

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:)	Docket No. RCRA-10-2024-0045
)	
)	
Walmart Supercenter #2722)	
537 Johansen Expressway)	
Fairbanks, AK 99701)	EXPEDITED SETTLEMENT
EPA ID No. AKR000200808)	AGREEMENT AND
)	
Respondent)	FINAL ORDER
)	
)	
)	

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928, and 40 C.F.R. § 22.13(b).
2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926 to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, the EPA may enforce the federal hazardous waste program in the State of Alaska.
3. Walmart Supercenter #2722 (“Respondent”) is the owner or operator of the facility at 537 Johansen Expressway, Fairbanks, AK 99701 (“Facility”). The EPA alleges that Respondent violated the following requirements of the RCRA.
 - a. 40 C.F.R. §§262.15(a) provides that certain generators may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste in a container at or near any point of generation where the waste initially accumulates which is under the control of the operator of the process generating the waste (“satellite container”) without a permit or interim status if, among other things: The satellite container holding hazardous waste must be closed at all times during accumulation, except when adding, removing or consolidating waste; or when temporary venting of a container is necessary; or for the proper operation of equipment; or to prevent dangerous situations, such as build-up of extreme pressure. The generator must mark or label the container with the words “Hazardous Waste.”

At the time of the inspection, on March 9, 2023, the inspector observed:

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- i. A cloth hamper used to accumulate aerosol cans managed as hazardous waste. The hamper sat open, without an operator adding or removing waste, and lacked both a label or marking reading “Hazardous Waste,” and an indication of the hazard of the contents.
- ii. A can of WD-40 solvent placed in a municipal solid waste bin, which an area operator then moved to the cloth hamper referenced above.

These constitute violations of 40 C.F.R. § 262.15(a).

- b. 40 C.F.R. §262.16(b)(2)(iv) provides that small quantity generators may accumulate hazardous waste at a facility without a permit or interim status, if, among other things, at least weekly, the small quantity generator inspects the central accumulation area in which the hazardous waste accumulates.

After the on-site inspection, the inspector reviewed the facility’s weekly inspection log and observed the facility failed to inspect its central accumulation area the second week of July 2022. This constitutes a violation of 40 C.F.R. §262.16(b)(2)(iv)

- c. 40 C.F.R. § 262.16(b)(6)(i)(B) requires that a SQG must mark or label its hazardous waste containers with an indication of the hazards of the contents. At the time of inspection, in the Receiving Area and Central Accumulation Area, the inspector observed:
 - i. One approximately four-foot-long box labeled “Hazardous Waste,” with an accumulation start date of “12-7-22” and “Fluorescent Lights,” lacked a label or marking indicating the hazards of the contents. An operator later applied a handwritten “Toxic” marking during the inspection.
 - ii. One approximately eight-foot-long box labeled “Hazardous Waste” that lacked a label or marking indicating the hazards of the contents.
 - iii. One approximately five gallon can in a flammables cabinet labeled “Hazardous Waste,” containing waste alcohol, lacked a label or marking indicating the hazards of the contents. An operator later applied a label reading “Ignitable.”
 - iv. One approximately five gallon can in a flammables cabinet labeled “Hazardous Waste,” containing waste fuel, lacked a label or marking indicating the hazards of the contents. An operator later applied a label reading “Ignitable.”

These constitute violations of 40 C.F.R. § 262.16(b)(6)(i)(B).

- d. 40 C.F.R. § 262.16(b)(6)(i)(C) requires that a small quantity generator must mark or label each container of hazardous waste with the date upon which each period of accumulation begins. At the time of the inspection, in the central accumulation area, the inspector observed one approximately eight-foot-long box labeled as “Hazardous Waste” that lacked a label or marking with the date hazardous waste accumulation began.

This constitutes a violation of 40 C.F.R. § 262.16(b)(6)(i)(C).

- e. 40 C.F.R. § 273.14(a), requires handlers of universal waste must label or mark universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be

labeled or marked clearly with any one of the following phrases: “Universal Waste— Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies). At the time of inspection, in the Central Accumulation Area, the inspector observed:

- i. A small fiber box labeled, “Lithium Batteries” holding at least two lithium-ion batteries that Ms. Meeks, an area operator, confirmed were waste. The box lacked a label or marking of the required terms cited above.
- ii. A small fiber box labeled, “Alkaline Batteries” holding an assortment of alkaline batteries, at least one lithium-ion battery, and one nickel metal hydride battery that Ms. Meeks, an area operator, confirmed were waste. The box lacked a label or marking of the required terms cited above.

