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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
Winfield Solutions, LLC d/b/a Omnium)
1417-A SW Lower Lake Road)
St. Joseph, Missouri 64504)
)
RCRA ID: MOD042865816)
)
Respondent.)
)
Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2014-0019

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Winfield Solutions, LLC d/b/a Omnium (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

2. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

3. The Respondent is Winfield Solutions, LLC d/b/a Omnium, is a Delaware limited liability corporation registered in the State of Missouri. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

Statutory and Regulatory Framework

4. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

6. Pursuant to the regulations set forth 40 C.F.R. Part 262 and 10 C.S.R. 25-5.262, generators of solid waste must perform hazard waste determinations on all solid wastes.

7. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. § 270.1(b) and 10 C.S.R. 25-7.270, require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

8. The regulations at 40 C.F.R. § 262.34(a) and 10 C.S.R. 25-5.262, allow a generator to accumulate hazardous waste in containers on-site for ninety days without a permit or without interim status, provided the conditions listed in 40 C.F.R. §§ 262.34(a) and 10 C.S.R. 25-5.262 are met. These conditions include compliance with various hazardous waste regulatory requirements.

Factual Background

9. Respondent owns and operates the facility located at 1417-A SW Lower Lake Road, St. Joseph, Missouri 64504.

10. Respondent notified the Missouri Department of Natural Resources that it is a large quantity generator of hazardous waste. As part of its operations, Respondent generates hazardous waste each year to be classified as a Large Quantity Generator (LQG) pursuant to 40 C.F.R. Part 262 and 10 C.S.R. 25-5.262.

11. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261.

12. Respondent has been assigned a RCRA facility identification number of MOD042865816.

13. On or about February 4-6, 2013, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility (hereinafter "the EPA inspection").

14. Respondent was inspected as a large quantity generator of hazardous waste. Large quantity generators generate over 1,000 kilograms of hazardous waste per month, pursuant to 40 C.F.R. Part 262 and 10 C.S.R. 25-5.262.

15. During the inspection, it was documented that Respondent accumulated dozens of listed and characteristic hazardous wastes.

16. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261 and 10 C.S.R. 10 C.S.R. 25-4.261. The wastes referenced in Paragraph 15 are "solid wastes" and "hazardous wastes" within the meaning of these regulations.

17. Based on information obtained during the February 2013 inspection, Respondent was issued a Notice of Preliminary Findings for, among other things, inadequate written hazardous waste training description, inadequate description of hazardous waste duties included in job descriptions, inadequate description of hazardous waste related actions to be taken within the contingency plan, incomplete equipment list within contingency plan, and no assessment for newly installed tanks.

Alleged Violations

18. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated there under, as follows:

Count 1

**OPERATING AS A TREATMENT, STORAGE, OR DISPOSAL FACILITY
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

19. The allegations stated in paragraphs 1 through 17 are realleged and incorporated as if fully set forth herein.

20. Section 3005 of RCRA, 42 U.S.C. § 6925, R.S.Mo. 260.390.1(1), and the regulations at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

21. At the time of the EPA inspection, Respondent did not have a permit or interim status for their facility.

22. The regulations at 10 C.S.R. 25-5.262(1), which incorporate by reference 40 C.F.R. § 262.34(a), allow a generator to accumulate hazardous waste in containers on-site for up to ninety (90) days without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(i)-(iv) are met. These conditions include compliance with other hazardous waste generator requirements.

23. At the time of the inspection, Respondent was not complying with various hazardous waste generator requirements, described below. Therefore, Respondent did not meet the exception to the regulation that allows generators to store hazardous waste at their facility for up to 90 days without a permit or interim status so long as they meet hazardous waste regulatory requirements.

Failure to Comply with Generator Requirements

Inadequate Written Training Description

24. The regulations at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.16(d)(3), require the owner or operator to maintain a written description at the facility of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. 265.16(d)(1), which includes all employees at the facility whose job relates to hazardous waste management.

25. At the time of the EPA inspection, Respondent failed to document a description of the introductory and continuing hazardous waste training provided to facility employees.

26. Respondent failed to provide an adequate written employee training description, in violation of the regulations at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.16(d)(3).

Inadequate Description of Hazardous Waste Duties Within Job Description

27. The regulations at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.16(d)(2), require the owner or operator to maintain a written position description at the facility for every position listed under 40 C.F.R. 265.16(d)(1), which includes all employees at the facility whose job relates to hazardous waste management.

28. At the time of the EPA inspection, the inspector noted Respondent failed to include hazardous waste duties within all employee job descriptions.

29. Respondent failed to provide a complete description of hazardous waste duties within employees' job description, in violation of the regulation found at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.16(d)(2).

