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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF: U.S. DEPARTMENT OF THE ARMY RESPONDENT White Sands Missile Range 100 Headquarters Avenue White Sands, NM 88002 EPA ID NO. NM2750211235	)	DOCKET NO. RCRA-06-2019-0944

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and the United States Department of the Army (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of New Mexico prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, including any right to confer with the EPA Administrator pursuant to 40 C.F.R. § 22.31(e), and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. The Respondent explicitly waives any right to confer with the EPA Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2) on all issues of facts and law set forth in this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for Federal civil penalties for those violations and facts which are set forth herein.

7. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, to this issuance of the Compliance Order, and the conditions specified in the CAFO.

8. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

9. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

10. The Respondent, the United States Department of the Army, is a department of the executive branch of the Federal government and is subject to the requirements of Section 6001 of RCRA, 42 U.S.C. § 6961.

11. "Person" is defined in N.M.A.C. 20.4.1.100[1] and N.M.A.C. 20.4.1.900 [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "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."

12. The Respondent is a "person" as defined by N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

13. "Owner" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

14. "Operator" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility".

15. "Owner or operator" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 270.2] as "the owner or operator of any facility or activity subject to regulation under RCRA."

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[1] Except as other provided, all citations to the EPA authorized New Mexico Hazardous Waste Program refer to Title 20, Chapter 4, Part 1 of the New Mexico Administrative Code (N.M.A.C.) effective March 1, 2009. 40 C.F.R. § 272.1601(c)(1). Generally, New Mexico incorporated by reference most of the regulations of 40 C.F.R. Part 260 – 268, 270, 273, and 279 as of July 1, 2008. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.

16. "Facility" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

17. The Respondent owns and operates a federal military installation located at 100 Headquarters Avenue, White Sands, New Mexico 88002.

18. The military installation identified in Paragraph 17 is a "facility" as that term is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10].

19. The Respondent is the "owner" and "operator" of the facility identified in Paragraph 17, as those terms are defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10] and N.M.A.C. 20.4.1.100 [40 C.F.R. § 270.2].

20. "Solid waste" is defined in N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2(a), (b), and (c)] is any discarded material which is abandoned by:

A. being disposed of, or

B. burned or incinerated, or

C. accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated, or

D. being recycled, or accumulated, stored, or treated before recycling, as specified in 40 C.F.R. § 261.2(c)(1) – (4).

21. The Respondent has discarded various wastewaters, sludges, solids, and commercial chemical products which were and are being abandoned by being disposed of, or accumulated,

stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated, or being recycled, or accumulated, stored, or treated before recycling.

22. Each of the materials identified in Paragraph 21 is a "solid waste" as that term is defined by N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2(a), (b), and (c)].

23. "Hazardous waste" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 261.3] as a solid waste which exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or is listed in 40 C.F.R. Part 261, Subpart D.

24. One or more of the materials identified in Paragraph 21 exhibited the following characteristics:

A. Ignitability, EPA Hazardous Waste Code D001;
B. Corrosivity, EPA Hazardous Waste Code D002;
C. Reactivity, EPA Hazardous Waste Code D003;
D. Toxicity
1. Arsenic, EPA Hazardous Waste Code D004;
2. Cadmium, EPA Hazardous Waste Code D006;
3. Chromium, EPA Hazardous Waste Code D007;
4. Lead, EPA Hazardous Waste Code D008;
5. Benzene, EPA Hazardous Waste Code D018;
6. Carbon tetrachloride, EPA Hazardous Waste Code D019;
7. Methyl ethyl ketone, EPA Hazardous Waste Code D035; and
8. Tetrachloroethylene, EPA Hazardous Waste Code D039.

25. One or more of the materials identified in Paragraph 21 is one or more of the following listed hazardous waste:

A. F002
B. F003
C. F005; and
D. P075 – Nicotine and salts.

26. "Generator" is defined in N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10] as meaning "any person, by site, whose act or process produces hazardous waste identified or listed in

[40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation."

