

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION IX

2013 MAY 17 AM 10:24

US EPA - REGION IX
 HEARING CLERK

IN THE MATTER OF:)	Docket No.
)	RCRA-09-2013-0003
)	
TestAmerica Laboratories, Inc.)	EXPEDITED SETTLEMENT
EPA ID. No. CAR000187781)	AGREEMENT AND
Respondent)	FINAL ORDER
)	
)	

EXPEDITED SETTLEMENT AGREEMENT

The U.S. Environmental Protection Agency (“EPA”) alleges that TestAmerica Laboratories, Inc. (“TAL” or “Respondent”), owner or operator of the facility at 120 Quarry Lane, Pleasanton, CA 94566 (the “Facility”), failed to comply with the following requirements under the Resource Conservation and Recovery Act (“RCRA”) and the EPA approved and authorized California hazardous waste management program (California Code of Regulations, Division 4.5 of Title 22)¹:

1. Failure to close hazardous waste satellite accumulation containers. 22 CCR §§ 66262.34(e)(1)(D); 66265.173(d) [40 Code of Federal Regulations (“CFR”) §§ 262.34(c)(1)(i); 265.173]
2. Failure to provide written job description and training for all TAL personnel with hazardous waste management responsibilities. 22 CCR §§ 66262.34(a)(4); 66265.16(a)(1); 66265.16(d) [40 CFR §§ 262.34(a)(4); 265.16(a)(1); 265.16(d)]
3. Failure to properly manage universal waste – lamps. 22 CCR § 66273.34 [40 CFR § 273.14(e)]

Alleged Violations:

1. Under 22 CCR §§ 66262.34(e)(1)(D); 66265.173(d) [40 CFR §§ 262.34(c)(1)(i); 265.173] the Respondent was required to keep containers of hazardous waste closed during storage, except when necessary to add or remove waste.

¹ All citations to the “CCR” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (see 57 FR 32726, July 23, 1992), September 26, 2001 (66 FR 49118, September 26, 2001), and October 11, 2011 (76 FR 62303, October 11, 2011). Corresponding Federal citations are provided in brackets.

- a. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, the inspectors observed that approximately 11 of 30 containers holding hazardous waste in the laboratory areas were not properly or securely closed while the containers were being used to accumulate hazardous waste at the point of generation. In addition, the inspectors also observed that approximately 85 percent of the open containers were connected to laboratory equipment. The majority of the containers pertaining to this alleged violation accumulated mixed RCRA hazardous waste solvents (D001, F002, and F003).
2. Under 22 CCR §§ 66262.34(a)(4); 66265.16(a)(1) [40 CFR §§ 262.34(a)(4); 265.16(a)(1)], facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. Additionally, under 22 CCR §§ 66262.34(a)(4); 66265.16(d) [40 CFR §§ 262.34(a)(4); 265.16(d)], the owner or operator shall maintain the following documents and records at the facility: 1. the job title of each position at the facility related to hazardous waste management, and the name of the employee filling each job; 2. a written job description for each position listed under 22 CCR § 66265.16(d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; 3. a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 22 CCR § 66265.16(d)(1) of this section.
 - a. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, a written description of the RCRA training requirements for the TAL manager with hazardous management responsibility was not provided to the EPA by the Respondent.
 - b. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, the inspectors observed that the TAL manager with hazardous waste management responsibility had not received sufficient training to assure compliance.
3. Under 22 CCR § 66273.33(b) [40 CFR § 273.13(d)], facilities must manage universal waste lamps in a way that prevents releases of any universal waste or component of universal waste to the environment. Additionally, a universal waste handler must contain any universal waste – lamps in a container that is structurally sound, adequate to prevent breakage, and compatible with the contents of the lamp. Such a container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions (see 22 CCR § 66273.33(b)(1) [40 CFR § 273.13(d)(1)]). Also, under 22 CCR § 66273.34(c) [40 CFR § 273.14(e)], each lamp or a container or package in which the lamps are container, shall be labeled and marked clearly with the following phrase: "Universal Waste-Lamps(s)". The universal waste handler must mark each lamp or container label with the accumulation start date or

by other means document the length of time universal waste – lamps have been accumulated on-site (see 22 CCR § 66273.35 [40 CFR § 273.15]).

- a. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, two tied bundles of universal waste – lamps were observed in TAL maintenance areas at the Facility. None of the tied bundles of universal waste lamps were marked universal waste - lamps nor were any of the tied bundles of universal waste lamps marked with the accumulation start date.
- b. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, one stack of universal waste – lamps (ten lamps total) were observed in TAL maintenance areas at the Facility. None of the stack of universal waste - lamps were marked universal waste – lamps nor were any of the stacked universal waste lamps marked with the accumulation start date.
- c. During a compliance inspection of the Facility conducted by EPA inspectors on November 19, 2010, three open boxes of universal waste – lamps were observed in TAL maintenance areas at the Facility. None of the universal waste – lamp containers were marked universal waste - lamps nor were any of the universal waste lamps containers marked with the accumulation start date.

