspection, a gap existed in the concrete of the drip pad where the southern and northern section met (the seam). The seam was not sealed and the gap that was created by the seam appeared to go to the depth of the drip pad concrete. There was also a deep diagonal crack in the southeastern corner of the northern section of the drip pad next to the seam. Hazardous waste could be released from the drip pad.

3.46. At the time of the inspection, there were several small cracks in the surface of the south drip pad near the rail tracks that led to the retort. A large portion of the southern section of the drip pad, mostly the west end in fairly close proximity to the rail tracks, was quite pebbled as if portions of the concrete had worn away leaving the rocks that were mixed in the concrete exposed.

3.47. When asked during the inspection, the Facility representative could not confirm that that drip pad was sealed. The corrosion and deterioration of the drip pad surface in this area of the drip pad could cause hazardous waste to be released from the drip pad.

**Drip pads and associated collection system designed to prevent run-off**

3.48. The regulation at 40 C.F.R. § 265.443(d) requires that drip pads and associated

collection systems must be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent run-off.

3.49. At the time of the inspection, the west end of the southern section of the drip pad, out from the rail tracks, appeared to be flush with the surrounding soil and liquid from the drip pad appeared to run off the drip pad onto the adjacent soil.

3.50. At the time of the inspection, much of the perimeter of the northern section of the drip pad was overgrown with weeds and the adjacent soil was flush with the surface of the drip pad. Along the northern edge of this section of the drip pad there were stains that began on the drip pad and ran off the drip pad to the adjacent soil.

#### **Run-on and run-off control system**

3.51. The regulation at 40 C.F.R. § 265.443(e) requires that unless protected by a structure, as described in 40 C.F.R. § 265.440(b), the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover as described in 40 C.F.R. § 265.440(b).

3.52. Protected drip pads are defined in 40 C.F.R. § 265.440(b) as any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated.

3.53. At the time of the inspection, the roof and/or gutter on the south side of the drip pad leaked in at least three places (two on the south end of the drip pad and one on the west end of the drip pad). Water from the leaking roof was falling on the drip pad. Some of the water that dripped from the south edge of the roof ran toward the rail tracks that extended from the retort door, and some of the water ran off the drip pad onto the soil adjacent to the drip pad.

3.54. Run-on occurred when water from the roof over the drip pad fell onto the drip

pad, and would likely occur during snow melt or other times of high precipitation, because there was no curb or berm around the perimeter of the drip pad. Similarly, there was no run-off management system.

**Failure to perform weekly inspections and cleaning of the drip pad**

3.55. The regulation at 40 C.F.R. § 265.443(i) requires that the drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed and the owner or operator must document the date and time of each cleaning, including the cleaning procedure used, in the facility's operating log.

3.56. At the time of the inspection, there was no documentation indicating the required drip pad cleaning schedule was adhered to and a Facility representative stated he was not aware of any such practice or documentation.

3.57. At the time of the inspection, two piles of dirt, wood chips and other debris were located on the south side of the drip pad and a Facility representative indicated the piles had been there for several years.

3.58. At the time of the inspection, the western edge of the northern drip pad was covered in a thick layer of soil and wood pieces. This accumulation of soil and debris prevented inspection of the entire surface of the northern drip pad.

**Minimize tracking of hazardous waste or hazardous constituents off the drip pad**

3.59. The regulation at 40 C.F.R. § 265.443(j) requires that drip pads be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents by personnel or equipment.

3.60. At the time of the inspection, tire tracks indicated a front-end loader drove on and off the drip pad.

3.61. At the time of the inspection, employees walked onto and off of the drip pad and

it appeared that they had not been instructed to avoid tracking hazardous waste off of the drip pad.

3.62. At or before the time of the inspection, Respondent did not operate its drip pad to minimize tracking of hazardous waste or hazardous constituents by personnel or equipment in accordance with 40 C.F.R. § 265.443(j).

**Maintain records to show drippage ceased on the drip pad**

3.63. The regulation at 40 C.F.R. § 265.443(k) requires that after being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

3.64. There was no documentation showing that after being removed from the treatment vessel the treated wood was held on the drip pad until drippage had ceased.

