

RECEIVED

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 MAY 26 AM 11:41

HEARINGS CLERK
EPA--REGION 10

IN THE MATTER OF:)	DOCKET NO: RCRA-10-2010-0164
)	
Port of Tacoma)	COMPLAINT AND
3400 Taylor Way)	COMPLIANCE ORDER
Tacoma, WA 98421)	
)	
Respondent.)	
_____)	

I. Preliminary Statement and Jurisdiction

1. This is a civil administrative action filed under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928 *et seq.* RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984. This action is also filed pursuant to Sections 22.1(a)(4), 22.13, and 22.37 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22.

2. The Administrator of the U.S. Environmental Protection Agency (“EPA”) is vested with authority to file a Complaint for a violation of any requirement of Subtitle C of RCRA by Section 3008 of RCRA, 42 U.S.C. § 6928. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been lawfully delegated that authority.

3. Pursuant to the authority of Subtitle C of RCRA, RCRA Section 3004, 42 U.S.C. § 6924, EPA has promulgated regulations applicable to the owners and operators of facilities that treat, store, or dispose of hazardous wastes which are codified at 40 C.F.R. Parts 264 and 265.

40 C.F.R. Part 265, Subpart H specifies financial assurance requirements applicable to interim status treatment, storage, or disposal facilities.

4. EPA and the State of Washington have jurisdiction for the administration and implementation of RCRA on non-trust lands within the 1873 Survey Area of the Puyallup Indian Reservation and activities conducted thereon over non-Indians.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6936(e)) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, and is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Washington final authorization to administer a state hazardous waste program in lieu of the federal government's RCRA program effective December 29, 2006 (71 FR 65253). Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531); October 12, 1999, effective January 11, 2000 (64 FR 55142); April 11, 2002,

effective April 11, 2002 (67 FR 17636); and on April 14, 2006, effective June 13, 2006 (71 FR 19442).

7. The authorized Washington state regulations that specify standards applicable to interim status facilities are found at Washington Administrative Code (WAC) 173-303-400.

8. Any references to the EPA Regional Administrator in a regulatory provision that has been incorporated by reference into the authorized provisions of the WAC is defined as a reference to the Washington Department of Ecology (“Ecology” or “Regulator”), pursuant to WAC 173-303-045(4)(a).

9. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides EPA with the authority to enforce State regulations in those states authorized to administer a hazardous waste program.

10. EPA has provided notice of this action to the State of Washington pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. Regulatory Requirements and General Allegations

11. The Port of Tacoma (“Respondent”) is a “person” as that term is defined in WAC 173-303-040.

12. Respondent is the owner of the spent pot-liner hazardous waste management units and waste pile areas (“spent pot-liner areas”) at the facility located at 3400 Taylor Way in Tacoma, Washington (the “Facility”).

13. Respondent is an “operator” of the Facility, as that term is defined in WAC 173-303-040.

14. The Facility is located on non-trust land within the exterior boundaries of the Puyallup Indian Reservation.

15. The Facility is comprised of property that includes at least two spent pot-liner waste pile areas where spent pot-liner hazardous waste, a listed hazardous waste (K088) and a “dangerous waste” regulated pursuant to WAC 173-303-9904, generated in the production of primary aluminum, has been managed, stored, or disposed of.

16. The spent pot-liner areas are waste piles that existed on November 19, 1980, and are subject to regulation as interim status units under WAC 173-303-400.

17. In 1980, the Facility was owned and operated by Kaiser Aluminum and Chemical Corporation (Kaiser). Kaiser filed a hazardous waste Part A Permit application for the Facility on November 17, 1980 with EPA. Kaiser filed a Dangerous Waste Part A Permit application with Ecology on August 2, 1982. Kaiser revised this application on August 8, 1983; July 25, 1985; and January 24, 1986. Kaiser submitted a “Dangerous Waste TSD Permit Application” to Ecology on March 30, 1987. That permit application included a closure plan for one waste pile, and a closure and post-closure plan for another waste pile area.

18. On February 10, 2003, Respondent submitted a revised Part A Permit application for the “Closed Waste Pile Area at the former Kaiser Tacoma Works facility (WAD 001882984)” to Ecology, reflecting a transfer in ownership of the Facility from Kaiser to Respondent.

