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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the matter of:	)	U.S. EPA Docket Nos.
	)	RCRA-09-2010-0018 and
	)	TSCA-09-2010-0010
	)	
US ECOLOGY NEVADA, INC.,	)	CONSENT AGREEMENT
	)	AND FINAL ORDER PURSUANT
	)	TO 40 CFR SECTIONS 22.13 and 22.18
	)	
	)	
Respondent.	)	
	)	

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); 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 (CFR) Part 22; and Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2615(a), for violation of Section 15 of TSCA, 15 U.S.C. §2614, by failing to comply with implementing regulations governing polychlorinated biphenyls ("PCBs") at 40 CFR Part 761. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

2. US Ecology Nevada, Inc. ("Respondent") operates a commercial hazardous waste treatment, storage and disposal facility in Nye County, Nevada, approximately eleven miles south of Beatty, in the Amargosa Desert ("facility"). The facility manages, treats and disposes of hazardous waste, PCBs and non-hazardous industrial waste. Respondent leases the property on which the facility is located from the State of Nevada. The leased property covers approximately 80 acres.

3. EPA and Respondent agree to settle this matter, and Respondent agrees to consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO, which contains the elements of a complaint required by 40 CFR §§22.14(a)(1)-(3) and (8),

simultaneously commences and concludes this matter in accordance with 40 CFR §§22.13 and 22.18.

4. The parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public interest, that it is consistent with the provisions and objectives of RCRA, TSCA, and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.

5. This action is based on EPA allegations that Respondent violated requirements of its permit to operate a commercial hazardous waste treatment, storage and disposal facility (NEV HW0019) ("Permit"); conditions of Respondent's approval to operate a chemical waste landfill ("TSCA Approval"); and other statutory and regulatory requirements of RCRA and TSCA, as set forth in detail in Section D of this CA/FO.

B. RCRA JURISDICTION

6. The State of Nevada 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 CFR Part 271. The authorized program is established pursuant to the Nevada Revised Statutes (NRS) §459.520 and Nevada Administrative Code (NAC) §§444.842 through 444.960. The State of Nevada has adopted 40 CFR Subpart A of Part 2, Subparts A and B of Part 124, and Parts 260 through 270 inclusive, by reference in the NAC §444.8632 (with exceptions listed in NAC §444.86325, as revised at §444.8633).[1]

7. Effective April 29, 2005, Respondent's permit to operate a commercial hazardous waste treatment, storage and disposal facility (NEV HW0019) ("RCRA Permit" or "Permit") was renewed by the Nevada Division of Environmental Protection for a period of five years. The facility currently is operating under the conditions of the 2005 Permit as modified July 24, 2006 and March 24, 2008.

8. The RCRA Permit, according to its terms, consists of the conditions in the Permit, the facility's 2005 permit renewal application, and the applicable regulations contained in 40 CFR Parts 260 through 266, 270, and 124, and Sections 206, 212, and 224 of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616, 98 Stat. 3221). In accordance with 40 CFR §270.32(c) and NAC §444.8632, regulations applicable to the facility are those that are in effect on the date of the issuance of the Permit.

9. Respondent's permitted units include the following: six hazardous waste container storage units; five PCB storage tanks; a leachate storage tank; three condensate storage tanks; one evaporation pad for truck decontamination; three batch stabilization tanks; a Low Temperature Thermal Desorption (LTTD) system; and three RCRA Subtitle C landfills.

[1] EPA is enforcing the requirements of the authorized program in the NAC in this CA/FO but, for convenience, this CA/FO uses federal RCRA regulatory citations rather than the NAC, which incorporates the federal regulations by reference.

10. Respondent is a "person" as defined in 40 CFR §260.10.

11. Respondent is the "operator" of a facility as defined in 40 CFR §260.10.

12. Respondent is engaged in storage, treatment, and disposal of hazardous waste as defined in 40 CFR §260.10.

13. At the facility, Respondent stores and treats a number of hazardous wastes as defined by Section 1004(5) of RCRA, 42 U.S.C. §6903(5), and 40 CFR §§260.10 and 261.3.

