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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2017-0166
)	
Emerald Services, Inc.)	CONSENT AGREEMENT
Tacoma, Washington)	
)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. 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.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Washington (“State”) final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. The State has primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries, except in Indian Country (as defined in 18 U.S.C. § 1151).

1.4. The State is authorized to implement its hazardous waste program on non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the “1873 Survey Area”) located in Tacoma, Washington pursuant to the settlement agreement between the Puyallup Tribe and Federal, State, and local governments dated August 27, 1988 (“Settlement Agreement”). The Settlement Agreement was ratified by Congress and

incorporated into federal law on June 21, 1991, as the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. Section 1773, *et. seq.* ("Settlement Act").

1.5. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally-approved State of Washington's dangerous waste program.

1.6. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to the Washington Department of Ecology and the Puyallup Tribe of Indians.

1.7. 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 Emerald Services, Inc. ("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 Office of Compliance and Enforcement, 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

3.1. Respondent is a corporation formed under the laws of the State of Washington, and authorized to do business in the State of Washington.

3.2. Respondent was purchased by Safety-Kleen Systems, Inc. on July 8, 2016, and both Respondent and Safety-Kleen Systems, Inc. are owned by parent holding company, Clean Harbors, Inc.

3.3. Respondent is a "person" as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Washington Administrative Code ("WAC") 173-303-040.

3.4. WAC 173-303-016(3)(a) defines "solid waste" as any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by a variance granted under WAC 173-303-017(5).

3.5. "Dangerous waste" is defined as "those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in [Chapter 173-303], the words 'dangerous waste' will refer to the full universe of wastes regulated by this chapter." The universe of wastes regulated by Chapter 173-303 includes "hazardous waste."

3.6. WAC 173-303-040 defines a "generator" as any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

3.7. "Owner" is defined in WAC 173-303-040 as "the person who owns a facility or part of a facility."

3.8. "Operator" is defined in WAC 173-303-040 as "the person responsible for the overall operation of the facility."

3.9. "Facility" is defined in WAC 173-303-040 as "all contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste."

3.10. Respondent operates the facility located at 1825 Alexander Avenue, Tacoma, Washington 98421 ("Tacoma facility").

3.11. The Tacoma facility identified in Paragraph 3.10 above is a "facility" as that term is defined by WAC 173-303-040.

3.12. Respondent is the "operator" of the Tacoma facility identified in Paragraph 3.10 above, as that term is defined in WAC 173-303-040.

3.13. Respondent is the "owner" of the Tacoma facility identified in Paragraph 3.10 above, as that term is defined by WAC 173-303-040.

3.14. Respondent operates the Tacoma facility as a permitted dangerous waste storage and treatment facility pursuant to a Permit for the Storage and Treatment of Dangerous Waste (Permit No.: WAD 981 769 110) issued by the Washington State Department of Ecology to Respondent on February 22, 2010 with an effective date of April 2, 2010 ("the Permit").

3.15. On or about March 2, 2016, EPA conducted a compliance evaluation inspection of the Tacoma facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

3.16. On or about January 31, 2017, 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).

3.17. On or about March 1, 2017, Respondent provided a response to EPA's information request.

3.18. On or about March 31, 2017, EPA notified Respondent that the response received on or about March 1, 2017 was incomplete.

3.19. On or about April 20, 2017 and May 2, 2017, Respondent provided supplemental responses to EPA's information request.

VIOLATION

COUNT 1: Failure to Demonstrate Financial Responsibility

3.20. The allegations in Paragraphs 1 through 3.19 are realleged and incorporated herein by reference.

3.21. Permit Condition 5.3, Financial Assurance for Liability, required that "Emerald will meet the financial assurance requirements for liability outlined in WAC 173-303-620(8) through liability insurance (see Appendix D)."

3.22. The RCRA authorized regulation at WAC-173-303-620(8)(a) requires that the owner or operator 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 in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. Owners or operators must meet the requirements of 40 C.F.R. § 264.147(a), which is incorporated by reference.