27. The materials identified in Paragraphs 21, 24, and 25 are "hazardous waste" as that term is defined by N.M.A.C. 20.4.1.100 [40 C.F.R. § 261.3].

28. The Respondent is a "generator" of hazardous waste as that term is defined by N.M.A.C. 20.4.1.100 [40 C.F.R. § 260.10].

29. "Universal Waste" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning any of the following hazardous wastes that are subject to the universal waste requirements of this part 273:

(1) Batteries as described in 40 C.F.R. § 273.2;

(2) Pesticides as described in 40 C.F.R. § 273.3;

(3) Mercury-containing equipment as described in 40 C.F.R. § 273.4; and

(4) Lamps as described in 40 C.F.R. § 273.5.

30. The Respondent generates, collects, and stores spent lead acid batteries at the facility identified in Paragraph 17.

31. N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.5(a)] provides that the requirements of 40 C.F.R. Part 273 apply to persons managing lamps as described in § 273.9, except those listed in paragraph (b) of this section.

32. "Lamp" also referred to as "universal waste lamp" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning "the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal

waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

33. The Respondent manages "lamps" as that term is defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

34. "Generator" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning "any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation."

35. The Respondent is a "generator" of "universal waste" as those terms are defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

36. "Universal Waste Handler" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning: "(1) A generator (as defined in this section) of universal waste; or (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination."

37. The Respondent is a "universal waste handler" as that term is defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

38. "Large Quantity Handler of Universal Waste" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning "a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time."

39. The Respondent accumulated 5,000 kilograms or more of universal waste at any time at the facility identified in Paragraph 17.

40. The Respondent is a "large quantity handler of universal waste" as that term is defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

41. On or about December 3, 2009, the Respondent was issued RCRA Permit No. NM2750211235 by the New Mexico Environment Department (NMED). The Permit, among other things, permitted storage buildings known as the Hazardous Waste Storage Facility.

42. On or about March 19 – 22, 2018, the Respondent's facility was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Failure to Properly Manage Universal Waste – Fluorescent Lamps

43. N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.33(d)(1)] provides that "a large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A large 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 must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

44. "Lamp" also referred to as "universal waste lamp" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning "the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

45. On or about the March 19 – 22, 2018 EPA inspection, the Respondent stored used fluorescent lamps inside the Hawk Trailer north of Building 21785.

46. The fluorescent lamps identified in Paragraph 45 are "lamps" as that term is defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

47. "Solid waste" is defined in N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2(a), (b), and (c)] is any discarded material which is abandoned by:

A. being disposed of, or

B. burned or incinerated, or

C. accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

D. being recycled, or accumulated, stored, or treated before recycling, as specified in 40 C.F.R. § 261.2(c)(1) – (4).

48. The fluorescent lamps identified in Paragraph 45 were abandoned by being accumulated or stored before or in lieu of being abandoned by being disposed of, burned, or incinerated, or being recycled, or accumulated, stored, or treated before being recycled.

49. The fluorescent lamps identified in Paragraph 45 were "discarded", as that term is defined by N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2(a)(2)(i)(A)].

50. The fluorescent lamps identified in Paragraph 45 became waste when they were discarded. N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.5(c)].

51. The fluorescent lamps identified in Paragraph 45 are "solid wastes" as that term is defined by N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2].

52. The fluorescent lamps identified in Paragraph 45 are "hazardous waste" as that term is defined by N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.24].

53. The fluorescent lamps identified in Paragraph 45 were stored in an open, cardboard box. The box containing the fluorescent lamps was not adequate to prevent breakage, was not structurally sound, and was not closed.

54. Therefore, the Respondent violated N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.33(d)(1)] by failing to properly manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

Count Two – Failure to Make Hazardous Waste Determination – Mercury Vapor Lamp

55. N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.33(d)(1)] provides that "a large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A large 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 must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

56. "Lamp" also referred to as "universal waste lamp" is defined in N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9] as meaning "the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

57. Prior to the March 19 – 22, 2018 EPA inspection, the Respondent disposed of a used mercury vapor lamp at the Construction and Demolition Landfill at the facility.