19. Neither EPA nor Ecology has ever issued a RCRA Subtitle C closure and post-closure (Part B) permit to the Facility. Accordingly, the Facility operates pursuant to interim status.

20. Owners or operators of interim status treatment, storage, or disposal facilities must demonstrate and maintain adequate financial responsibility meeting the requirements of 40 C.F.R. Part 265, Subpart H or the authorized state equivalent.

21. The authorized Washington state regulations that specify standards applicable to interim status facilities are found at WAC 173-303-400, and incorporate the financial assurance requirements of 40 C.F.R. Part 265, Subpart H by reference at WAC 173-303-400(3)(a). All subsequent references to 40 C.F.R. Part 265, Subpart H shall also be a reference to those requirements as they have been incorporated into WAC 173-303-400(3)(a).

22. 40 C.F.R. § 265.141(b) defines a “current closure cost estimate” as the most recent of the cost estimates prepared in accordance 40 C.F.R. § 265.142(a), (b), and (c).

23. 40 C.F.R. § 265.142(a) requires the owner or operator of an interim status facility to have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the regulatory requirements for closure that are listed in that section. Among other things, the cost estimate must equal the cost of final closure at the point in the facility’s active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (developed in accordance with 40 C.F.R. § 265.112).

24. 40 C.F.R. § 265.141(c) defines a “current post-closure cost estimate” as the most recent of the estimates prepared in accordance with 40 C.F.R. § 265.144(a), (b), and (c).

25. 40 C.F.R. § 265.144(a) requires the owner or operator of an interim status hazardous waste disposal unit to have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable

post-closure regulations in 40 C.F.R. §§ 265.117- 265.120, 265.228, 265.258, 265.280, and 265.310.

26. Pursuant to 40 C.F.R. § 265.144(a)(2), the post-closure cost estimate shall be calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 40 C.F.R. § 265.117.

27. Pursuant to 40 C.F.R. § 265.142(b) and 40 C.F.R. § 265.144(b), during a facility's active life, owners and operators using the financial test mechanism must annually update the closure and post-closure cost estimates for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regulator as specified in 40 C.F.R. § 265.143(e)(3) and 40 C.F.R. § 265.145(e)(3).

28. A facility's "active life" is defined in 40 C.F.R. § 260.10 as "the period from the initial receipt of hazardous waste at the facility until the [Regulator] receives certification of final closure."

29. Modifications to a closure or post-closure cost estimate are allowed only in accordance with 40 C.F.R. §§ 265.142(c) and 265.144(c).

30. Pursuant to 40 C.F.R. §§ 265.142(d) and 265.144(d), the owner or operator must keep the latest closure and post-closure cost estimate prepared in accordance with the applicable regulations, including any adjustments made pursuant to required inflationary adjustments, at the Facility during the operating life of the Facility.

31. Pursuant to WAC 173-303-380(1)(g), the owner or operator of a facility must keep a written operating record at the facility that includes, among other things, all closure and post-closure cost estimates required for the facility.

32. The March 30, 1987 Permit Application submitted by Kaiser to Ecology included the following three cost estimates: a closure cost estimate for the “waste pile storage area in Building 3,” in the amount of \$78,725; a closure cost estimate for the “closed waste pile area,” in the amount of \$47,250; and a post-closure cost estimate for the “closed waste pile area,” in the amount of \$169,050. These costs were estimated in then-current (1987) dollars.

33. The current value of the closure and post-closure cost estimates of Respondent’s 1987 cost estimates, when adjusted for inflation, is \$500,133.

34. Between 1987 and the present, neither Ecology nor EPA has approved a modification to the 1987 closure and post-closure plans. Accordingly, the 1987 closure and post-closure plans are still in effect.

35. 40 C.F.R. § 265.143 requires the owner or operator of an interim status facility to establish financial assurance for closure by the effective date of the regulations [July 6, 1982]. 40 C.F.R. § 265.145 requires the owner or operator of an interim status facility with a hazardous waste disposal unit to establish financial assurance for post-closure by the effective date of the regulations [July 6, 1982].

36. The obligation to maintain continuous financial assurance for closure and post-closure may be terminated only in accordance with the procedures established in 40 C.F.R. §§ 265.143(h) and 265.145(h).