3.23. Between January 15, 2012 and January 15, 2013, Respondent failed to demonstrate financial responsibility exclusive of legal defense costs in Policy Number

001264600 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Tacoma facility as required by Permit Condition 5.3 and WAC-173-303-620(8)(a). Respondent also failed to either amend this liability insurance policy with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.24. Between January 15, 2013 and January 15, 2014, Respondent failed to demonstrate financial responsibility exclusive of legal defense costs in Policy Number 001264601 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Tacoma facility as required by Permit Condition 5.3 and WAC-173-303-620(8)(a). Respondent also failed to either amend this liability insurance policy with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.25. Between January 15, 2014 and January 15, 2015, Respondent failed to demonstrate financial responsibility exclusive of legal defense costs in Policy Number ERADNPU14 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Tacoma facility as required by Permit Condition 5.3 and WAC-173-303-620(8)(a). Respondent also failed to either amend this liability insurance policy with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.26. Between January 15, 2015 and January 15, 2016, Respondent failed to demonstrate financial responsibility exclusive of legal defense costs in Policy Number ERADNPU15 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Tacoma facility as required by Permit Condition 5.3 and WAC-173-303-620(8)(a). Respondent also failed to either amend this liability insurance policy with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.27. Between January 15, 2016 and January 15, 2017, Respondent failed to demonstrate financial responsibility exclusive of legal defense costs in Policy Number ERADNPU16 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Tacoma facility as required by Permit Condition 5.3 and WAC-173-303-620(8)(a). Respondent also failed to either amend this liability insurance policy with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.28. Between November 1, 2016 and November 1, 2017, Respondent failed to either amend Policy Number PEC0042-3903 with a Hazardous Waste Facility Liability Endorsement or evidence this policy with a Certificate of Liability Insurance as required by Permit Condition 5.3 and WAC-173-303-620(8)(a).

3.29. Respondent's failure to demonstrate financial responsibility as required by the RCRA authorized regulation at WAC-173-303-620(8)(a) constitutes a violation of Permit Condition 5.3.

3.30. 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 \$37,500 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. Respondent admits the jurisdictional allegations of this Consent Agreement.

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

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$125,800 (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 900
Seattle, Washington 98101
young.teresa@epa.gov

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

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

4.13. 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.

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

4.15. 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.

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

DATED:

FOR RESPONDENT:

9/5/2017

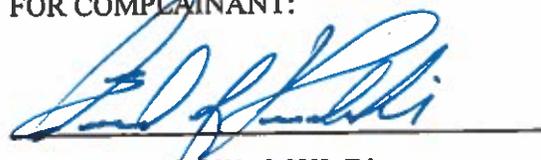


WILLIAM CONNORS,
Senior Vice President of Compliance
Emerald Services, Inc.

DATED:

FOR COMPLAINANT:

9/7/2017



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2017-0166
)	
Emerald Services, Inc.)	FINAL ORDER
Tacoma, Washington)	
)	
)	
Respondent.)	

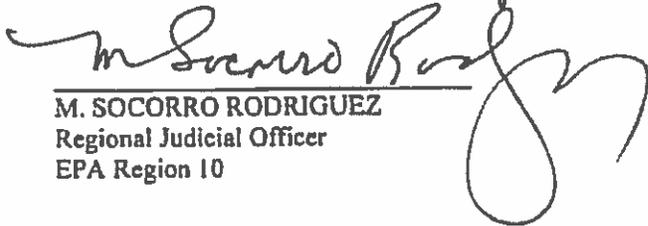
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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. 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 8th day of September 2017.


M. SOCORRO RODRIGUEZ
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: Emerald Services Inc., Docket No.: RCRA-10-2017-0166**, 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 to:

Lynne Davies
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-113
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

William Connors
Senior Vice President of Compliance
Clean Harbors, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, Massachusetts 02061-9149

DATED this 8th day of Sept., 2017

A handwritten signature in blue ink, appearing to read "Candace H. Smith", written over a horizontal line.

Candace H. Smith
Back-up Regional Hearing Clerk
EPA Region 10