58. The mercury vapor lamp identified in Paragraph 57 is a "lamp" as that term is defined by N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.9].

59. "Solid waste" is defined in N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2(a), (b), and (c)] is any discarded material which is abandoned by:

A. being disposed of, or

B. burned or incinerated, or

C. accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

D. being recycled, or accumulated, stored, or treated before recycling, as specified in 40 C.F.R. § 261.2(c)(1) – (4).

60. "Disposal" is defined in N.M.A.D. 20.4.1.100 [40 C.F.R. § 260.10] as meaning "the discharge, deposit, injection, dumping, spilling, leaking, or placing any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water."

61. The mercury vapor lamp identified in Paragraph 57 was abandoned by being "disposed" of, as that term is defined by N.M.A.D. 20.4.1.100 [40 C.F.R. § 260.10].

62. The mercury vapor lamp identified in Paragraph 57 was "discarded" as that term is defined by N.M.A.D. 20.4.1.200 [40 C.F.R. § 261.2(a)(2)(i)(A)].

63. The mercury vapor lamp identified in Paragraph 57 became waste when it was discarded. N.M.A.C. 20.4.1.1000 [40 C.F.R. § 273.5(c)].

64. The mercury vapor lamp identified in Paragraph 57 is "solid waste" as that term is defined by N.M.A.C. 20.4.1.200 [40 C.F.R. § 261.2].

65. N.M.A.C. 20.4.1.300 [40 C.F.R. § 262.11] provides that 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.

66. The Respondent generated a solid waste.

67. As of the March 19 – 22, 2018 EPA inspection, the Respondent had failed to make a hazardous waste determination for the mercury vapor lamp identified in Paragraph 57.

68. Therefore, the Respondent violated N.M.A.C. 20.4.1.300 [40 C.F.R. § 262.11] by failing to make a hazardous waste determination for a mercury vapor lamp.

Count Three – Manifest Violations

69. N.M.A.D 20.4.1.300 [40 C.F.R. 40 C.F.R. § 262.20(a)(1)] provides that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part.

70. The instructions for preparing a manifest set forth in the Appendix to 40 C.F.R. Part 262 requires the generator to read, sign and date the waste minimization certification statement.

71. Manifest No. 008734253 FLE was used to transport hazardous waste from the Respondent's facility to a designated facility.

72. The Respondent entered the date of January 29, 2017 on Manifest No. 008734253 FLE, three days prior to the date of pickup by the transporter (January 26, 2017).

73. The instructions for preparing a manifest set forth in the Appendix to 40 C.F.R. Part 262 requires the generator to enter waste code for each waste stream.

74. Manifest No. 010663500 FLE was used to transport hazardous waste from the Respondent's facility to a designated facility.

75. For Manifest No. 010663500 FLE, the Respondent incorrectly identified the DOT Shipping Name as warfarin (P001), when the DOT Shipping Name was nicotine (P075).

76. Therefore, the Respondent violated N.M.A.C. 20.4.1.300 [40 C.F.R. § 262.20(a)(1)] by not properly preparing two manifests.

Count Four – Inadequate Aisle Space

77. N.M.A.D. 20.4.1.300 [40 C.F.R. § 262.34(a)(4)] provides the following:

(a) Except as provided in 40 C.F.R. § 262.34(d), (e), and (f), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status provided that:

* * * *

(4) The generator complies with the requirements for owners or operators in [40 C.F.R. Part 265,] Subparts C and D, with 40 C.F.R. § 265.16, and with all applicable requirements under 40 C.F.R. Part 268.

78. 40 C.F.R. § 265.35 provides that the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility unless aisle space is not needed for any of these purposes.

79. On or about the March 19 – 22, 2018 EPA inspection, the Respondent stored drums containing hazardous waste in the 10K less than 90 day storage area.

80. On or about the March 19 – 22, 2018 EPA inspection, a double row of drums were separated by an aisle space of approximately ten inches.

