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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2011 MAY 26 AM 11:30

REGISTRATION DIVISION

In the matter of)	U.S. EPA Docket No
)	RCRA-9-2011- <i>0011</i>
Belfor Environmental)	
)	CONSENT AGREEMENT AND
EPA ID No. AZ 0000042085)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and 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 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Belfor Environmental ("Belfor" or "Respondent").
2. Respondent owned and operated a facility located at 456 E. Juanita Ave., Mesa, Arizona, 85204 (the "Facility"). The Facility's EPA Identification Number is AZ0000042085. Belfor conducted three primary lines of business at the Facility including emergency response, asbestos abatement and waste handling. The Facility is no longer in operation.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that: (1) Respondent failed to identify hazardous waste in violation of A.A.C. R18-8-262.A [40 C.F.R. § 262.11] (2) Respondent failed to minimize the release of hazardous waste in violation of A.A.C. R18-8-262.A & A.A.C. R18-8-265.A [40 C.F.R. § 265.31 as referenced by 40 C.F.R. § 262.34(a)(4)]; (3) Respondent failed to obtain a detailed chemical and physical analysis of a waste prior to treatment, in violation of A.A.C. R18-8-264.A [40 C.F.R. § 264.13]; (4) Respondent failed to comply with requirements for off-site shipment of hazardous waste in violation of A.A.C. R18-8-262.A [40 C.F.R. §§ 262.20 and 262.30-262.33]; and (5) Respondent treated and stored hazardous waste without a permit in violation of A.A.C. R18-8-270.A [40 C.F.R.

§270.1(c)]. These are all in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq., and state regulations adopted pursuant thereto.¹

B. JURISDICTION

4. On November 20, 1985, the State of Arizona received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926 and 40 C.F.R. § 271, effective December 4, 1985. The authorized program is established pursuant to the Arizona Laws Relating to Environmental Quality, Title 49, (Arizona Revised Statutes ("A.R.S.") 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2. Effective October 7, 1991, the State of Arizona received authorization for revisions to A.R.S. 49-921, et seq. The State of Arizona has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in A.R.S. 49-921 and A.A.C. R18-8-260.F.5 [*see also* 40 C.F.R. § 260.10].
6. Respondent was the "operator" of a facility as defined in A.A.C. R18-8-260.C and 270.A [*see also* 40 C.F.R. § 260.10].
7. Respondent was a large quantity "generator" of hazardous waste as defined in A.A.C. R18-8-260.C [40 C.F.R. § 260.10].
8. Respondent generates or has generated hazardous waste including but not limited to : lead contaminated sand (D008), which are "hazardous wastes" as defined in A.R.S. 49-921(5), A.A.C. R18-8-260.C and 261.A [*see also* Section 1004(5) of RCRA, 42 U.S.C. §6903(5), 40 C.F.R. §§ 260.10 and 261.3].
9. On May 28, 2010, Belfor initiated an environmental audit of its Facility, and on June 17, 2010 provided EPA a report of the results of that environmental audit. Respondent supplemented that self-disclosure by letters dated August 3, 2010 and October 4, 2010. Based upon the information provided by Belfor, EPA has determined that Respondent had violated A.R.S. 49-922, and regulations adopted pursuant thereto [*see also* Sections 3001, 3004 and 3005 of RCRA, 42 U.S.C. §§6921, 6924 and 6925].
10. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is

¹ All citations to the "A.A.C." refer to the Arizona Administrative Code, contained in Title 18, Chapter 8, Department of Environmental Quality Waste Management, Article 2, Hazardous Waste. Citations to "A.R.S." refer to Arizona Revised Statutes. EPA is enforcing Arizona hazardous waste management program requirements as approved and authorized by the United States on October 7, 1991. 40 C.F.R. §§124, 260 through 266, 268, 270 and 273, or parts thereof, are adopted by reference.

a violation of a requirement of Subtitle C of RCRA.

11. A violation of Arizona's authorized hazardous waste program, found at A.R.S. 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Arizona's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
12. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
13. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Identify Hazardous Wastes

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. Arizona regulation A.A.C. R18-8-262.A [see also 40 C.F.R. § 262.11], by incorporating 40 C.F.R. § 262.11 by reference states that a person who generates a solid waste must determine if that waste is a hazardous waste.
16. During the audit, Belfor identified several solid wastes for which Belfor had not determined if the waste was a hazardous waste. These wastes included two boxes of sand contaminated with lead, and a number of drums and other containers that contained unknown material and were not dated. Belfor subsequently characterized the sand as D008 and obtained test results for the contents of the containers and drums.
17. Therefore, EPA alleges that Respondent violated Arizona regulation A.A.C. R18-8-262.A [see also 40 C.F.R. § 262.11].

