



### **Statutory and Regulatory Framework**

4. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

6. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

7. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator to promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

9. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management (hereinafter “128 N.A.C.”).

10. 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 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 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.

11. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States. 128 N.A.C. §1.103 defines “person” in a manner that is consistent with the federal definition.

13. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.052 define “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

14. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.138 define “treatment” as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

15. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.125 define “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

16. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.042 define “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

17. “Solid waste” is defined at 40 C.F.R. § 261.2 and 128 N.A.C. Chapters 2 and 3.

18. “Hazardous waste” is defined at 40 C.F.R. § 261.3 and 128 N.A.C. §1.062.

19. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.060 define “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

20. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.085 define “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

21. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.024 define “container” as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

22. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.100 define “operator” to mean the person responsible for the overall operation of a facility.

23. The regulation at 40 C.F.R. § 260.10 and 128 N.A.C. §1.101 define “owner” to mean the person who owns a facility or part of a facility.

24. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the 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.

25. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$124,426 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

### **General Factual Background**

26. Respondent is a corporation and authorized to conduct business within the State of Nebraska. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

27. Respondent owns and operates a treatment, storage, and disposal and hazardous waste transfer facility located at 2247 South Highway 71, Kimball, Nebraska 69145 (the “Facility”). Respondent’s facility includes a fluidized bed incinerator, ash monofill, covered and uncovered container storage areas, tank farms, and stormwater storage areas. Respondent employs approximately 200 employees at the Facility and operates the Facility 24 hours per day, 7 days per week.

28. On or about March 1, 1996, Respondent notified EPA that it was a Large Quantity Generator of hazardous waste.

29. Effective September 22, 2022, and pursuant to the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§81-1501 through 81-1533, regulations promulgated thereunder by the Nebraska Department of Environment and Energy (“NDEE”), and Section 3005 of RCRA, Respondent renewed its Hazardous Waste Management Facility Permit (the “Hazardous

Waste Operating Permit”) for the Facility. The Hazardous Waste Operating Permit was subsequently modified on August 5, 2024.

30. Respondent’s Facility has received an EPA ID Number of NED981723513.

31. On or about August 27-29, 2024, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility.

### **Violations**

32. Complainant hereby states and alleges that Respondent has violated RCRA and the state and federal regulations promulgated thereunder, as follows:

#### **Count 1**

##### **Failure to Minimize Releases of Hazardous Waste to the Environment in Permitted Area**

33. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 31 above, as if fully set forth herein.

34. Pursuant to Section C.1 of Clean Harbors’ Hazardous Waste Operating Permit, incorporating by reference 40 CFR. § 264.31 and 128 N.A.C. §21-003, Clean Harbors is required to design, construct, maintain, and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

35. During the inspection, non-containerized hazardous waste ash was present on the floor, walls, and equipment in the ash sampling hut at the Facility.

36. During the inspection, hazardous waste was present on and around the pumping system associated with the south tanker truck unloading bay of Area 70, where hazardous waste is transferred from tanker trucks to storage tanks.

37. Clean Harbors’ failure to maintain and operate the Facility to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment are violations of Section C.1 of Clean Harbors’ Hazardous Waste Operating Permit, incorporating by reference 40 CFR. § 264.31 and 128 N.A.C. §21-003.

#### **Count 2**

##### **Failure to Store Hazardous Waste in Closed Containers in Permitted Area**

38. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 30 above, as if fully set forth herein.

39. Pursuant Section F.7.a. of Clean Harbors' Hazardous Waste Operating Permit, incorporating by reference 40 CFR § 264.173 and 128 N.A.C. §21-009, Clean Harbors is required to close all containers holding hazardous waste during accumulation or storage and ensure each container is equipped with a cover.

40. Pursuant to Section F.12.b.3 of Clean Harbors' Hazardous Waste Operating Permit, Clean Harbors must ensure that each container is equipped with a cover and closure device that forms a continuous barrier over the container openings with no visible holes, gaps, or other open spaces into the interior of the container.

41. During the inspection, roll-off container #411054 held hazardous waste in Area 50B and was covered with a torn tarp.

42. Clean Harbors' failure to equip roll-off container #411054 with a cover that forms a continuous barrier over the container opening with no visible holes, gaps, or other open spaces into the interior of the container is a violation of Section F.7.a. and F.12.b.3 of Clean Harbors' Hazardous Waste Operating Permit, and 40 CFR § 264.173 and 128 N.A.C. §21-009.

