

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

06 DEC -8 PM 2:16

IN THE MATTER OF:)
)
)
US Army Corps of Engineers, Chemistry and)
Material Quality Assurance Laboratory)
420 S. 118th Street)
Omaha, Nebraska)
)
EPA ID No. NE7210890029)
)
Respondent.)
)
Proceeding under Section 3008 (a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. § 6928(a) and (g).)

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2006-0233

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 26, 2006, when the United States Environmental Protection Agency, Region VII (Complainant or EPA) issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to the US Army Corps of Engineers, Chemistry and Material Quality Assurance Laboratory (COE or Respondent) in Omaha, Nebraska. The Complaint was based on the findings of a Compliance Evaluation Inspection conducted by EPA at this COE laboratory on November 2, 2005. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 et seq., the Complainant sought civil penalties for alleged violations of Section 3005 of RCRA.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves the liability of Respondent for matters alleged in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a judicial or administrative hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent certifies by the signing of this Consent Agreement and Final Order that its facility at 420 S. 118th Street in Omaha, Nebraska, is in compliance with Subchapter III of RCRA, 42 U.S.C. §§6921-6939e, and the regulations promulgated thereunder.
8. The effect of the settlement described below in paragraph 11 of this Consent Agreement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 7 of this Consent Agreement.
9. Nothing contained in the Final Order portion of 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.
10. The undersigned representative of Respondent certifies he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
11. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$67,127.00 as set forth in Paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on or before the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

13. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

14. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative provides Respondent with written notice that all requirements hereunder have been satisfied.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the receipt of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of sixty-seven thousand one hundred twenty-seven dollars (\$67,127.00).

2. Payment of the penalty shall be by certified check or a check certified by the U.S. Treasury, made payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondent by name and reference the Docket Number (RCRA-07-2007-0233) on the check. Copies of the check shall also be mailed to:

Jennifer Trotter
Office of Regional Counsel
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

And

Regional Hearing Clerk
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. Nothing in this Consent Agreement and Final Order shall be construed as limiting the ability of EPA to seek any available remedies or sanctions, including an action to collect any penalties due and owing, in the event Respondent fails to perform.

B. Parties Bound

5. This Final Order portion of 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.

C. Reservation of Rights

6. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion 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 thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

8. 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.

9. 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 future 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.

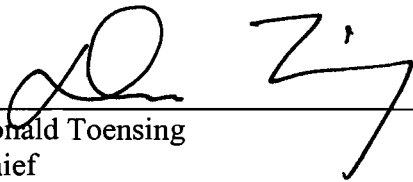
10. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

11. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

12-8-06

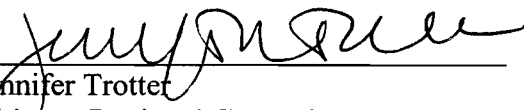
Date



Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division

12-8-06

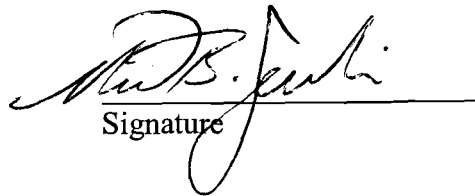
Date



Jennifer Trotter
Assistant Regional Counsel
United State Environmental Protection Agency
Region VII

RESPONDENT:
US Army Corps of Engineers, Chemistry and
Materials Quality Assurance Laboratory

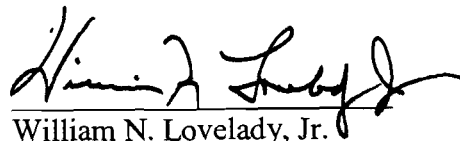
4 Dec 06
Date


Signature

Richard B. Jenkins
Printed Name


Colonel, US Army Corps of Engineers
Commander
Title

4 Dec 06
Date



William N. Lovelady, Jr.
ERDC Counsel
U.S. Army Corps of Engineers

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date December 5, 2006

IN THE MATTER OF US Army Corps of Engineers, Chemistry and Material Quality Assurance
Laboratory, Respondent
Docket No. RCRA-07-2006-0233

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William N. Lovelady, Jr., Esq.
USAE ERDC WES
3909 Halls Ferry Road
Vicksburg, Mississippi 39180-6133

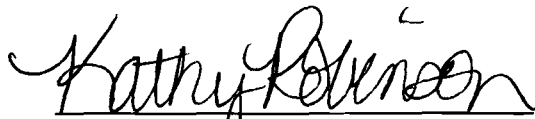
Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Barbara A. Gunning
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 12/18/06


Kathy Robinson
Hearing Clerk, Region 7