14. On April 3, 2007, and on June 24-25, 2008, EPA conducted compliance evaluation inspections at the facility (referred to herein as the "2007 CEI" or "2008 CEI"). Based upon the findings EPA made during one or both CEIs, and additional information obtained subsequent thereto, EPA determined that Respondent had violated its RCRA Permit, and/or statutory or regulatory requirements of RCRA.

15. 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, Section 3001 of RCRA *et seq.*, 42 U.S.C. §6921 *et seq.* Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

16. A violation of Nevada's authorized hazardous waste program constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Nevada'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.

17. 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.

18. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. §6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. TSCA JURISDICTION

19. Pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e), EPA promulgated regulations governing PCBs at 40 CFR Part 761.

20. "PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. 40 CFR §761.3.

21. "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. 40 CFR §761.3.

22. "Person" means any individual, corporation, partnership, or association; any state, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the federal government. 40 CFR §761.3.

23. It is unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Section 5 or 6, 15 U.S.C. §§2604, 2605. TSCA Section 15(1)(C), 15 U.S.C. §2614(1)(C).

24. At all times relevant to this CA/FO, the facility managed and disposed of PCBs regulated under TSCA (15 U.S.C. §2601 *et seq.*) and federal regulations adopted pursuant thereto (40 CFR Part 761).

25. The Administrator has delegated the authority to initiate this proceeding under TSCA Section 16(a), 15 U.S.C. §2615(a), to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

D. ALLEGED VIOLATIONS

COUNT 1
Release of Hazardous Waste

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.

27. A "release" for purposes of the Permit "includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous waste or hazardous constituents." Permit condition 1.5.15.

28. Permit condition 2.1 requires Respondent to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned, sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, as required by 40 CFR §264.31 and NAC 444.8632.

29. During the 2007 CEI, EPA inspectors observed a spill of spent hazardous waste catalyst onto the ground of hazardous waste storage area #1 within the facility.

30. Subsequent to the 2008 CEI, EPA inspectors determined that releases were occurring from the LTTD system. Specifically:

a. the facility's February 22, 2008 and April 10, 2008 operating logs (entitled "Supervisor's Daily Notes") demonstrated that smoke was exiting from one or more of the LTTD system's treatment units;

b. the smoke contained hazardous waste or hazardous constituents; and

c. the smoke was not being captured by any emission control system, thereby entering into and releasing into the environment.

31. Therefore, EPA alleges that Respondent failed to comply with Permit condition 2.1.

COUNT 2
Leaking Container

32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.

33. Pursuant to Permit condition 3.5, if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the facility must transfer the hazardous waste from such container to a container that is in good condition, or otherwise manage the waste in compliance with the conditions of the Container Management Plan and the facility's RCRA Permit. See also 40 CFR §264.171.

34. During the 2007 CEI, EPA inspectors observed one 55-gallon container of chromic acid in the facility's liquid container storage area that had been leaking prior to the 2007 CEI.

35. Respondent processed the container subsequent to the 2007 CEI, after being informed about the presence of the leak.

36. Therefore, EPA alleges that Respondent failed to comply with Permit condition 3.5.

COUNT 3
Leaking Tank System

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.

38. Permit condition 4.4. states: "In the event of a leak or a spill from the tank system, from a secondary containment system, or if a system becomes unfit for continued use, US Ecology shall comply with Permit Application Section 10.9.1 and *remove the system from service immediately*," and, pursuant to condition 4.4.1, "stop the flow of hazardous waste into the system and inspect the system to determine the cause of the release" (emphasis added).

39. During the 2007 CEI, EPA inspectors observed:

a. a leak in the condensate transfer pump in the LTTD system, the function of which is to transfer waste to the condensate processing area;

b. an accumulation of liquid underneath the transfer pump that demonstrated that the pump had begun leaking before the 2007 CEI; and

c. no action was taken by the facility during the 2007 CEI to address this issue.