### **Count 3**

#### **Failure to Label Hazardous Waste Container with Accumulation Start Date**

43. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 30 above, as if fully set forth herein.

44. Pursuant to 128 N.A.C. §20-014.01B1, the storage of hazardous wastes restricted from land disposal under 40 CFR Subpart C is prohibited, unless, inter alia, the owner/operator of a hazardous waste treatment, storage or disposal facility stores such in a container that is clearly marked to identify its contents and the date each period of accumulation begins.

45. At the time of the inspection, Clean Harbors was accumulating hazardous waste debris for off-site disposal in a forty cubic yard roll-off container (#410281) in Area 40. The container was not marked with the date that hazardous waste accumulation began.

46. Clean Harbors' failure to label hazardous waste container #410281 with the accumulation start date is a violation of 128 N.A.C. §20-014.01B1.

### **Count 4**

#### **Failure to Store Hazardous Waste in Container in 90-Day Area**

47. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 30 above, as if fully set forth herein.

48. Pursuant to 128 N.A.C. §10-004.01, a large quantity generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that it meets the conditions for exemption enumerated in §§10-004.01A – 004.01H.

49. Pursuant to Nebraska Administrative Code §10-004.01A, hazardous waste must be placed in containers.

50. At the time of the inspection, hazardous waste shredder material was located on the outside of two roll-off containers (Containers #410306 and #410996) in Central Accumulation Area A.

51. Clean Harbors' failure to meet the conditions for exemption without obtaining a hazardous waste storage permit or interim status is a violation of 128 N.A.C. §10-004.01.

### **CONSENT AGREEMENT**

52. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

53. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

54. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein,

55. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

56. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

57. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address:  
fitzpatrick.timmerly@cleanharbors.com.

### **Penalty Payment**

58. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifty-Eight Thousand Nine Hundred Dollars (\$58,900) as set forth below.

59. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be paid using one of the electronic payment options found at <http://www.epa.gov/financial/makepayment>.

60. A copy of the confirmation of payment shall simultaneously be emailed to the following:

Regional Hearing Clerk  
R7\_Hearing\_Clerk\_Filings@epa.gov; and

Jonathan Meyer, Attorney  
meyer.jonathan@epa.gov.

61. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and 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. 31 U.S.C. § 3717(e)(2).

62. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To

provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [sherrer.dana@epa.gov](mailto:sherrer.dana@epa.gov) within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Division with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

#### **Effect of Settlement and Reservation of Rights**

63. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent’s liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

64. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent’s representations to the EPA, as memorialized in paragraph directly below.

65. Respondent certifies by the signing of this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and its implementing regulations, Nebraska Hazardous Waste Regulations, Title 128, and any permit issued pursuant to RCRA and the Nebraska Environmental Protection Act.

66. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

67. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order 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 not to exceed Seventy-Four Thousand Nine Hundred Forty-Three Dollars (\$74,943) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

68. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

69. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

70. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

71. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

72. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

73. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

74. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

75. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

\_\_\_\_\_  
Alyse Stoy  
Acting Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jonathan Meyer  
Office of Regional Counsel



**FINAL ORDER**

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

## CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Clean Harbors Environmental Services, Inc., EPA Docket No. RCRA-07-2025-0103, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Jonathan Meyer  
Office of Regional Counsel  
meyer.jonathan@epa.gov

Kevin Snowden  
Enforcement and Compliance Assurance Division  
snowden.kevin@epa.gov

Carrie Venerable  
Office of Regional Counsel  
venerable.carrie@epa.gov

Copy via Email to Respondent:

Timmery Fitzpatrick  
Clean Harbors Environmental Services, Inc.  
PO Box 9149  
42 Longwater Drive  
Norwell, MA 02061-9149  
fitzpatrick.timmery@cleanharbors.com

Copy via Email to the State of Nebraska:

Nebraska Electronic Docket (e-copy)  
ndeq.epainspections@nebraska.gov

David Haldeman, Administrator (e-copy)  
Waste Management Division  
Nebraska Department of Environment and Energy  
david.haldeman@nebraska.gov

Jeff Edwards (e-copy)  
Nebraska Department of Environment and Energy  
jeffery.edwards@nebraska.gov

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed