

(“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.9. The State of Oregon has adopted regulations for the management of hazardous waste. The Oregon Administrative Rules (OAR) chapter 340, divisions 100 to 106 incorporate the requirements of 40 C.F.R. Parts 260, 261, 264, and 270 by reference and these regulations have been authorized by EPA.

3.10. Respondent is a corporation formed under the laws of the State of Oregon and authorized to do business in the State of Oregon.

3.11. Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

3.12. 40 C.F.R. § 261.2(a)(1) defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34.

3.13. 40 C.F.R. § 261.3 defines "hazardous waste" as a "solid waste" (as defined in 40 C.F.R. § 261.2) that has not been excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.14. "Owner" is defined in 40 C.F.R. § 260.10 as "the person who owns a facility or part of a facility."

3.15. "Operator" is defined in 40 C.F.R. § 260.10 as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

3.16. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

3.17. "Facility" is defined in 40 C.F.R. § 260.10 as "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste."

3.18. Respondent operates the Chemical Waste Management of the Northwest facility located at 17629 Cedar Springs Lane, Arlington, Oregon ("CWMNW facility").

3.19. Respondent is the "owner" and "operator" of the CWMNW facility identified in Paragraph 3.10 above, as those terms are defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 270.2.

3.20. Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person that treats, stores, or disposes of hazardous waste must have a permit or interim status. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.

3.21. Respondent operates the CWMNW facility as a permitted hazardous waste storage facility pursuant to a Hazardous Waste Permit for the Storage, Treatment and Disposal of Hazardous Waste, issued by the State of Oregon to Respondent with an effective date of August 21, 2006 (“the Permit”).

3.22. On or about September 18, 2018, EPA conducted an inspection of the CWMNW facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

3.23. On or about March 4, 2019, EPA sent an information request to Respondent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604(e).

3.24. On or about April 2, 2019, Respondent provided a response to EPA’s information request.

VIOLATION

Count 1: Failure to Establish Adequate Financial Responsibility for Sudden and Non-Sudden Accidental Occurrences

3.25. The allegations in Paragraphs 1 through 3.16 are realleged and incorporated herein by reference.

3.26. Permit Condition II.P.1 states that “(t)he Permittee shall comply with the requirements of 40 CFR 264.147(a), as amended by OAR 340-104-0147, and the documentation requirements of 40 CFR 264.151, as amended by OAR 340-104-0151, including the

requirements to have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.”

3.27. 40 C.F.R. § 264.147(a) requires that an owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

3.28. Permit Condition II.P.2 states that “(t)he Permittee shall comply with the requirements of 40 CFR 264.147(b), as amended by OAR 340-104-0147, and the documentation requirements of 40 CFR 264.151, as amended by OAR 340-104-0151, including the requirements to have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.”

3.29. 40 C.F.R. §264.147(b) requires that “(a)n owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of

at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate.”

3.30. Between January 1, 2015 and July 1, 2016, Respondent’s liability coverage under Policy Numbers PLS 14240854 and PLS 14236941 did not state that the coverage limits were exclusive of legal fees and therefore failed to establish adequate financial responsibility for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the CWMNW facility as required by Permit Conditions II.P.1 and II.P.2, and 40 C.F.R. § 264.147(a) and (b).

3.31. Between July 1, 2016 and July 1, 2017, Respondent’s liability coverage under Policy Number PEL 9994175-00, did not state that the coverage limits were exclusive of legal fees and therefore failed to establish adequate financial responsibility for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the CWMNW facility as required by Permit Conditions II.P.1 and II.P.2, and 40 C.F.R. § 264.147(a) and (b).

3.32. Between July 1, 2017 and July 1, 2018, Respondent’s liability coverage under Policy Number PEL 9994175-01, did not state that the coverage limits were exclusive of legal

fees and therefore failed to establish adequate financial responsibility for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the CWMNW facility as required by Permit Conditions II.P.1 and II.P.2, and 40 C.F.R. § 264.147(a) and (b).

3.33. Between July 1, 2018 and July 1, 2019, Respondent's liability coverage under Policy Number PEL 9994175-02, did not state that the coverage limits were exclusive of legal fees and therefore failed to establish adequate financial responsibility for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the CWMNW facility as required by Permit Conditions II.P.1 and II.P.2, and 40 C.F.R. § 264.147(a) and (b).

3.34. Respondent's failure to establish adequate financial responsibility as required by 40 C.F.R. § 264.147(a) and (b) constituted separate violations of Permit Conditions II.P.1 and II.P.2.

3.35. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,000, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. For purposes of this proceeding, Respondent admits only the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations or legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$25,000 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
schanilec.kevin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order that is attached to this Consent Agreement. Respondent reserves all of its rights in any proceeding other than this proceeding.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

9/24/20

FOR RESPONDENT:



JASON S. ROSE, President
Chemical Waste Management of the Northwest, Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by EDWARD
KOWALSKI
Date: 2020.09.24 08:39:19
-07'00'

EDWARD KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. RCRA-10-2020-0111
)	
Chemical Waste Management of the)	FINAL ORDER
Northwest, Inc.)	
)	
Arlington, Oregon)	
)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent reserves all of its rights in any proceeding other than this proceeding. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Chemical Waste Management of the Northwest, Inc., Docket No.: RCRA-10-2020-0111**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Lynne Davies
Acting Chief, Waste Enforcement Branch
U.S. Environmental Protection Agency
davies.lynne@epa.gov

Further, the undersigned certifies that a true and correct copy of the document was delivered electronically to:

Andrew M. Kenefick
Senior Legal Counsel
Chemical Waste Management of the Northwest, Inc.
AKenefick@wm.com

DATED this _____ day of _____, 2020.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10