40. Therefore, EPA alleges that Respondent failed to comply with Permit condition 4.4.

COUNTS 4 & 5
Subpart AA - Control Device Efficiency, Recordkeeping

41. Paragraphs 1 through 40 above are incorporated herein by this reference as if they were set forth here in their entirety.

42. Permit condition 6.4.3.2.5 requires a statement signed and dated by the facility, certifying that the operating parameters used in the design analysis presented in the Permit Application reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

43. Permit condition 6.4.3.1.1 requires the facility to comply with 40 CFR §264.1035.

44. Pursuant to 40 CFR §264.1035(b), owners and operators must demonstrate the organic removal efficiency or total organic compound concentration achieved by control devices by either performance tests (40 CFR §264.1035(b)(3)) or engineering calculations (40 CFR §264.1035(b)(4)), and must record the information in the facility operating record.

45. Documentation required by 40 CFR §264.1035(b)(3) for the performance test plan, includes a description of how it is determined that the planned test would be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur, including the estimated or design flow rate and organic content of each vent stream. The plan must define the acceptable operating ranges of key process and control device parameters during the test program. In addition, the plan must include a detailed engineering description of the closed-vent system and control device, and a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

46. Documentation required by 40 CFR §264.1035(b)(4) also includes a list of all information references and sources used in preparing the documentation.

47. Documentation required by 40 CFR §264.1035(b)(4) for engineering calculations includes a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams. The design analysis is required to address the vent stream characteristics and control device operation parameters. For a condenser, the design analysis is required to: establish the design outlet organic compound concentration level; design average temperature of the condenser exhaust vent stream; and design average temperature of the coolant fluid at the condenser inlet and outlet. For a carbon adsorption system, the design analysis is required to: establish the design outlet organic concentration level; capacity of carbon beds; type and working capacity of activated carbon used for carbon beds; and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

48. Permit condition 6.4.3.2.2 requires the facility to document the emission reductions achieved by add-on control devices, which include condensers and carbon absorption systems, based on engineering calculations or source tests.

49. Permit condition 6.4.3.2.2 also requires determinations of emission reductions to "be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur."

50. Subsequent to the 2008 CEI, EPA inspectors determined that Respondent had insufficient documentation (design or testing information) for the condenser and carbon adsorption systems that could show that the LTTD system, as configured, was operating as designed.

51. As of the 2007 and 2008 CEIs, Respondent had not documented the emission reductions achieved by the add-on carbon adsorption system.

52. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 6.4.3.2.5 and 6.4.3.2.2, and 40 CFR §§264.1035(b)(3) and (4).

COUNT 6
Subpart AA - Carbon Change-out, Recordkeeping

53. Paragraphs 1 through 52 above are incorporated herein by this reference as if they were set forth here in their entirety.

54. As part of its recordkeeping obligations under Permit condition 6.4.3.2.3, the facility is required to replace the existing carbon in the LTTD system with fresh carbon "at *regular, predetermined times that is [sic] less than the design carbon replacement interval* and document such replacement in the recordkeeping for this unit" (emphasis added).

55. 40 CFR §264.1033(h) requires the facility to replace the existing carbon with fresh

carbon using one of the following procedures:

> (1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be *daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of §264.1035(b)(4)(iii)(G), whichever is longer* (emphasis added).
>
> (2) Replace the existing carbon with fresh carbon at a *regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of §264.1035(b)(4)(iii)(G)*" (emphasis added).

56. 40 CFR §264.1033(i) states "[a]n alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications."

57. For a carbon adsorption system, 40 CFR §264.1035(b)(4)(iii)(G) requires the facility's design analysis to establish: the design outlet organic concentration level; capacity of the carbon bed; type and working capacity of activated carbon used for the carbon bed; and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. This design analysis must be recorded in the facility's operating record. 40 CFR §264.1035(b).

58. Permit condition 6.4.3.1.1 requires compliance with 40 CFR §264.1035(c), which in turn requires the facility to record the date when existing carbon in the control device is replaced with fresh carbon (for a carbon adsorption system operated subject to requirements specified in §264.1033(g) or §264.1033(h)(2)), or record the date and time when the control device is monitored for carbon breakthrough and the monitoring device reading (for a carbon adsorption system operated subject to requirements specified in §264.1033(h)(1)).

