

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2021-0213
)	
United States Air Force,)	CONSENT AGREEMENT
)	
Respondent)	
)	
Eielson Air Force Base)	
2310 Central Ave.)	
<u>Eielson Air Force Base, Alaska 99702</u>)	

I. STATUTORY AUTHORITY

1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.
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, EPA may enforce the federal hazardous waste program in the State of Alaska.
3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the United States Air Force (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

4. 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.
5. 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.

6. 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

7. Respondent, United States Air Force, is a department, agency, and/or instrumentality of the United States.
8. Respondent is a “person,” as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
9. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is and has been the “owner” and “operator,” as those terms are defined at 40 C.F.R. § 260.10, of Eielson Air Force Base, located at 2310 Central Avenue, Eielson Air Force Base, Alaska 99702 (the “Facility”).
10. The Facility generates and stores various types of hazardous, universal, and non-hazardous wastes from vehicle maintenance, aircraft maintenance, and other industrial activities.
11. Respondent generates and accumulates at the Facility various types of “solid waste,” as that term is defined at 40 C.F.R. § 261.2.
12. Respondent generates and accumulates “hazardous waste” at the Facility, as that term is defined at 40 C.F.R. § 260.10.
13. Respondent is and has been a “generator” of and has engaged in the “storage” in “containers” of, hazardous waste, as those terms are defined at 40 C.F.R. § 260.10, at the Facility.
14. Respondent is a “large quantity handler of universal waste,” as that term is defined in 40 C.F.R. § 273.9.
15. On October 6-8, 2020, an authorized representative of EPA (“EPA Inspector”) conducted a RCRA compliance inspection (“2020 Inspection” or “Inspection”) at the Facility. At the time of the Inspection, the Facility reported as a large quantity generator (“LQG”) of hazardous waste, as that term is defined at 40 C.F.R. § 260.10, meaning that it generated in any single month more than 1,000 kg (2,200 pounds) of hazardous waste.
16. At all times relevant to the allegations set forth in this Consent Agreement, the Facility was not a permitted treatment, storage, or disposal facility, and did not have interim status.

COUNT I
(Failure to Make a Hazardous Waste Determination)

17. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must make an accurate determination as to whether that waste is a hazardous waste at the point of generation using the method provided in 40 C.F.R. § 262.11(a)-(d).
18. On or before October 6, 2020, a pair of leather gloves, used as personal protective equipment for welding, was deposited in a trash can as solid waste at the Central Heat & Power Plant in Building 6203 Warehouse at the Facility.
19. Leather gloves used as personal protective equipment for welding have been known to exhibit the toxicity characteristic for chromium.
20. Respondent's failure to determine if solid waste generated at the Facility is a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT II
(Storage of Hazardous Waste Without a Permit or Interim Status)

21. Section 3005 of RCRA, 42 U.S.C. § 6925, requires that anyone who treats, stores, or disposes of hazardous waste must have a permit or interim status.
22. 40 C.F.R. § 270.1 states that no person may store, treat, or dispose of hazardous waste without a permit or interim status.
23. Under 40 C.F.R. § 262.17, an LQG may accumulate hazardous waste on site without a permit or interim status provided that it meets all of the conditions for exemption listed in that section.
24. 40 C.F.R. 262.15(a) states that a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status provided that all of the conditions for exemption in that section are met.

Failure to Label or Mark Containers of Hazardous Waste

25. 40 C.F.R. § 262.15(a)(5) requires that a generator mark or label its container with the words "Hazardous Waste," and an appropriate hazard indicator.

26. On October 7, 2020, a 55-gallon container of hazardous waste, approximately one-third full, in Building 1344 was not labeled with the words “Hazardous Waste,” or an appropriate hazard indicator.
27. On October 8, 2020, Respondent accumulated non-acute hazardous waste in a one-gallon container in Building 6203 and the container was not marked with an appropriate hazard indicator.
28. Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.15 for this hazardous waste, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Conduct Weekly Inspections

29. 40 C.F.R. 262.17(a)(1)(v) provides that, at least weekly, the LQG must inspect central accumulation areas, and must look for leaking containers and for deterioration of containers caused by corrosion or other factors.
30. Prior to the 2020 Inspection, Respondent failed to conduct a number of weekly hazardous waste inspections at the Facility.
31. Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.17, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

COUNT III

(Failure to properly manage universal waste)

32. At the time of the 2020 Inspection, Respondent was a “large quantity handler of universal waste,” as that term is defined in 40 C.F.R. § 273.9.
33. Pursuant to 40 C.F.R. § 273.34(e), a large quantity handler of universal waste must label or clearly mark each lamp or a container or package of in which such lamps are contained with any one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.
34. Pursuant to 40 C.F.R. § 273.35(c), a large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

35. Pursuant to 40 C.F.R. § 273.33(d), 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.
36. On October 6, 2020, there was a cardboard container containing 17 4-foot waste fluorescent lamps outside of Building B1340. The container was not closed, was not labeled as universal waste, and was not marked with the date the lamps first became a waste.
37. On October 7, 2020, there was an open cardboard box containing 30 waste fluorescent lamps in Building 3112. The box was not closed, not labeled as universal waste, and was not marked with the date the lamps first became a waste.
38. On October 7, 2020, there were three waste 4-foot fluorescent lamps, two of which were taped together, leaning against piping in a mechanical boiler room in Building 3112. The waste lamps were not contained or packaged to prevent breakage, were not labeled as universal waste, and were not marked with the date the lamps first became a waste.
39. Failure to label or clearly mark each lamp or a container or package of lamps with the appropriate language is a violation of 40 C.F.R. § 273.34(e).
40. Failure to document the length of time that universal waste had been accumulated from the date it became a waste or was received is a violation of 40 C.F.R. § 273.35(c).
41. Failure to contain waste lamps in containers or packages that are structurally sound, adequate to prevent breakage, and kept closed is a violation of 40 C.F.R. § 273.33(d).