81. A ten-inch aisle space is not sufficient space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in the less than 90 day storage area.

82. Therefore, the Respondent violated N.M.A.D. 20.4.1.300 [40 C.F.R. § 262.34(a)(4)] by failing to comply with 40 C.F.R. § 265.16 by failing to maintain sufficient aisle space in the 10K less than 90-day storage area.

Count Five – Inadequate Contingency Plan

83. N.M.A.D. 20.4.1.500 [40 C.F.R. § 264.52(e)] provides that the contingency plan must include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment, where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

84. Section 3.7.12 of the Respondent's Contingency Plan dated July 2017 provided the following information concerning emergency equipment:

A. Four, 95-gal (0.361 cu m), emergency spill response kits containing sock absorbents, pads, and pulp;
B. One spill kit for aggressive spills containing sock absorbents, pads, and pulp located at Building S22895;
C. Twelve sacks of absorbent;
D. Six recovery/overpack drums; and
E. Non-sparking shovels, picks, etc.

All of this equipment is stored in, or immediately outside Building S22895.

85. The Respondent's Contingency Plan fails to list all emergency equipment at the facility, including but not limited to, cell phone and radio in the 10K less than 90 day area,

personal protective equipment (PPE) (e.g., chemical resistant clothing, respirators), and firefighting equipment.

86. Therefore, the Respondent violated N.M.A.D. 20.4.1.500 [40 C.F.R. § 264.52(e)] by failing to include all required information for its emergency coordinators and provide all necessary information regarding emergency equipment.

Count Six – Failure to Submit One-Time Land Disposal Restriction Notification

87. N.M.A.D. 20.4.1.700 [40 C.F.R. § 266.80(a)] gives the Respondent the option of handling lead-acid batteries via 40 C.F.R. Part 266, Subpart G, or 40 C.F.R. Part 273.

88. The Respondent elected to handle lead-acid batteries via 40 C.F.R. Part 266, Subpart G.

89. The table in 40 C.F.R. § 266.80(a) provides that if your batteries will be reclaimed other than through regeneration, and you generate, collect, and/or transport these batteries, you are exempt from 40 C.F.R. Parts 262 (except for 40 C.F.R. § 262.11), 263, 264, 265, 266, 270, and 124, and the notification requirements of Section 3010 of RCRA, and are subject to 40 C.F.R. Parts 261, 40 C.F.R. § 262.11, and applicable provisions under 40 C.F.R. Part 268.

90. N.M.A.D. 20.4.1.800 [40 C.F.R. § 268.7(a)(2)] provides that if the generator chooses not to make the determination whether the waste must be treated, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file.

91. The Respondent generates, collects, and stores spent lead-acid batteries.

92. The Respondent's spent lead-acid batteries are reclaimed other than through regeneration.

93. The Respondent is subject to the applicable provisions of 40 C.F.R. Part 268.

94. The Respondent chose not to make a determination whether the lead-acid batteries must be treated.

95. On or about January 4, 2016, the Respondent shipped spent lead-acid batteries to Novak Inc. d/b/a Interstate Batteries of Las Cruces.

96. Novak, Inc. d/b/a Interstate Batteries of Las Cruces is a treatment or storage facility.

97. On or about January 4, 2016, the Respondent failed to send a one-time written notice to Novak, Inc., d/b/a Interstate Batteries of Las Cruces with its initial shipment of spent lead-acid batteries, that it chose not to make a determination that the spent lead-acid batteries must be treated.

98. The Respondent failed to place a copy of the one-time written notice in its files.

99. Therefore, the Respondent violated N.M.A.D. 20.4.1.800 [40 C.F.R. § 268.7(a)(2)] by failing to send a one time notice with its initial shipment of spent lead-acid batteries that it chose not to make a determination that the spent lead-acid batteries must be treated, and failed to keep a copy of the notice in its files.

III. <u>COMPLIANCE ORDER</u>

100. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Pursuant to N.M.A.D. 20.4.700 [40 C.F.R. § 266.80(a)], the Respondent shall submit a one-time written notification to each treatment or storage facility that receives its lead-acid batteries for any shipment of lead-acid batteries that occurs after the effective date of this CAFO. The Respondent shall keep a copy of the one-time written notice in its files. The Respondent

shall submit a copy of the notification(s) to EPA and NMED within ten (10) days after it submits the notification to the treatment or storage facility.

B. Within thirty (30) days of the effective date of this CAFO, the Respondent shall submit a revised Contingency Plan to EPA for review and to NMED for approval. The Contingency Plan shall include, among other things, all required information for emergency equipment set forth in N.M.A.D. 20.4.500 [40 C.F.R. § 264.52(e)]. The Respondent shall implement the plan, or the plan as modified by NMED, immediately upon approval by NMED.

C. In all instances in which this Compliance Order requires written submissions to EPA and NMED, each submission must be accompanied by the following certification:

> "I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

D. Unless another law or regulation requires a longer document retention period, the Respondent shall preserve, for a period of one year after termination of this CAFO, all records and documents in its possession or in the possession of its employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary. This information shall be made available to EPA and NMED upon request.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

101. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent be assessed a civil penalty of **TWENTY-FOUR THOUSAND, SIX HUNDRED FOURTEEN DOLLARS ($24,614)**.

102. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6".

103. The Respondent's Treasury Account Symbol is 021 2020. Inquiries concerning this payment can be made to Ms. Misty Haynes. Ms. Haynes can be reached at (575) 678-3366 or via e-mail at misty.d.haynes3.civ@mail.mil.

104. Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
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" with a phone number of (412) 234-4381".

PLEASE NOTE: Docket Number RCRA-06-2019-0944 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Margaret Osbourne, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Attention: Joyce Johnson

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

B. RETENTION OF ENFORCEMENT RIGHTS

105. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

106. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

107. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations,

or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA to obtain penalties or injunctive relief under the RCRA, its implementing regulations, the federally authorized New Mexico hazardous waste program, or under other federal or state laws, regulations, or permit conditions.

108. In any subsequent administrative proceeding initiated by the Complainant for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

109. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of RCRA, its implementing regulations, the federally authorized New Mexico hazardous waste program, or with any other provisions of federal, State, or local laws, regulations, or permits.

C. NOTIFICATION

110. 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 action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Joyce Johnson
Federal Facilities Coordinator
RCRA Enforcement Section (ECDSR)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
johnson.joyce-r6@epa.gov

Respondent:

Brian D. Knight, RPA
Chief, Environmental Division
White Sands Missile Range
100 Headquarters Avenue
White Sands, NM 88002
brian.d.knight.civ@mail.mil

New Mexico Environment Department

Janine Kraemer, CHMM
Program Manager
Compliance & Technical Assistance Program
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive
Santa Fe, NM 87505
janine.kraemer@state.nm.us

D. MODIFICATION

111. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. ANTI-DEFICIENCY ACT

112. The Respondent shall seek all existing funds to meet the requirements of the 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 with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

F. TERMINATION

113. At such time as the Respondent believes it is in compliance with all of the requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within sixty (60) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

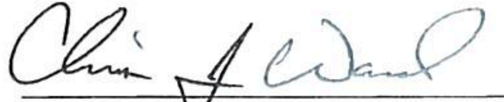
G. EFFECTIVE DATE

114. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 18 Feb 20



Christopher J. Ward
COL, FA
Commanding
U.S. Army Garrison
White Sands Missile Range

FOR THE COMPLAINANT:

Date: 3-3-2020

for Margaret Osborne
Cheryl T. Seager
Director
Enforcement and Compliance Assurance
Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 3-5-2020

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2020, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 120 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 7019 2970 0001 3607 0145

Brian D. Knight, RPA
Chief, Environmental Section
Directorate of Public Works
USAG White Sands Missile Range
100 Headquarters Avenue
White Sands Missile Range, NM 88002

[signature]