

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Natawé Katz 2/9/11
Name of Contact person Date

in the EPA Region III ORC at 215-814-2615
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment
American Environmental Services, Inc.

The Total Dollar Amount of Receivable \$14,736

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2011-0071

The Site-Specific Superfund Acct. Number -

The Designated Regional/HQ Program Office RCRA

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005

2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
3. Regional Hearing Clerk

2. Designated Program Office
3. Regional Counsel

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In Re:

**American Environmental Services, Inc.
2100 Georgetown Drive, Suite 303
Sewickley, PA 15143**

RESPONDENT.

**1750 Morgantown Industrial Park
Morgantown, Monongalia County, WV 26501
EPA Facility I.D. #WVD981107600,**

FACILITY.

Docket No. RCRA-03-2011-0071

**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

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and American Environmental Services, Inc. ("Respondent" or "AES"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The Consolidated Rules of Practice, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO"), collectively referred to herein as the "CAFO," simultaneously commence and conclude this administrative proceeding against Respondent.
3. The State of West Virginia ("West Virginia" or "State") has received federal authorization to administer a Hazardous Waste Management Program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42

U.S.C. §§ 6921-6939e. The West Virginia Hazardous Waste Management Regulations (hereinafter, "WVHWMR"), promulgated by the State pursuant to West Virginia Code Chapter 22, Article 18 (Hazardous Waste Management Act), originally were authorized by EPA on March 28, 1984, effective May 29, 1986 (51 Fed. Reg. 17739), pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the WVHWMR were authorized by EPA on May 10, 2000, effective July 10, 2000 (65 Fed. Reg. 29973) and October 16, 2003, effective December 15, 2003 (68 Fed. Reg. 59542). The provisions of West Virginia's current, authorized revised WVHWMR are set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (33 Code of State Regulations 20, abbreviated as 33CSR20, and hereinafter cited as WVHWMR § 33-20-1, et seq.). The provisions of the WVHWMR incorporate by reference the federal hazardous waste management regulations published at 40 C.F.R. Parts 260-279 (July 1, 1999), except as otherwise provided therein. The provisions of the WVHWMR have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on the federally-authorized WVHWMR in effect at the time of the violations alleged herein. Except as otherwise provided, all references and citations herein to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260-279 are to the July 1, 1999 edition of the Code of Federal Regulations.
5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized WVHWMR requirements at Respondent's hazardous waste treatment, storage and disposal facility located at 1750 Morgantown Industrial Park, Morgantown, Monongalia County, West Virginia 26501 (hereinafter, the "Facility").
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated August 5, 2010, EPA notified the State, through the Hazardous Waste and UST Program Manager of the WVDEP, of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in the paragraph immediately above.

9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.
13. The provisions of this CAFO shall be binding upon Complainant and upon Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. Respondent is an Oklahoma corporation with headquarters located at 2100 Georgetown Drive, Suite 303 Sewickley, PA 15143, and is registered to do business in the State of West Virginia.
17. Respondent is a "person" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
18. The Facility is a hazardous waste storage "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
19. At all times relevant to this CAFO, Respondent was an "owner" and "operator" of the Facility, as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
20. During calendar years 2008 and 2009, Respondent was a "primary exporter" of hazardous waste at the Facility, as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 262.51.

21. During calendar years 2008 and 2009, Respondent was engaged in the “storage” of “solid waste” and “hazardous waste” at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
22. EPA has determined that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and the WVHWMR.

COUNT I

Failure to File Accurate Annual Reports Reflecting Exports

23. The allegations of paragraphs 1 through 22 of this CA are incorporated herein by reference as though fully set forth at length.
24. WVHWMR § 33-20-5.3 incorporates by reference 40 C.F.R. § 262.56(a), which provides that primary exporters of hazardous waste shall file with the Administrator, not later than March 1 of each year, a report (“Annual Report”) summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year.
25. Respondent failed to file with the Administrator an accurate Annual Report for calendar year 2008. Specifically, in its 2008 Annual Report, Respondent failed to report four shipments of hazardous waste that it exported, and underreported the amount of hazardous waste that it exported by 54,104 lbs.
26. Respondent failed to file with the Administrator an accurate Annual Report for calendar year 2009. Specifically, in its 2009 Annual Report, Respondent underreported the amount of hazardous waste that it exported by 68,338 lbs.
27. Respondent violated of WVHWMR § 33-20-5.3, which incorporates by reference 40 C.F.R. § 262.56(a).

IV. CIVIL PENALTIES

28. Respondent agrees to pay a civil penalty in the amount of **Fourteen Thousand Seven Hundred Thirty Six Dollars (\$14,736.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have for the violations alleged in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CA. Such civil penalty shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

29. The civil penalty settlement amount set forth in the paragraph immediately above was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Specifically, EPA has taken into account the actions undertaken by the Respondent to respond to the violations alleged in this CA. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's June, 2003 "RCRA Penalty Policy," which reflects the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner, entitled *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after January 30, 1997 through March 15, 2004 are subject to a 10% increase (not to exceed a \$27,500.00 per violation statutory maximum penalty) above the penalty guideline amounts set forth in the RCRA Penalty Policy to account for inflation. Penalties for RCRA violations occurring after March 15, 2004 through January 12, 2009 are subject to an additional 17.23% increase (not to exceed a \$32,500.00 per violation statutory maximum penalty) above the penalty guideline amounts set forth in the RCRA Penalty Policy to account for subsequent inflation. Penalties for RCRA violations occurring after January 12, 2009 are subject to an additional increase (not to exceed \$37,500 per violation statutory maximum penalty).

30. Payment of the civil penalty as required by paragraph 28, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*Docket No. RCRA-03-2011-0071*);

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be

addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

31. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Natalie L. Katz
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

33. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

34. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for

administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

35. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
36. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

37. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is, as of the date of its signature, in compliance with all relevant provisions of the authorized VVHWMR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

38. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

39. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

40. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA.

IX. PARTIES BOUND

41. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

42. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

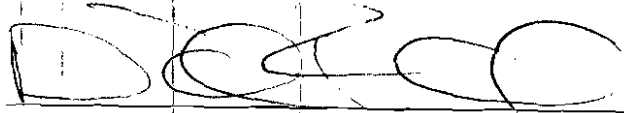
XI. ENTIRE AGREEMENT

This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For the Respondent, American Environmental Services, Inc.:

Date: 01-18-2011

By:



David Torrece
President

For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 1/24/11

By:

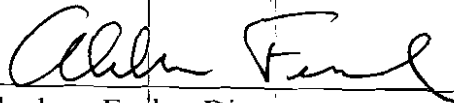


Natalie L. Katz
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 1/28/11

By:



Abraham Ferdas, Director
Land and Chemicals Division