COUNT IV
(Failure to comply with used oil requirements)

42. At the time of the 2020 Inspection, Respondent was a generator of used oil as that term is defined in 40 C.F.R. § 279.1.
43. Pursuant to 40 C.F.R. § 279.22(c)(1), containers used to store oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”
44. During the 2020 Inspection, the Inspector observed a container that was collecting and containing used oil in Building 1342. The container was not labeled with the words “Used Oil.”
45. Failure to label a container containing used oil with the words “Used Oil” is a violation of 40 C.F.R. § 279.22(c)(1).

IV. TERMS OF SETTLEMENT

46. Respondent admits the jurisdictional allegations of this Consent Agreement.
47. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
48. In determining the amount of penalty to be assessed, EPA has taken into account 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 \$23,354 (the "Assessed Penalty").
49. Respondent agrees to pay the Assessed Penalty within 75 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.
50. 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 by a means that facilitates receipt confirmation to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SI.-MO-C2-GL
St. Louis, MO 63101

Respondent must note on the check the title and docket number of this action. Respondent's Treasury Account Symbol is 5713400. Inquiries concerning this payment can be made to Captain Matthew A. Morrow. Captain Morrow can be contacted at 907-377-2360, Matthew.morrow.5@us.af.mil.

51. Payment by Respondent may also be made using the Intra Governmental Payment and Collection application (IPAC), using the Agency's Location Code (ALC) 68-01-0727. Please include the Docket Number of this action in the description field of the IPAC. The customer service representative is Peter Hendrickson, 513-487-2086.
52. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 50 on the Regional Hearing Clerk and EPA Region 10 at the following addressed:

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

Melanie Garvey
U.S. Environmental Protection Agency
Federal Facilities Enforcement Office
Garvey.Melanie@epa.gov

53. Respondent shall seek all existing funds to meet the requirements of this Consent Agreement. 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 this Consent Agreement and Final Order. Nothing in this Consent Agreement and Final Order shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
54. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective actions within the time frame specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.
55. Based on the findings contained in this Consent Agreement, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to certify and provide documentation to EPA within 30 days of the effective date of this Consent Agreement and Final Order:
- a. that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent makes hazardous waste determinations on all solid waste generated at the Facility according to 40 C.F.R. § 262.11;
 - b. that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent complies with the conditions for storage of hazardous waste without a permit or interim status at the Facility according to 40 C.F.R. § 262.17, including conducting weekly inspections;
 - c. that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent complies with the conditions for accumulating hazardous waste in containers at or near any point of generation without a permit or interim status according to 40 C.F.R. § 262.15(a);
 - d. that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent complies with the requirements for managing universal waste at the Facility according to 40 C.F.R. §§ 273.33, 273.34, 273.35;
 - e. that Respondent has implemented standard management practices or operating procedures which shall ensure that Respondent is complying with used oil requirements.

56. In all instances in which this Consent Agreement requires written submissions to EPA, each submission must be accompanied by the following certification signed by a responsible officer of Respondent:

“I certify under penalty of law that, based on information and belief formed after a reasonable inquiry, the statements and information contained in this document accurately reflect the compliance status of this facility and are true, accurate, and complete.”

By: Date / Signature / Title / Printed Name of Responsible Official

57. Respondent shall provide compliance documentation required to the following address:

U.S. Environmental Protection Agency
Region 10
Garvey.Melanie@epa.gov

58. 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.

59. The parties shall bear their own costs and attorneys' fees in bringing or defending this action.

60. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order and/or to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this Consent Agreement and Final Order.

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

62. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

17 SEP 21

FOR RESPONDENT:

DJRC

Colonel David J. Berkland, Commander
354th Fighter Wing, Eielson Air Force Base, Alaska

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2021-0213
)	
United States Air Force,)	FINAL ORDER
)	
Respondent)	
)	
Eielson Air Force Base)	
2310 Central Ave.)	
<u>Eielson Air Force Base, Alaska 99702</u>)	

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

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

SO ORDERED this _____ day of _____, 2021.

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: United States Air Force, Docket No.: RCRA-10-2021-0213**, 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 by electronic mail to:

Kathleen Doster
U.S. Environmental Protection Agency
Federal Facility Enforcement Office
1200 Pennsylvania Ave. NW, MC 2261A
Washington, D.C. 20460
Doster.Kathleen@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered by electronic mail to:

Major Matthew Pellegrine
510 Hickham Ave., Building 250, Bay A
Travis AFB, CA 94535
matthew.pellegrine.1@us.af.mil

DATED this _____ day of _____, 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10