Inadequate Description of Hazardous Waste Actions to be Taken

30. The regulations at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.52(a), require the contingency plan to describe what actions facility personnel must take in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

31. At the time of the EPA inspection, the inspector reviewed the contingency plan and observed the plan did not describe the hazardous waste related actions that employees must take during hazardous waste related emergencies.

32. Respondent's contingency plan failed to fully describe hazardous waste actions to be taken during an emergency, in violation of the regulations found at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.52(a).

Incomplete Equipment List

33. The regulations at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.52(e), require the facility's contingency plan to 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 physical description of each item on the list, and a brief outline of its capabilities.

34. At the time of the EPA inspection, the inspector noted that Respondent's contingency plan failed to describe the equipment within the Warehouse Waste Storage Area and failed to describe the spill kits throughout the facility contents and capabilities.

35. Respondent failed to have a complete equipment list within the facility's contingency plan, in violation of the regulations found at 10 C.S.R. 25-5.262(2)(C)2.E, referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.52(e).

No Assessment for Newly Installed Tank

36. The regulations 10 C.S.R. 25-5.262(2)(C)2.E referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.192(b) state owners or operator of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequate designed and that the tank systems has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. 270.11(d) of this chapter attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information: (1) design standard(s) according to which the tank(s) and ancillary equipment is or will be constructed; (2) hazardous characteristics of the waste(s) to be handled; and (3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be contact with the soil or with water, a determination by a corrosion expert of the factors listed in subpart (i).

37. At the time of the EPA inspection, Omnium stated the hazardous waste storage had been replaced in February or March of 2012, after the original hazardous waste storage tank began leaking around March of 2010. According to facility personnel during the inspection and in subsequent information requests, a tank assessment pursuant to 40 C.F.R. 265.192(b) was not conducted by a Professional Engineer on the original or the newly installed tank.

38. Respondent failed to conduct an assessment for the newly installed tank, in violation of 10 C.S.R. 25-5.262(2)(C)2.E referencing 10 C.S.R. 25.5.262(2)(C)2.B incorporating 40 C.F.R. 262.34(a)(1)(ii) incorporating 40 C.F.R. 265.192(b).

III. CONSENT AGREEMENT

39. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of this CA/FO.

40. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

41. Respondent neither admits nor denies the factual allegations set forth in this CA/FO.

42. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this CA/FO, and its right to appeal the proposed Final Order portion of this CA/FO.

43. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

44. This CA/FO resolves all civil administrative claims for the alleged RCRA violations identified in this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA, or any violation of any other applicable law, not alleged in the CA/FO and to enforce the terms and conditions of this CA/FO.

45. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

46. Respondent certifies that by signing this CA/FO that to the best of its information and belief, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

47. The effect of settlement described in Paragraph 44 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 46 above of this CA/FO.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

49. This CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

50. Respondent agrees that in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$28,848 as set forth in Paragraph 1 of the Final Order below.

51. The penalty specified in Paragraph 50 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state, or local income tax purposes.

52. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

53. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

54. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount provided herein or, if not specified, an amount not to exceed \$37,500 per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

55. This CA/FO shall be effective upon filing. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of Twenty-Eight Thousand Eight Hundred and Forty-Eight Dollars (\$28,848). The payment must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Kristen Nazar
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

B. Parties Bound

4. This Final Order portion of this CA/FO shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall take steps to ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

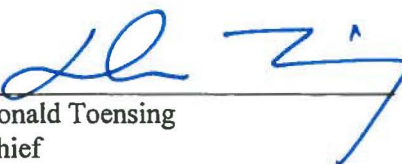
In the Matter of Winfield Solutions, LLC d/b/a Omnium
Consent Agreement and Final Order
RCRA-07-2014-0019

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

12-1-14

Date



Donald Toensing
Chief

Waste Enforcement and Materials Management Branch
Air and Waste Management Division

11/25/14

Date



Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

In the Matter of Winfield Solutions, LLC d/b/a Omnium
Consent Agreement and Final Order
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FOR RESPONDENT:

WINFIELD SOLUTIONS, LLC D/B/A OMNIUM

By Charles Van Feldt

Title Secretary

Signature Charles Van Feldt

11-20-14
Date

In the Matter of Winfield Solutions, LLC d/b/a Omnium
Consent Agreement and Final Order
RCRA-07-2014-0019

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

12-8-14

Date

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Winfield Solutions, LLC d/b/a Omnium, Respondent
Docket No. RCRA-07-2014-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to:

Margretta Hanson, Counsel
Land O'Lakes, Inc.
PO Box 64101
St. Paul, Minnesota 55164

Dated: 12/9/14



Kathy Robinson
Hearing Clerk, Region 7