These constitute violations of 40 C.F.R. § 273.14(a).

- f. 40 C.F.R. §§262.10(a)(1)(ii)(D), and by reference § 262.42(b), require that a small quantity generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

I reviewed the facility’s manifests in eManifest and RCRAInfo and noted these manifests were received 60 days after the facility shipped them:

- i. Manifest 012698220FLE, shipped on January 20, 2022, received on April 20, 2022
- ii. Manifest 012698221FLE, shipped on January 20, 2022, received on April 20, 2022
- iii. Manifest 015977505FLE, shipped on September 27, 2021, received on December 21, 2021
- iv. Manifest 015840964FLE, shipped on September 21, 2021, received on December 10, 2021

A facility representative told me they did not submit exception reports for these manifests. This constitutes violations of 40 C.F.R. §§262.10(a)(1)(ii)(D), and by reference § 262.42(b).

- g. 40 C.F.R. § 279.22(c)(1) requires containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” During the inspection, the inspector observed:
 - i. One white, approximately 5-gallon bucket, beneath an oil filter crusher, containing approximately 3-4 gallons of used oil lacked a label or marking with the words “Used Oil.”
 - ii. One black, approximately 50-gallon tank connected to a hydraulic oil filter crusher, containing approximately 2-3 gallons of used oil lacked a label or marking with the words “Used Oil.”

These constitute violations of 40 C.F.R. § 279.22(c)(1).

h. 40 C.F.R. § 262.16(b)(2)(iii)(A) requires containers of hazardous waste remain closed except when necessary to add or remove waste. At the time of the inspection, one 55-gallon drum of ignitable spent solvent in the Chemical Room sat open. This constitutes a violation of 40 C.F.R. § 262.16(b)(2)(iii)(A).

- i. One 55-gallon drum of spent solvent
- ii. One approximately pint-sized bottle of waste ammoniacal silver
- iii. One approximately pint-sized bottle of waste gold chloride
- iv. One approximately pint-sized bottle of waste chromic acid
- v. One approximately pint-sized bottle of waste picric acid

This constitutes a violation of 40 C.F.R. § 262.16(b)(6)(i)(C).

4. 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 \$20,000. The attached Penalty Calculation Worksheet is incorporated by reference.
5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b); and (7) consents to electronic service of the filed ESA.
6. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$20,000 for the RCRA violations identified in this Agreement. Payments under this Agreement may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.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 979078
St. Louis, Missouri 63197-9000

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

7. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Kyle Masters
U.S. Environmental Protection Agency
Region 10
Masters.Kyle@epa.gov

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and Final Order and to execute and legally bind Respondent to it.
9. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
10. Each party shall bear its own costs and fees, if any.
11. This Agreement and Final Order shall constitute full settlement of the civil claims alleged herein.
12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.
13. This Agreement is binding on the parties signing below and, in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order with the Regional Hearing Clerk for the EPA, Region 10.

IT IS SO AGREED,

RESPONDENT:

Name (print): Wendy Brant

Title (print): VP EHS Compliance

Signature: Wendy Brant

Date: June 13, 2024

EPA REGION 10:

EDWARD KOWALSKI Digitally signed by EDWARD KOWALSKI
Date: 2024.06.14 16:15:09 -07'00'

Date: _____

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10

FINAL ORDER

I hereby ratify the Expedited Settlement Agreement and incorporate it by reference. This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall be effective immediately upon filing with the Regional Hearing Clerk for the EPA, Region 10. Such filing will conclude this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED,

Richard Mednick, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

Date: _____

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Walmart Supercenter #2722 located in Fairbanks, Alaska, Docket No.: RCRA-10-2024-0045, 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 via electronic mail to:

Kyle Masters
U.S. Environmental Protection Agency
Region 10
Masters.Kyle@epa.gov

Mr. Andrew Mierek
Store Manager
Walmart Supercenter #2722
537 Johansen Expressway
Fairbanks, Alaska 99701
admire.s02722.us@wal-mart.com

DATED this _____ day of _____, 2024.

Salee Porter, Regional Hearing Clerk
EPA Region 10