3.65. In addition, there were several areas where wood-treating waste had dripped off of the drip pad. These included:

a. In the area west of the drip pads, there were bundles of treated wood stored on skids similar to the skids in the drip shed. Like in the drip shed, the bundles were placed on the skids in such a way that one end of the bundle touched the ground and the other end rose slightly above the ground. Where the bundles of treated wood touched the ground and in locations near the skids where the bundles of treated wood appeared to have been stored in the past, the soil was a different color than the soil in the “pathways” between the rows of bundles and skids. The soil under the bundles was a greyish-blue color. The pattern of the discolored grey-blue soil was similar to the pattern the inspector observed in the drip shed where the treated wood was stored. The pattern seemed to extend out from the skids to the distance that corresponded to the length of the bundles of treated wood.

b. At the time of the inspection, bundles of treated wood were stored in the area north of the boiler control room. The bundles of treated wood in this area were stored on skids in exactly the same manner as described for the bundles of treated wood stored west of the drip shed. Likewise the discoloration of the soil between the skids and the end of the bundles was identical to the discolored soil that was observed in the treated pole storage area that was located to the west of the drip shed.

c. At the time of the inspection, a few bundles of treated wood were being stored in the area behind the boiler control shed and the treating plant building. The staining pattern on the ground was identical to the staining pattern that was observed in the other areas of the Facility where treated wood was stored.

3.66. The areas of staining indicate that the treated wood was not held on the drip pad until drippage ceased, nor was the required documentation maintained at the Facility.

**Maintain documentation of past operating and waste handling practices**

3.67. The regulation at 40 C.F.R. § 265.443(n) requires that the owner or operator maintain, as part of the facility operating log, documentation of past operating and waste handling practices. The documentation must include identification of preservative formulations used in the past, a description of drippage management practices and a description of treated wood storage and handling practices.

3.68. At the time of the inspection, there was no documentation at the Facility pertaining to past operating and waste handling practices including formulations used, a description of drippage management practices or a description of treated wood storage and handling practices.

**I.c. Storage of hazardous waste without a permit**

3.69. The regulation at 40 C.F.R. § 262.34(b) states that a generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject

to the requirements of 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270.

3.70. At the time of the inspection, there was no documentation at the Facility to show that the drip pad and associated collection system had been cleaned at least one time every ninety (90) days and that the waste was shipped offsite for treatment, storage or disposal as required by federal regulations.

3.71. At the time of the inspection, a Facility representative pointed out two piles of dirt, wood chips and debris and stated that they had been on the southern portion of the drip pad for a couple of years.

**Label with the words "hazardous waste"**

3.72. The regulation at 40 C.F.R. § 262.34(a)(3) requires that while waste is being accumulated on-site, each tank must be labeled or marked clearly with the words "hazardous waste."

3.73. At the time of the inspection, none of the tanks in the treating plant building, including the sump under the retort door and the trough under the retort, were labeled or clearly marked with the words "hazardous waste."

**Satellite accumulation areas**

3.74. The regulations at 40 C.F.R. § 262.34(c)(i) and (ii) allow a generator to accumulate as much as 55 gallons of hazardous waste (or one quart of an acutely hazardous waste listed in 40 C.F.R. § 261.33(e)) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided he complies with certain conditions that include marking the containers either with the words "hazardous waste" or with other words that identify the contents of the container, and complies with the regulations at 40 C.F.R. §§ 265.171 through 265.173(a).

3.75. At the time of the inspection, an unlabeled 55-gallon container was located near the trough in the treating plant building and was approximately half-full of a blue-green crystal-like substance that the Facility representative said was CCA residue from cleaning out the trough filter and the trough.

3.76. The CCA residue in the 55-gallon container is F035 listed hazardous waste. Respondent had not complied with the conditions for accumulating hazardous waste in a satellite accumulation area without a permit or interim status, and did not have a permit or interim status.

**Satellite accumulation areas containers closed**

3.77. The regulation at 40 C.F.R. § 262.34(a)(1) allows for accumulation of hazardous waste in satellite accumulation areas provided, among other things, that waste is stored in a container that is always closed during storage, except when it is necessary to add or remove waste [40 C.F.R. § 265.173(a)].