COUNT II

Failure to Minimize a Release of Hazardous Waste

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.

19. Arizona regulation A.A.C. R18-8-265.A, which incorporates 40 C.F.R. § 265.31, states that the facility must be maintained and operated 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.
20. During the audit, Belfor discovered that approximately a half cubic yard of the sand had been disposed of in a dumpster along with some construction debris.
21. During the audit, Belfor discovered that a portion of the Facility had become contaminated from management of the D008 sand.
22. Therefore EPA alleges Respondent has violated A.A.C. R18-8-265.A [see also 40 C.F.R. §265.31].

COUNT III

Failure to Obtain a Detailed Analysis of Waste

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. A.A.C. R18-8-264.A [see also 40 C.F.R. § 264.13] requires that before a person treats, stores, or disposes of any hazardous wastes they must obtain a detailed chemical and physical analysis of a representative sample of the wastes.
25. During the audit Belfor discovered that two boxes of D008 sand had been treated and stored onsite. The boxes containing the D008 sand had not been analyzed.
26. Therefore EPA alleges Respondent has violated A.A.C. R18-8-264.A [see also 40 C.F.R. § 264.13].

COUNT IV

Failure to Comply with Requirements for Off-site Shipment

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. A.A.C. R18-8-262.A [see also 40 C.F.R. §§ 262.30 - .33], by incorporating 40 C.F.R. §§ 262.30 - .33 by reference, requires that before transporting or offering hazardous waste for transportation off-site, a generator must properly package, label, mark, and placard (or offer placards to the transporter) the waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 C.F.R. §§ 172, 173, 178 and 179.

29. A.A.C. R18-8-262.A [see also 40 C.F.R. § 262.20], by incorporating 40 C.F.R. § 262.20 by reference, requires a person who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal to prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22.
30. During the audit, Belfor discovered that due to the failure to analyze the D008 sand, some of the D008 sand was transported without a proper manifest and without the proper packaging, labeling, marking, and placarding.
31. Therefore, EPA alleges that Respondent failed to comply with the requirements for off-site shipment of hazardous waste in violation of A.A.C. R18-8-262.A [see also 40 C.F.R. § 262.20] and A.A.C. R18-8-262.A [see also 40 C.F.R. §§ 262.30 - .33].

COUNT V

Storage and Treatment of Hazardous Waste Without a Permit

32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.
33. A.A.C. R18-8-262.A, by incorporating 40 C.F.R. § 262.34 by reference, provides that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator meets certain conditions, including that generators label containers with the words "hazardous waste" and with the date accumulation of the waste begins. Large quantity generators who fail to label containers of hazardous waste appropriately fail to meet the requirements of A.A.C. R18-8-262.A, and are subject to the permitting requirements of A.A.C. R18-8-270.A [see also 40 C.F.R. § 270.1].
34. A.A.C. R18-8-270.A [see also 40 C.F.R. § 270.1(c)] and A.R.S. 49-922 [see also RCRA Section 3005(e) (42 U.S.C. § 6925(e))] require that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste.
35. During the audit, Belfor discovered that two boxes of D008 sand had been treated and stored onsite for a period of time, dating back to a project that was conducted in May 2009. The D008 was stored in excess of 90 days from the date it was generated. In addition, the boxes containing the D008 sand were not labelled as hazardous waste and did not state the accumulation start date.
36. During the audit, Belfor discovered numerous drums and other containers that had been stored onsite for a period of time. Several of the materials were subsequently determined to be hazardous wastes. The drums and containers were not labelled as hazardous waste and did not state the accumulation start date.

37. Respondent's failure to meet the requirements set forth or referenced by A.A.C. R18-8-262.A subject it to the permit requirements of A.A.C. R18-8-270.A [see also 40 C.F.R. §§ 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of A.A.C. R18-8-270.A [see also 40 C.F.R. § 270.1(c)].

D. FINAL PENALTY

38. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to \$37,500 per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009.
39. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially reduce the gravity component of a penalty if it determines that a respondent has satisfied the nine conditions set forth in the Audit Policy.
40. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic discovery of the violation through an environmental audit or a compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.
41. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit Policy will not face any gravity-based civil penalties. If the regulated entity meets all but the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties by 75%. EPA reserves the right to collect any economic benefit realized as a result of the violation disclosed.
42. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions outlined in the Audit Policy and therefore will not face gravity-based civil penalties.
43. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System. Respondent discovered the violations as the result of an environmental audit. On May 28, 2010, Belfor initiated a formal environmental audit of its Phoenix facility. The violations were discovered during the conduct of the audit. The initial disclosure occurred on June 17, 2010.

44. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not result from any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.
45. Prompt Disclosure. Respondent fully disclosed the violations to EPA within 21 days after it discovered the violations had, or may have, occurred. The violations were discovered during an audit that began on May 28, 2010 and the initial disclosure occurred on June 17, 2010.
46. Discovery and Disclosure Independent of Government or Third Party Plaintiff. Respondent discovered and disclosed the violations to EPA prior to any federal, state, or local agency inspection or investigation, notice of citizen suit, the filing of a third-party complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by a regulatory agency.
47. Correction and Remediation. Respondent properly shipped the hazardous waste offsite, remediated impacted areas and shipped offsite contaminated soil, and submitted an amended 8700-12 form. The disclosed violations did not cause any environmental or human harm that has not been remediated.
48. Prevent Recurrence. Respondent has closed the Facility. In addition, Belfor has informed EPA that it has retained an environmental consultant to help Belfor revise its environmental, health, and safety standard operating procedures and compliance program; it has initiated the process of hiring an environmental compliance and safety director to oversee environmental compliance at all of its operations; and has begun to develop a more detailed, revised audit program to include annual environmental audits of all of its facilities.
49. No Repeat Violations. Respondent has not had any other occurrence of these specific violations at the Facility within the past three years or at any other facility owned or operated by Respondent within the past five years.
50. Other Violations Excluded. The violations did not result in serious actual harm, present an imminent and substantial endangerment to public health or the environment, or violate the specific terms of any judicial or administrative order or consent agreement.
51. Cooperation. Respondent has fully cooperated with EPA in determining the applicability of the Audit Policy.
52. In signing this CA/FO, Respondent certifies under penalty of law that the information submitted to EPA in the letters dated June 17, August 3 and October 4, 2010, disclosing violations of RCRA and the information in paragraphs 34-43 of this CA/FO are based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

53. EPA has determined that the violations resulted in an insignificant amount of economic benefit.
54. For the reasons set forth above, all penalties based on the gravity of the violations and the savings of economic costs related to the violations are waived.

E. ADMISSIONS AND WAIVERS OF RIGHTS

55. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
56. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

57. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns.
58. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
59. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

60. Because EPA has concluded that Respondent has, as described herein, satisfied the nine conditions set forth in the Audit Policy, Complainant has not sought gravity-based penalties for the violations alleged.

61. Based on Complainant's determination that any economic benefit derived from the violations was insignificant, Complainant has not sought to collect any economic benefit penalty for the violations alleged.
62. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of the civil and administrative penalty claims of the United States for the violations of RCRA specifically alleged in Section D above.
63. The effect of the settlement described above is conditional upon the accuracy of Respondent's representations to EPA as memorialized in paragraphs 43-51 of this CA/FO and Respondent's self-disclosure dated June 17, 2010, and supplemented on August 3 and October 4, 2010.

I. RESERVATION OF RIGHTS

64. Except for the liability for civil penalties as set forth herein, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
65. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
66. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
67. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

68. Except as set forth herein, nothing in this CA/FO shall constitute or be construed as a release from any other claim, 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 the Facility.

K. MISCELLANEOUS

69. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

70. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

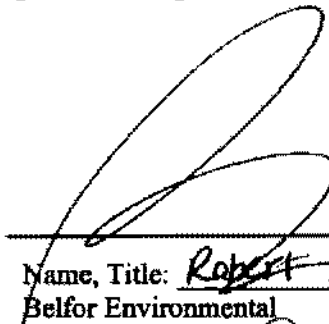
71. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.


72. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

5.2.2011
Date

5/25/11
Date


Name, Title: Robert Martens, Legal Director
Belfor Environmental


Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9

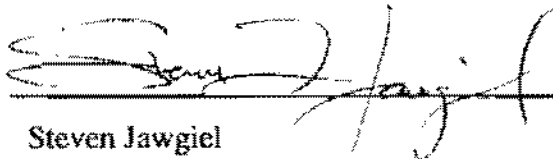
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9-2011-*0011*)

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

05/26/11

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by:

Certified Mail, Return Receipt Requested to:

Robert Martens
Legal Director
Belfor Environmental
Belfor USA
185 Oakland Ave., Suite 300
Birmingham, MI 48009-3433

5/25/11
Date

Bryan K Goodwin
[Name] Bryan K Goodwin
Regional Hearing Clerk
Office of Regional Counsel, Region IX