37. 40 C.F.R. Part 265, Subpart H requires interim status hazardous waste treatment, storage, or disposal facilities to maintain financial assurance coverage for “third-party liability.”

38. Third-party liability coverage is required for an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, pursuant to 40 C.F.R.

§ 265.147 for either “sudden accidental occurrences” (sudden accidental) liability coverage, or “non-sudden accidental occurrences” liability coverage, or both. Sudden accidental liability coverage applies to bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

39. Pursuant to 40 C.F.R. § 265.147(a), an owner or operator of an interim status treatment, storage, or disposal facility is required to have and maintain sudden accidental liability coverage in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million.

40. The period of coverage for third-party liability financial assurance may be terminated only in accordance with the procedure specified at 40 C.F.R. § 265.147(e).

41. On June 26, 2003, Ecology informed Respondent that the Facility is subject to a \$2 million annual aggregate financial assurance obligation for third-party liability.

42. 40 C.F.R. §§ 265.143, 265.145, and 265.147 require the owner or operator of an interim status facility to establish financial assurance for closure, post-closure, and third-party liability by means of one of six specified financial mechanisms. The financial test is one of the financial mechanisms authorized for use to meet the financial responsibility requirements.

43. The financial test requirements at 40 C.F.R. § 265.143(e)(3) for closure, and 40 C.F.R. § 265.145(e)(3) for post-closure care, specify that the facility’s owner or operator must submit a letter signed by the owner or operator’s chief financial officer (CFO) and worded exactly as specified in 40 C.F.R. § 264.151(f) to demonstrate that it meets the financial test.

44. If an owner or operator uses the financial test to demonstrate financial responsibility for both third-party liability and closure and/or post-closure, then the owner or

operator must submit a letter signed by the owner or operator's chief financial officer (CFO) and worded exactly as specified in 40 C.F.R. § 264.151(g) to demonstrate that it meets the financial test.

45. The CFO's letter specified in 40 C.F.R. § 264.151(g) states, among other things, that the information provided by the CFO in the letter is "derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year."

46. The CFO's letter specified in 40 C.F.R. § 264.151(g) requires a demonstration that the owner or operator is qualified to use the financial test for an amount of coverage at least equal to the sum of the current closure and post-closure cost estimates and the annual aggregate third-party liability coverage.

47. An owner or operator using the financial test to provide financial assurance for closure, post-closure, and third-party liability must send updated information to the Regulator within 90 days after the close of the succeeding fiscal year, consisting of all three items specified in 40 C.F.R. §§ 265.143(e)(3), 265.145(e)(3), and 265.147(f)(3) in order to continue to use the mechanism, pursuant to 40 C.F.R. §§ 265.143(e)(5), 265.145(e)(5), and 265.147(f)(5).

48. If an owner or operator using the financial test to provide financial assurance for closure or post-closure cannot demonstrate that it meets the requirements of the test by the regulatory deadline, the owner or operator must notify the Regulator within 90 days after the end of the company's fiscal year pursuant to 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6).

49. If an owner or operator using the financial test to provide financial assurance for closure or post-closure cannot demonstrate that it meets the requirements of the test by the regulatory deadline, the owner or operator must provide the Regulator with an alternate form of

adequate financial assurance within 120 days of the end of the company's fiscal year pursuant to 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6).

50. If an owner or operator using the financial test to provide financial assurance for third-party liability cannot demonstrate that it meets the requirements of the test by the regulatory deadline, the owner or operator must provide the Regulator with an alternate form of adequate financial assurance within 90 days after the end of the company's fiscal year pursuant to 40 C.F.R. § 265.147(f)(6).

51. Currently and at all times relevant to this Complaint, Respondent's fiscal year began on January 1 and ended on December 31 annually.

52. On August 14, 2003, Ecology received a financial test demonstration from Respondent to provide financial responsibility for the Facility's closure, post-closure, and third-party liability obligations. The financial test demonstration identified current closure and post-closure cost estimates for the Facility totaling \$2,238,877 and \$2 million in third-party liability obligations.

III. Facility-specific Allegations

2004 Violations

53. During 2004, Respondent was required to demonstrate and maintain financial assurance coverage for closure and post-closure at the Facility in an amount at least equal to the sum of its current closure and post-closure cost estimates.

54. During 2004, Respondent was required to demonstrate and maintain financial assurance coverage for third-party liability for sudden accidental occurrences in the aggregate amount of \$2 million.

55. Respondent was required to submit its financial test demonstration for closure, post-closure, and third-party liability coverage for 2004 to Ecology no later than March 30, 2004.

56. On February 2, 2005, Respondent submitted its final financial test demonstration for 2004.

57. Respondent's February 2, 2005, financial test demonstration identified closure and post-closure cost estimates for the Facility totaling \$2,248,919 and an aggregate third-party liability obligation of \$2 million.

Count 1:

Respondent failed to notify Ecology by March 30, 2004, of its inability to demonstrate that it satisfied the substantive requirements for use of the financial test in accordance with the schedule required by 40 C.F.R. §§ 265.143(e)(5) and 265.145(e)(5), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 2:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for closure and post-closure meeting the requirements of 40 C.F.R. Part 265, Subpart H by April 30, 2004, subsequent to the notice required by 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 3:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for third-party liability meeting the requirements of 40 C.F.R. § 265.147 by March 30, 2004, in violation of 40 C.F.R. § 265.147(f)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 4:

Between January 1, 2004 and December 31, 2004, Respondent had no financial assurance mechanism in place for financial assurance for closure, post-closure, and third-party liability. Respondent failed to maintain continuous financial assurance for closure, post-closure, and third-party liability in violation of 40 C.F.R. §§ 265.143, 265.145, and 265.147, as incorporated by reference at WAC 173-303-400(3)(a).

2005 Violations

58. During 2005, Respondent was required to demonstrate and maintain financial assurance coverage for closure and post-closure at the Facility in an amount at least equal to the sum of its current closure and post-closure cost estimates.

59. During 2005, Respondent was required to demonstrate and maintain financial assurance coverage for third-party liability for sudden accidental occurrences in the aggregate amount of \$2 million.

60. Respondent was required to submit its financial test demonstration for closure, post-closure, and third-party liability coverage for 2005 to Ecology no later than March 31, 2005.

61. On May 18, 2005, Ecology received a financial test demonstration from Respondent.

62. Respondent's May 18, 2005, financial test demonstration identified closure, post-closure, and corrective action cost estimates for the Facility totaling \$2,240,125 and an aggregate third-party liability obligation of \$2 million.

Count 5:

Respondent failed to notify Ecology by March 31, 2005, of its inability to demonstrate that it satisfied the substantive requirements for use of the financial test in accordance with the schedule required by 40 C.F.R. §§ 265.143(e)(5) and 265.145(e)(5), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 6:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for closure and post-closure meeting the requirements of 40 C.F.R. Part 265, Subpart H by April 30, 2005, subsequent to the notice required by 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 7:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for third-party liability meeting the requirements of 40 C.F.R. § 265.147 by March 31, 2005, in violation of 40 C.F.R. § 265.147(f)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 8:

Between January 1, 2005 and May 18, 2005, Respondent had no financial assurance mechanism in place for financial assurance for closure, post-closure, and third-party liability. Respondent failed to maintain continuous financial assurance for closure, post-closure, and third-party liability in violation of 40 C.F.R. §§ 265.143, 265.145, and 265.147, as incorporated by reference at WAC 173-303-400(3)(a).

2006 Violations

63. During 2006, Respondent was required to demonstrate and maintain financial assurance coverage for closure and post-closure at the Facility in an amount at least equal to the sum of its current closure and post-closure cost estimates.

64. During 2006, Respondent was required to demonstrate and maintain financial assurance coverage for third-party liability for sudden accidental occurrences in the aggregate amount of \$2 million.

65. Respondent was required to submit its financial test demonstration for closure, post-closure, and third-party liability coverage for 2006 to Ecology no later than March 31, 2006.

66. On April 14, 2006, Ecology received a financial test demonstration from Respondent for 2006 dated April 13, 2006.

67. Respondent's April 14, 2006, financial test demonstration identified closure, post-closure, and corrective action cost estimates for the Facility totaling \$2,349,130 and an aggregate third-party liability obligation of \$2 million.

Count 9:

Respondent failed to notify Ecology by March 31, 2006, of its inability to demonstrate that it satisfied the substantive requirements for use of the financial test in accordance with the schedule required by 40 C.F.R. §§ 265.143(e)(5) and 265.145(e)(5), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 10:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for closure and post-closure meeting the requirements of 40 C.F.R. Part 265, Subpart H by April

30, 2006, subsequent to the notice required by 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 11:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for third-party liability meeting the requirements of 40 C.F.R. § 265.147 by March 31, 2006, in violation of 40 C.F.R. § 265.147(f)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 12:

Between January 1, 2006 and April 14, 2006, Respondent had no financial assurance mechanism in place for financial assurance for closure, post-closure, and third-party liability. Respondent failed to maintain continuous financial assurance for closure, post-closure, and third-party liability in violation of 40 C.F.R. §§ 265.143, 265.145, and 265.147, as incorporated by reference at WAC 173-303-400(3)(a).

2007 Violations

68. During 2007, Respondent was required to demonstrate and maintain financial assurance coverage for closure and post-closure at the Facility in an amount at least equal to the sum of its current closure and post-closure cost estimates.

69. During 2007, Respondent was required to demonstrate and maintain financial assurance coverage for third-party liability for sudden accidental occurrences in the aggregate amount of \$2 million.

70. Respondent was required to submit its financial test demonstration for closure, post-closure, and third-party liability coverage for 2007 to Ecology no later than March 31, 2007.

71. On April 18, 2007, Ecology received a financial assurance demonstration from the Respondent for 2007 dated April 16, 2007.

72. Respondent's April 18, 2007, financial test demonstration identified closure, post-closure, and corrective action cost estimates for the Facility totaling \$2,246,412 and an aggregate third-party liability obligation of \$2 million.

Count 13:

Respondent failed to notify Ecology by March 31, 2007, of its inability to demonstrate that it satisfied the substantive requirements for use of the financial test in accordance with the schedule required by 40 C.F.R. §§ 265.143(e)(5) and 265.145(e)(5), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 14:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for closure and post-closure meeting the requirements of 40 C.F.R. Part 265, Subpart H by April 30, 2007, subsequent to the notice required by 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 15:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for third-party liability meeting the requirements of 40 C.F.R. § 265.147 by March 31, 2007, in violation of 40 C.F.R. § 265.147(f)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 16:

Between January 1, 2007 and April 18, 2007, Respondent had no financial assurance mechanism in place for financial assurance for closure, post-closure, and third-party liability. Respondent failed to maintain continuous financial assurance for closure, post-closure, and third-party liability in violation of 40 C.F.R. §§ 265.143, 265.145, and 265.147, as incorporated by reference at WAC 173-303-400(3)(a).

2008 Violations

73. During 2008, Respondent was required to demonstrate and maintain financial assurance coverage for closure and post-closure at the Facility in an amount at least equal to the sum of its current closure and post-closure cost estimates.

74. During 2008, Respondent was required to demonstrate and maintain financial assurance coverage for third-party liability for sudden accidental occurrences in the aggregate amount of \$2 million.

75. Respondent was required to submit its financial test demonstration for closure, post-closure, and third-party liability coverage for 2008 to Ecology no later than March 30, 2008.

76. On August 19, 2008, Ecology received a financial assurance demonstration from Respondent for 2008 that was mailed under a cover letter dated August 15, 2008.

77. Respondent's August 19, 2008, financial test demonstration identified closure, post-closure, and corrective action cost estimates for the Facility totaling \$2,306,096 and an aggregate third-party liability obligation of \$2 million.

78. EPA inspected Respondent's Facility on January 9, 2008, for purposes of determining the Facility's compliance with applicable environmental requirements. Respondent

was unable to produce copies of the Facility's current closure and post-closure cost estimates from the facility operating record at the time of the inspection.

Count 17:

Respondent failed to notify Ecology by March 30, 2008, of its inability to demonstrate that it satisfied the substantive requirements for use of the financial test in accordance with the schedule required by 40 C.F.R. §§ 265.143(e)(5) and 265.145(e)(5), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 18:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for closure and post-closure meeting the requirements of 40 C.F.R. Part 265, Subpart H by April 30, 2008, subsequent to the notice required by 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), in violation of 40 C.F.R. §§ 265.143(e)(6) and 265.145(e)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 19:

Respondent failed to provide Ecology with an alternate financial assurance mechanism for third-party liability meeting the requirements of 40 C.F.R. § 265.147 by March 30, 2008, in violation of 40 C.F.R. § 265.147(f)(6), as incorporated by reference at WAC 173-303-400(3)(a).

Count 20:

Between January 1, 2008 and August 19, 2008, Respondent had no financial assurance mechanism in place for financial assurance for closure, post-closure, and third-party liability. Respondent failed to maintain continuous financial assurance for closure, post-closure, and third-

party liability, in violation of 40 C.F.R. §§ 265.143, 265.145, and 265.147, as incorporated by reference at WAC 173-303-400(3)(a).

Count 21:

On January 9, 2008, Respondent failed to have a copy of the Facility's latest closure and post-closure cost estimates on-site, in violation of 40 C.F.R. §§ 265.142(d) and 265.144(d), as incorporated by reference at WAC 173-303-400(3)(a), and was unable to provide a copy of the closure and post-closure cost estimates from the Facility's operating record to an inspector, in violation of WAC 173-303-380(1)(g).

IV. COMPLIANCE ORDER

79. Based on the foregoing findings, Respondent is hereby ordered to achieve and maintain compliance with the requirements of 40 C.F.R. Part 265, Subpart H as incorporated by WAC 173-303-400(3)(a).

80. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a Final Order unless, no later than thirty (30) days after this Complaint is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

V. ASSESSMENT OF PENALTIES

81. EPA reserves its right to assess penalties and/or seek additional appropriate injunctive relief for violations of the requirements cited in Section III of this Complaint, as provided under Section 3008 of RCRA, 42 U.S.C. § 6928. The Administrator of EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 30 U.S.C. § 3701, required EPA to adjust its penalties for inflation on

a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after March 15, 2004 through January 12, 2009.

82. Complainant proposes, subject to the receipt and evaluation of further relevant information from the Respondent, that a penalty up to the statutory maximum for each day of each violation alleged in this Complaint be assessed.

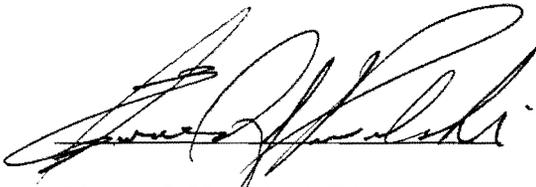
VI. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

83. Under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.15, Respondent has a right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Hearing Clerk within thirty (30) days of service of this Complaint.** In its answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint will constitute an admission of that allegation.

Respondent's answer should be sent to:

Carol Kennedy, Regional Hearing Clerk
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: 158
Seattle, WA 98101
Tel: 206-553-0242

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:



Dated: 5/26/2010

Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Shirin Venus, Assistant Regional Counsel
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: 158
Seattle, WA 98101
Tel: 206-553-4194

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT** in **In the Matter of: The Port of Tacoma, DOCKET NO.: RCRA-10-2010-0164** was filed with the Regional Hearing Clerk on May 26, 2010.

On May 26, 2010, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to each of the following individuals:

John Wolfe, Interim Executive Director and CEO
Port of Tacoma
One Sitcum Plaza
Tacoma, WA 98421

and

Kimberly A. Seely, Attorney
Goodstein Law Group
501 S. G Street
Tacoma, WA 98405

DATED this 26 day of May 2010.


Jennifer Eason
Office of Regional Counsel
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT** in **In the Matter of: The Port of Tacoma, DOCKET NO.: RCRA-10-2010-0164** was filed with the Regional Hearing Clerk on May 26, 2010.

On May 26, 2010, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to each of the following individuals:

John Wolfe, Interim Executive Director and CEO
Port of Tacoma
One Sitcum Plaza
Tacoma, WA 98421

and

Kimberly A. Seely, Attorney
Goodstein Law Group
501 S. G Street
Tacoma, WA 98405

DATED this 26 day of May 2010.


Jennifer Eason
Office of Regional Counsel
EPA Region 10