59. Establishment of the carbon working capacity of the carbon is a prerequisite to monitoring and replacement under 40 CFR §264.1033(h).

60. During and subsequent to its inspections of the facility, EPA inspectors determined that:

a. The facility had not established the carbon working capacity in the LTTD system;

b. The facility had not used an alternative structure for replacing existing carbon with fresh carbon in accordance with 40 CFR §264.1033 (i) because the facility's use of the FID readings in the main stack as an

indicator of when the carbon beds were approaching breakthrough was unreliable, due to pervasive instances of inaccurate FID readings on the main stack, and the fact that the facility had not established the carbon working capacity; and

c. The facility had not established a design carbon replacement interval.

61. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 6.4.3.1.1 and 6.4.3.2.3; 40 CFR §264.1033(h); and 40 CFR §§264.1035(b)(4)(iii)(G) and (c).

COUNT 7
Subpart BB - Equipment Inspection, Monitoring and Recordkeeping

62. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

63. Permit condition 6.4.3.9 requires Respondent to comply with condition 6.4.3.5.

64. Permit condition 6.4.3.5 (Recordkeeping) requires Respondent to maintain certain records for each piece of equipment relating to the LTTD system, including: equipment identification number and hazardous waste management unit identification, including whether the equipment is in a state of positive or negative pressure; approximate locations within the facility; type of equipment; the hazardous waste state at the equipment; and the method of compliance with the standard.

65. During and subsequent to their inspections of the facility, EPA inspectors determined that, with respect to the equipment subject to Section 6 of the Permit, the facility failed to:

a. identify whether each piece of equipment was in a state of positive or negative pressure;

b. reflect equipment changes on the list (e.g. equipment that was removed was not reflected on the list, equipment changes (e.g., from a valve to a flange) were not reflected, equipment added to the LTTD system was not reflected, etc.);

c. tag (i.e., via identification tags) several pieces of equipment, including two condensate pumps;

d. identify several pieces of equipment with unique identification numbers; and

e. reflect the correct tag identification number on a piece of equipment.

66. Permit condition 6.4.3.8.2 requires Respondent to comply with condition 6.4.3.4.2.

67. Permit condition 6.4.3.4.2 requires Respondent to monitor points identified by tag numbers in the Process BB Process Flow Diagram.

68. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 6.4.3.5, 6.4.3.9, 6.4.3.4.2 and 6.4.3.8.2.

COUNT 8
Subpart BB - Pressure Relief Device Settings

69. Paragraphs 1 through 68 above are incorporated herein by this reference as if they were set forth here in their entirety.

70. Tanks that are part of the facility's LTTD system are subject to the conditions of Section 6.2.6.

71. Under Permit condition 6.2.6.2, the LTTD system's tanks must be equipped with a roof or cover designed to meet certain specifications, including those identified in Permit condition 6.2.6.2.4, which states:

> ". . . a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device . . . shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. *The settings at which the device opens shall be established* such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials" (emphasis added).

72. During the 2007 CEI, EPA inspectors observed that the facility used a common pressure relief device for the tanks within the LTTD system.

73. During and subsequent to the 2007 CEI, EPA inspectors determined that the facility had not established the settings at which the pressure relief device opens.

74. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 6.2.6, 6.2.6.2 and 6.2.6.2.4, because it had not established the settings at which the pressure relief device opens such that the device remains in the closed position whenever the internal pressure of a tank is within the internal pressure operating range.

COUNT 9
Subpart BB - Open-ended Valve

75. Paragraphs 1 through 74 above are incorporated herein by this reference as if they were set forth here in their entirety.

76. 40 CFR §265.1056(a)(1) requires that open-ended valves or lines shall be equipped with a cap, blind flange, plug, or a second valve.

77. During the 2007 CEI, EPA inspectors observed an open-ended valve (tag ID 735) on a carbon tank in the LTTD area that was not capped or otherwise equipped with a blind flange, plug or second valve.