3.78. The 55-gallon container located near the trough in the treating plant building was not closed.

**1.d. Conditions related to preparedness and prevention;  
contingency plan and emergency procedures; and personnel training**

3.79. All generators that store hazardous waste in containers, tanks, containment buildings and drip pads for ninety (90) days or less are required to comply with additional conditions specified in 40 C.F.R. § 262.34(a)(4) which require that a generator who chooses not to obtain a permit or interim status must comply with the requirements for owners or operators in 40 C.F.R. Part 265, Subparts C and D, § 265.16, and § 268.7(a)(5).

**Annual personnel training**

3.80. The regulation at 40 C.F.R. § 265.16(c) states that facility personnel must take part in an annual review of the initial training required in 40 C.F.R. § 265.16(a).

3.81. The Facility had a document titled, "Inchelium Wood Treatment Plant Hazardous Communication, Personal Protective Equipment and Accident Prevention Program," dated December 4, 2000. Documentation showed that two employees took this training on December 5, 2000, but no additional training, such as the annual review required by the regulations, was documented.

#### **Recordkeeping**

3.82. The regulation at 40 C.F.R. § 265.16(d) states that the owner or operator must maintain the following documents and records at the facility: (1) the job title for each position at the facility related to hazardous waste management, and the name of employees filling each job; (2) a written job description for each position listed above (this description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications, and duties of facility personnel assigned to each position); (3) a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed in 40 C.F.R. § 265.16(d)(1); and (4) records that document that the training or job experience required by 40 C.F.R. § 265.16(a) - (c) has been given to, and completed by, facility personnel.

3.83. There was no documentation at the Facility related to the specific job titles of employees that handled hazardous waste and the requirements for specific training and documentation of that training, except documentation of one-time training provided to two employees in December 2000.

#### **Preparedness and prevention requirements**

3.84. The regulations at 40 C.F.R. Part 265, Subpart C (§§ 265.30 - 265.37) outline preparedness and prevention requirements.

*Testing and maintenance of emergency equipment*

3.85. The regulation at 40 C.F.R. § 265.33 requires that all facility communications or alarm systems, fire protection equipment, spill control equipment and decontamination equipment, where required, must be tested and maintained as necessary to assure proper operation in time of emergency.

3.86. At least some of the fire extinguishers at the Facility had not been tested since October 1996, and so were not maintained to assure proper operation in time of emergency.

3.87. The eye wash station in the treatment plant building did not appear to be connected to a water supply source and so was not maintained to assure proper operation in time of emergency.

*Immediate access to internal alarm or emergency communication device*

3.88. The regulation at 40 C.F.R. § 265.34(a) states that whenever hazardous waste is being poured, mixed, spread or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under 40 C.F.R. § 265.32.

3.89. There was no internal alarm or emergency communication device in the treatment plant building. Further, employees working alone in the treating plant building did not have visual or voice contact with other employees of the plant.

**Summary of Count I**

3.90. Respondent disposed of hazardous waste on the ground; stored hazardous waste in containers without a permit or interim status and without complying with conditions for accumulation in containers without a permit or interim status; and operated hazardous waste drip pads without a permit or interim status, and without complying with conditions for operating them without a permit or interim status.

**COUNT II: Failure to have a written closure plan and to conduct closure**

3.91. At or before the time of the inspection, Respondent failed to comply with the conditions for storage of hazardous waste without a permit or interim status set forth at 40 C.F.R. § 262.34, and did not have a permit or interim status.

3.92. At or before the time of the inspection, Respondent disposed of hazardous waste at its Facility without a permit or interim status.

3.93. Respondent failed to file a Part A permit application as required by Section 3005 of RCRA and 40 C.F.R. Part 270 for the hazardous waste storage and disposal that occurred at or before the 2005 inspection.

3.94. The interim status standards apply to owners<sup>s</sup> and operators who treat, store, transfer and/or dispose of hazardous waste.

3.95. The interim status standards apply to owners and operators of facilities in existence on the effective date of regulatory amendments that render the facility subject to the requirement to have a RCRA permit (See 270.10).

3.96. The regulation at 40 C.F.R. § 265.1(b) sets forth the interim status standards to which owners and operators are subject.

