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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
CRAIGMONT AIR SERVICES,)
INC. and STAN BYBEE,)
Respondents)
-----)

Docket No. RCRA-10-2009-0091
CONSENT AGREEMENT
AND FINAL ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondents are Craigmont Air Services, Inc., and its president, Stan Bybee ("Respondents").

1.3. Pursuant to Section 9006(d) of RCRA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondents hereby consent to the

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issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

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

2.2. A concise statement of the factual basis for alleging violations of RCRA, together with specific references to the provisions of RCRA and implementing regulations Respondents are alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent Craigmont Air Services, Inc. is an S corporation currently incorporated in the state of Idaho.

3.2. Respondent Stan Bybee is the President of Craigmont Air Services, Inc. who has been responsible for the corporation's operations from at least 2006 to the present.

3.3. Respondents own and/or operate a facility at the Craigmont Airport in Craigmont, Idaho ("Facility").

3.4. Respondents own and/or operate one underground storage tank at the Facility.

3.5. Respondents' tank is a 12,000-gallon tank which contains petroleum product.

3.6. Respondents are each a "person" as that term is defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.

3.7. Respondents are each the "owner" and/or "operator" of an "underground storage tank" ("UST") at the Facility as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

3.8. Respondents' UST is used to store a "regulated substance," as defined in Section 9001(7), 42 U.S.C. § 6991(7), and 40 C.F.R. § 280.12.

3.9. As an owner and/or operator of an UST, Respondents are required, pursuant to Section 9003 of RCRA, 42 U.S.C. § 6991b, and its implementing regulation at 40 C.F.R. § 280.41(a), to monitor their tank at least every 30 days for releases using the methods described in 40 C.F.R. § 280.43.

3.10. Respondents use an Incon TS-1000 automatic tank gauge ("ATG") as the release detection method for the UST at the Facility.

3.11. Respondents must meet the requirements of 40 C.F.R. § 280.43(d)(1), which requires that USTs using ATGs have an automatic product level monitor test that is able to detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product.

3.12. During an EPA inspection of the Facility on June 6, 2006, an EPA inspector observed that the ATG was powered off and a report dated June 2005 was still attached to the monitor. No other leak test reports from the ATG were available. EPA issued a field citation to Craigmont Air Service for failure to monitor its tank every 30 days in violation of 40 C.F.R. § 280.41(a). The company paid the \$300 penalty proposed in the field citation and provided passing leak test reports for the months of August and September 2006.

3.13. On July 12, 2007, an inspector from the Nez Perce Tribe conducted a compliance assistance inspection at the Facility and observed the ATG to be in alarm mode with the "out of paper" button flashing. The September and October 2006 leak test reports were available. No other leak test reports from the ATG were available. The Nez

Perce inspector notified Mr. Bybee of his noncompliance with 40 C.F.R. § 280.41(a) in a letter dated September 10, 2007.

3.14. During an EPA inspection on May 13, 2008, the EPA inspector asked Mr. Bybee to provide all release detection documentation for the previous 12 months for the tank. Mr. Bybee informed the EPA inspector that he was unable to provide leak test reports.

3.15. Mr. Bybee subsequently provided copies of passing leak test reports to the Nez Perce Tribe and/or EPA for June 2008 through December 2008.

3.16. Therefore, Respondents violated 40 C.F.R. § 280.41(a) from at least November 1, 2006 through May 31, 2008.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1. Respondents admit the jurisdictional allegations contained in Part I, above.

4.2. Respondents neither admit nor deny the specific factual allegations in Part III, above.

4.3. Respondents waive their right to request an adjudicatory hearing on any issue addressed in this CAFO.

4.4. Respondents represent that they are duly authorized to execute this CAFO and that the party signing this CAFO on their behalf is duly authorized to bind Respondents to the terms of this CAFO.

4.5. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, taking into account the seriousness of the violation and Respondents' good faith efforts to comply, EPA and Respondents agree that an appropriate penalty to settle this action is EIGHT THOUSAND ONE HUNDRED NINETY-ONE DOLLARS (\$8,191).