EPA and Respondent agree that settlement of this matter for a penalty of nine thousand seven hundred fifty dollars (\$9,750) is in the public interest. The attached Proposed Penalty Worksheet is hereby incorporated by reference.

EPA is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of RCRA and 40 CFR § 22.13(b).

In signing this Agreement, Respondent: (1) admits that Respondent is subject to the California Code of 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; and (5) waives any right to contest the allegations contained herein.

By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violation(s) have been corrected; and (2) Respondent is submitting proof of payment of the civil penalty with this Agreement.

The civil penalty of \$9,750 should be paid in accordance with the following payment instructions:

Payment shall be made by remitting a certified or cashier’s check, including the name and docket number of this case, for the amount, payable to “Treasurer, United States of America,” (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sf01.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Upon the effective date of this Agreement, payment of the civil penalty shall constitute full settlement of the civil claims alleged herein.

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.

Upon signing and returning this Agreement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 3008(b) of RCRA.

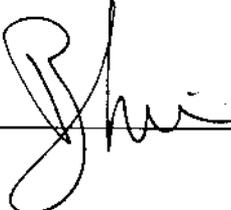
Each party shall bear its own costs and fees, if any.

This Agreement is binding on the parties signing below, and in accordance with 40 CFR 22.31(b), is effective upon filing.

IT IS SO AGREED,

Name (print): BENJAMIN ERWIN

Title (print): CFO

Signature: 

Date 4-29-13

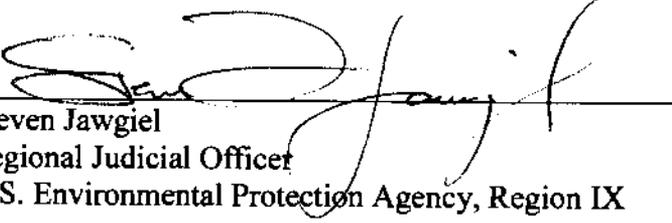
APPROVED BY EPA:



Date 5-10-13

Kathleen H. Johnson, Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

IT IS SO ORDERED:


Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

Date 05/17/13

RCRA EXPEDITED SETTLEMENT AGREEMENT

Proposed Penalty Worksheet

Facility Name: TestAmerica Laboratories, Inc.

EPA ID Number: CAR000187781

Non-small Business Facility Violations	Penalty	Multiplier (number of individual violations, i.e., # of drums)	Total
Labeling violations	\$750	0	
Dating violations	\$750	0	
Open containers	\$750	6	\$4,500
Storage of hazardous waste for no more than 30 days OVER the allowed time (i.e., 121 days for LQGs = not eligible)	\$750	0	
Deficiencies in contingency plan (for LQGs) or emergency postings (SQGs)	\$750	0	
Used oil violations, not including releases	\$750		
Universal waste violations	\$750	6	\$4,500
Training record violations	\$750	1	\$750
Other eligible violation(s) – list each	\$750		
Other eligible violation(s) – list each	\$750		
TOTAL			\$9,750

CERTIFICATE OF SERVICE

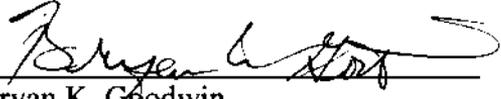
I hereby certify that the original of the foregoing Expedited Settlement Agreement in the matter of TestAmerica, has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent by Certified Mail, Return Receipt Requested, to:

Jenny L. Stewart, Esq.
Corporate Counsel
TestAmerica, Inc.
19 Old Kings Highway South
Suite 100
Darien, CT 06820

Certified Mail No. 7011 1510 0003 5224 2031

Date

5/17/2013


Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

Phone: (415) 972-3000

<http://www.epa.gov/region9>

Certified Mail No. 7011 1510 0003 5224 2031
Return Receipt Requested

MAY 1 2013

Jenny L. Stewart, Esq.
Corporate Counsel
TestAmerica, Inc.
19 Old Kings Highway South
Suite 100
Darien, CT 06820

**Re: In the matter of TestAmerica, Inc.
U.S. EPA Docket No. RCRA-09-2013-**

Dear Ms. Stewart:

Enclosed is a copy of the fully executed Expedited Settlement Agreement which contains the terms of the settlement reached with the United States Environmental Protection Agency.

Your payment of the penalty identified in the Expedited Settlement Agreement and your certification that you have returned to compliance have closed this enforcement action. If you have any questions regarding the rules, regulations or statutes associated with the Expedited Settlement Agreement, please contact John Schofield at (415) 972-3386 or schofield.john@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Johnson".

Kathleen Johnson, Director
Office of Enforcement

cc: Kristine Green, DTSC
Paul Smith, Livermore-Pleasanton Fire Department
Peter Moreton, TestAmerica, Pleasanton, CA