

1.2 Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with Section 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and the Municipality of Anchorage (“Respondent”) hereby agrees to issuance of the Final Order contained in Part VI of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part VI of this CAFO becomes effective.

2.2 A concise statement of the factual basis for each RCRA violation alleged, together with specific references to the provisions of RCRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Respondent is the Municipality of Anchorage and a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903.

3.2 At all times relevant to the violations alleged in this action, Respondent was the owner and operator of the Anchorage Public Transportation Department Maintenance Facility, a “facility” as defined at 40 C.F.R. § 260.10, located at 3650 East Tudor Road, Anchorage, Alaska.

3.3 The violations alleged in this CAFO are based on information gathered during an EPA site inspection conducted at the facility on July 26, 2006, and on information contained in Respondent’s June 5, 2007, response to EPA’s April 3, 2007, Request for Information.

Failure to Properly Treat Hazardous Wastes

3.4 Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a permit or interim status, and 40 C.F.R. § 270.1(c) requires a RCRA permit for the treatment, storage, or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261.

3.5 40 C.F.R. § 260.10 defines 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 render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.”

3.6 On July 26, 2006, Respondent collected approximately two pints of spent solvent left over from cleaning paint guns in a tray and allowed the liquid to evaporate. After the liquid evaporated, Respondent disposed of the dry residue as non-regulated solid waste. The residue was both a F003 and F005 listed waste.

3.7 Allowing the spent solvent to evaporate constituted “treatment” within the meaning of 40 C.F.R. § 260.10.

3.8 Respondent’s treatment of the spent solvent without a permit or interim status constituted one violation of Section 3005 of RCRA and 40 C.F.R. § 270.1(c).

3.9 On July 26, 2006, Respondent burned absorbent pads mixed with spent brake fluid, a F002 listed waste, without a permit or interim status.

3.10 Respondent's act of burning the absorbent pads constituted treatment of a hazardous waste.

3.11 Respondent's treatment of the absorbent pads without a permit or interim status, constituted one violation of Section 3005 of RCRA and 40 C.F.R. § 270.1(c).

3.12 Respondent generated approximately 30 spent fluorescent lamps per month that its employees broke into smaller pieces for disposal as non-regulated solid waste. Most fluorescent lamps are a D009 characteristic hazardous waste because they contain mercury.

3.13 Respondent's breaking of the fluorescent lamps before disposal constituted treatment of a hazardous waste.

3.14 Respondent's treatment of the fluorescent lamps without a permit or interim status constituted one violation of Section 3005 of RCRA and 40 C.F.R. § 270.1(c).

Failure to Properly Label Containers for Used Oil

3.15 40 C.F.R. § 279.22(c)(1) requires that containers and above-ground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

3.16 On July 26, 2006, two drains were used as receptacles for used oil from drain pans and oil filters. Neither of the drains was marked with the words "Used Oil."

3.17 Respondent's failure to label or mark clearly the words "Used Oil" on the drains used to collect used oil for storage constituted one violation of 40 C.F.R. § 279.22(c)(1).

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3 Pursuant to Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6925(a)(3) and (g), and based on the allegations above, the nature of the violations, Respondent's good faith efforts to comply with applicable requirements, and Respondent's prompt cooperation with EPA regarding the above allegations, Complainant has determined and Respondent agrees that an appropriate penalty to settle this action is \$40,300 for the full and final resolution of all allegations contained in Part III of this CAFO.

4.4 Respondent consents to the issuance of the Final Order set forth in Part VI below and agrees to pay the total civil penalty set forth in Paragraph 4.3 above within 30 days of the effective date of the Final Order.

4.5 Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

U.S. Environmental Protection Agency
Region 10
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case.

4.6 Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Sylvia Burges
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.7 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondent fails to pay the penalty assessed, Respondent may be subject to a civil action to collect the assessed penalty.

4.8 Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date set forth in Paragraph 4.4, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, 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 contained herein.

b. 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.

c. 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 penalty described in Paragraph 4.3. above, including any additional costs incurred under Paragraph 4.8, 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 fully authorized to enter into terms and conditions of this CAFO and to bind Respondent to the terms of this CAFO.

4.11 Except as described in Paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.12 Respondent expressly waives any rights to contest the allegations and waives any right to appeal the Final Order set forth in Part VI below.

4.13 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14 The above provisions are STIPULATED AND AGREED UPON by Respondent and Complainant.

V. Certification of Compliance

5.1 Respondent hereby certifies that as of the date of execution of this CAFO, the facility is in compliance with all applicable requirements of RCRA Section 3005, 42 U.S.C. § 6925, and 40 CFR § 279.1(c) and 279.22(c)(1).

FOR RESPONDENT MUNICIPALITY OF ANCHORAGE



Signature

Dated: 9-23-08

Print Name: Michael K. Abbott
Title: Municipal Manager

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Ann E. Prezyna
Deputy Regional Counsel

Dated: 9/29/2008

VI. FINAL ORDER

6.1 The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

6.2 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

6.3 This Final Order shall become effective upon filing.

SO ORDERED this 30th day of September, 2008.



Richard G. McAllister
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

A true and correct copy, by certified mail, return receipt requested:

Tina M. Sellers
Attorney at Law
REEVES AMODIO LLC
500 L Street, Suite 300
Anchorage, Alaska 99501-5910

A true and correct copy, by interoffice mail, to

Ann E. Prezyna
Office of Regional Counsel
ORC-158

A true and correct copy, by interoffice mail, to

Sylvia Burges
Office of Compliance and Enforcement
OCE-127

Dated: 9/30/08

By: Sharon Eng
Sharon Eng
Acting Regional Hearing Clerk
EPA Region 10