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4.6. Respondents consent to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph plus any accrued interest according to the following schedule:

(a) Within thirty (30) days of the effective date of the Final Order, Respondents shall make an initial payment of \$2,000.

(b) Within one year of the effective date of the Final Order, Respondents shall make a second payment of \$2,000.

(c) Within two years of the effective date of the Final Order, Respondents shall pay the remaining civil penalty of \$4,191, plus interest that has accrued from 30 days from the effective date of the CAFO until the date of final payment. Interest shall be calculated in accordance with paragraph 4.10(a).

(d) Should Respondents sell the UST at the Facility within two years of the effective date of the Final Order, then Respondents agree to notify EPA of the sale and to make the second and/or third payment, plus interest, within 30 days of the date of the sale. EPA shall notify Respondents of the exact amount of interest due after EPA receives notification of the sale.

4.7. Payments under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondents shall note on the checks the title and docket number of this case.

Respondents also may make each penalty payment by wire transfer in accordance with instructions provided by EPA.

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4.8. Respondents shall serve photocopies of the checks or documentation of the wire transfers described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Katherine Griffith
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

4.9. If Respondents fail to pay the penalty assessed in this CAFO, Respondents may be subject to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty plus interest, handling charges, and nonpayment penalties as set forth below. In any collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.10. Pursuant to 31 U.S.C. § 3717, Respondents shall pay the following amounts:

(a) Interest. Any unpaid penalties shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the date a conformed copy of this CAFO is mailed to Respondent for the civil penalty, provided, however, no interest shall be payable on any portion of the penalties paid within 30 days.

(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 or stipulated 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 or stipulated penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the day the underlying penalty first becomes past due.

4.11. The penalty described in paragraph 4.5 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.


4.12. Each party shall bear its own costs, fees, and disbursements in this action.

4.13. Respondents expressly waive any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consent to the terms of this CAFO.

4.14. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

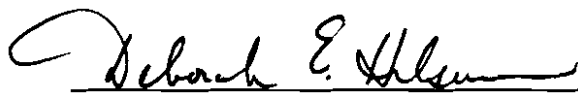
STIPULATED AND AGREED:

RESPONDENTS


STAN BYBEE, individually and as President of
Craigmont Air Services, Inc.

Dated: 2/25/09

U.S. ENVIRONMENTAL PROTECTION AGENCY


DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: 3/2/09

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V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

5.2. Based on the findings contained in the Consent Agreement, Respondents are also ordered to comply with the following requirement pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a). Respondents shall immediately comply with the release detection requirements in 40 C.F.R. Part 280, Subpart D ("Subpart D") for the UST at the Facility. Respondents shall provide documentation of such compliance within 30 days of the effective date of this Final Order. If the UST holds greater than one inch of regulated substance and if Respondents retain ownership and access to the UST, then Respondents shall provide documentation of compliance with Subpart D every 30 days for 12 months or until the penalty referenced in paragraph 4.5 is paid in full, whichever is later. Such documentation shall be provided to the following:

Katherine Griffith
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations and facts alleged in the Consent Agreement 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 Respondents' obligation to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

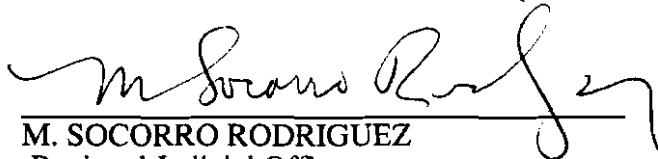
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5.4. This Final Order shall become effective upon filing.

SO ORDERED this 6th day of March, 2009



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: CRAIGMONT AIR SERVICES, INC. AND STAN BYBEE, DOCKET NO.: RCRA-10-2009-0091** was filed with the Regional Hearing Clerk on March 6, 2009.


On March 10, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 on March 10, 2009, to:

Mr. Stan Bybee, President
Craigmont Air Service, Inc.
1597 Bybee Lane
Nyssa, Oregon 97913-5121

DATED this 10th day of March 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10