3.97. Respondent stored and disposed of hazardous waste at its Facility at or before the 2005 inspection of the Facility and is the operator of a hazardous waste management facility.

3.98. Respondent failed to comply with applicable interim status standards set forth in 40 C.F.R. Part 265, including 40 C.F.R. § 265.112.

3.99. The regulation at 40 C.F.R. § 265.112 requires that owners or operators of hazardous waste management facilities have a written closure plan that identifies the steps necessary to perform closure as provided at 40 C.F.R. § 265.112.

3.100. At the inspection, Respondent did not have a written closure plan for its Facility in violation of 40 C.F.R. § 265.112.

3.101. The regulation at 40 C.F.R. § 265.445 requires owners and operators of drip pads to conduct closure of the drip pads and associated systems.

3.102. Respondent has not conducted closure of the drip pad as required by 40 C.F.R. § 265.445, nor otherwise complied with the requirements of 40 C.F.R. § 265.445.

**COUNT III: Failure to have a cost estimate for closure**

3.103. The regulation at 40 C.F.R. § 265.142 requires that owners or operators of hazardous waste management facilities have a cost estimate for closure.

3.104. The regulation at 40 C.F.R. § 265.445 requires that the cost estimate required for closure under 40 C.F.R. § 265.112 or § 265.144 include the cost of complying with the contingent closure plan and the contingent post-closure plan required in 40 C.F.R. § 265.445.

3.105. At the inspection, Respondent did not have a cost estimate for closure for its Facility in violation of 40 C.F.R. § 265.142.

**COUNT IV: Failure to comply with used oil management requirements**

3.106. Generators of used oil must comply with the regulations at 40 C.F.R. Part 279, Subpart C.

3.107. The regulation at 40 C.F.R. § 279.22(d) requires that generators address any release of used oil.

3.108. At the inspection, the EPA inspector noticed oil on the floor of the ground level room of the merchandiser control booth building, on the ground around the tank on the south side of the merchandiser control booth building and near the base of the building, and on the soil around the containers located outside the oil shed.

3.109. At the time of the inspection, Respondent had not addressed the releases of used oil at the Facility.

#### **IV. TERMS OF SETTLEMENT**

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

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

4.3. Pursuant to Section 3008(a), and based on the allegations above, the seriousness of the violations, any good faith efforts to comply with applicable requirements, and in settlement of Counts I through IV above, Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to undertake the following:

a. Respondent will not treat, store or dispose of hazardous waste without a permit except in accordance with conditions for accumulation of hazardous waste specified at 40 C.F.R. § 262.34.

b. Within 120 days of the date that the Final Order in this matter is signed, Respondent shall submit to EPA a closure plan in accordance with 40 C.F.R. Part 265, Subpart G. Respondent must complete closure of the each unit in accordance with a closure plan approved by EPA. Respondent must include a detailed schedule in the closure plan. Within thirty (30) days of EPA's approval of the closure plan, Respondent must establish and maintain financial assurance for closure in accordance with 40 C.F.R. Part 265, Subpart H.

c. Within ninety (90) days of the date that the Final Order in this matter is signed, Respondent shall submit a plan for addressing the releases of used oil at the Facility.

d. In the event that EPA concludes that the investigation of the extent of the contamination caused by the disposal of hazardous waste on the drip pad or in the storage yard or treatment building shows that clean closure is not appropriate, Respondent must, within thirty (30) days of EPA notice of its conclusion:

- i. Submit to EPA a post-closure plan in accordance with 40 C.F.R. §§ 265.118 and 265.445;
  - ii. Establish and maintain a groundwater monitoring program in accordance with 40 C.F.R. Part 265, Subpart F; and
  - iii. Establish and maintain financial assurance for post-closure in accordance with 40 C.F.R. § 265.118.
- e. The closure plan will contain a schedule that will provide for establishing and maintaining institutional controls on the Facility property in the event that the closure is not protective of unrestricted use of the Facility, as determined by EPA.
- f. All work to be performed pursuant to this CAFO shall be under the direction and supervision of qualified personnel. Respondent shall provide a copy of this CAFO to all contractors, subcontractors, laboratories and consultants retained to conduct or monitor any portion of the work performed pursuant to this CAFO. Respondent shall provide a copy of this CAFO to any successor(s) in interest prior to any transfer of ownership or operation of the Facility.
- 4.4. Attached to this CAFO is a Certificate of Completion (Attachment A). Respondent must execute and submit this Certificate to EPA at the address set forth in paragraph 4.5. within fourteen (14) days of completing each action set forth in paragraph 4.3.a.,b.,c. and d.
- 4.5. Unless otherwise specified, any communications with EPA regarding this CAFO shall be in writing and directed to Jennifer G. MacDonald, Assistant Regional Counsel, and Cheryl Williams, RCRA Compliance Officer, at the following address:
- U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101.
- 4.6. All actions required pursuant to this CAFO shall be undertaken in accordance with all applicable local, state, and federal laws and regulations.

4.7. Whether Respondent has complied with the terms of this CAFO as herein required shall be the sole determination of EPA.

4.8. Respondent agrees that EPA may inspect the Facility at any time.

4.9. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO, and Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, those submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.10. Nothing in this CAFO 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 CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

4.11. If Respondent fails to comply with this CAFO, Respondent may be subject to penalties in accordance with Section 3008(c) of RCRA, 42 U.S.C. § 6928.

4.12. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent under the terms of this CAFO.

4.13.

a. If any event occurs which causes or may cause delays in the completion of the closure as required under this CAFO, Respondent shall notify EPA in writing within ten (10) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c. If EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays shall not be excused.

d. The burden of proving that any delay is caused by circumstances beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

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

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

4.16. Respondent expressly waives any rights to contest the allegations and waives any right to appeal the Final Order set forth in Part V below.

4.17. This CAFO constitutes a settlement by EPA pursuant to RCRA for the violations alleged in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

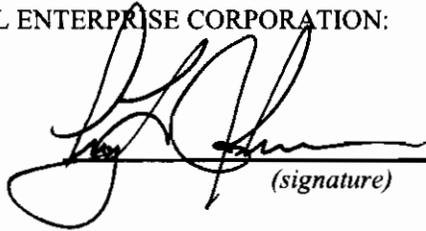
4.18. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

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

4.20. The above provisions are STIPULATED AND AGREED UPON by Respondent and Complainant.

FOR RESPONDENT COLVILLE TRIBAL ENTERPRISE CORPORATION:

Dated: 9/25/08

  
\_\_\_\_\_  
(signature)

Troy L. Johnson

CEO  
(print or type name and title)

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 9-30-08

  
\_\_\_\_\_  
Michael A. Bussell, Director  
Office of Compliance and Enforcement

Dated: 9/29/08

  
\_\_\_\_\_  
Jennifer G. MacDonald  
Assistant Regional Counsel

**V. FINAL ORDER**

Pursuant to the provisions of RCRA, 42 U.S.C. § 6901 *et seq.*, and EPA Region 10 and Colville Tribal Enterprise Corporation having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No. RCRA-10-2007-0168) be entered, and Respondent shall comply in accordance with the terms set forth in the Consent Agreement and comply with its terms.

This Consent Agreement and Final Order shall become effective on the date below.

DATED this 30<sup>th</sup> day of September, 2008

  
Richard G. McAllister  
Regional Judicial Officer

Certificate of Service

The undersigned certifies that the original of the attached Consent Agreement and Final Order in the **In the Matter of: Colville Tribal Enterprise Corporation, Docket No.: RCRA-10-2008-0168**, was filed with the Regional Hearing Clerk in the manner specified, on the date below:

A true and correct copy, by certified mail, return receipt requested:

Bruce Didesch  
Corporate Counsel  
Colville Tribal Enterprise Corporation  
P.O. Box 5  
Coulee Dam, Washington 99116

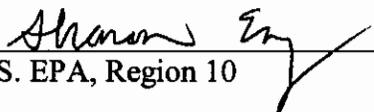
A true and correct copy, by interoffice mail, to:

Jennifer MacDonald  
Office of Regional Counsel  
ORC-158

A true and correct copy, by interoffice mail, to:

Cheryl Williams  
Office of Compliance and Enforcement  
OCE-127

Dated: 9/30/08

By:   
U.S. EPA, Region 10