78. Therefore, EPA alleges that Respondent failed to comply with 40 CFR §265.1056(a)(1).

COUNT 10
Subpart CC - Annual Inspection of Tank Air Emission Control Equipment

79. Paragraphs 1 through 78 above are incorporated herein by this reference as if they were set forth here in their entirety.

80. Permit condition 6.2.6.3 requires the owner or operator of the facility to inspect air emission control equipment at the facility at least once every year and to maintain a record of the inspection in accordance with the requirements specified in 40 CFR §264.1089(b).

81. 40 CFR §264.1089(b) requires the owner or operator of a tank using air emission controls in accordance with 40 CFR §264.1084 to prepare and maintain records for the tank that includes certain information, including without limitation: (i) a tank identification number or other unique identification description as selected by the owner or operator; (ii) a record for each inspection required by 40 CFR §264.1084 that includes the date the inspection was conducted and information related to any defects detected.

82. During and subsequent to their inspections of the facility, EPA inspectors determined that neither the owner nor operator of the facility had performed an annual inspection of the tank air emission control equipment.

83. Therefore, EPA alleges that Respondent failed to comply with Permit condition 6.2.6.3.

COUNTS 11 and 12
Subpart AA – Continuous Monitoring and Operation and Maintenance

84. Paragraphs 1 through 83 above are incorporated herein by this reference as if they were set forth here in their entirety.

85. Permit condition 6.4.3.1 requires the facility to continuously monitor the emissions and the flow rate out of the stack from the LTTD system; it requires the facility to comply with the following:

1. Monitor the Common Exhaust Stack . . . in accord with the following parameters:

1) A continuous monitoring system meeting the requirements of method 25A of 40 CFR part 60 Appendix A.

2) A continuous monitoring system as specified in method 2 of 40 CFR part 60 Appendix A [type s pitot tube].

3) Comply with the emission limits specified in Permit condition 6.4.1 and 6.4.1.1.

86. Permit condition 1.6.7 requires the facility to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the facility to achieve compliance with the conditions of the Permit. Condition 1.6.7 states that "proper operation and maintenance" includes effective performance of the facilities and systems.

87. Subsequent to the 2008 CEI, EPA reviewed the facility's records to verify its compliance with the requirements of Permit conditions 6.4.3.1 and 1.6.7.

88. During its review of the facility's records, EPA determined that the facility's monitoring equipment had inaccurately recorded carbon monoxide concentrations, hydrocarbon concentrations, and stack airflows. EPA also determined that monitoring equipment (e.g., temperature probes, pressure sensors, etc.) was not working, and that monitoring equipment was out of calibration and not recording accurate information.

89. EPA further identified numerous discrepancies with the facility's data for the time period from January 1, 2007 to June 30, 2008, relating to numerous operating parameters recorded by the facility's continuous monitoring system, including inaccurate readings for carbon monoxide concentration, hydrocarbon concentration, airflow, soil temperature, condenser air temperature, condenser chill water temperature, and differential pressure.

90. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 6.4.3.1 and 1.6.7.

COUNT 13
Cracks in Secondary Containment

91. Paragraphs 1 through 90 above are incorporated herein by this reference as if they were set forth here in their entirety.

92. Permit condition 4.2.1 requires the facility to design, construct, and operate secondary containment systems in accordance with the design plans and descriptions contained in Permit Application Section 10, and 40 CFR §264.193(b)-(f).

93. Pursuant to 40 CFR §264.193(e)(1)(iii), external liner systems for hazardous waste storage tanks must be "free of cracks or gaps."

94. Permit condition 3.8 requires the facility to construct and maintain the secondary containment systems for containers in accordance with Section 9.2.4 of the Permit Application and the requirements of 40 CFR §264.175.

95. 40 CFR §264.175(a) requires the facility's container storage areas to have a containment system that is designed and operated in accordance with 40 CFR §264.175(b), subsection (1) of which requires that "[a] base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed."

96. During the 2008 CEI, EPA inspectors observed a crack in the secondary containment wall for the tanks in the LTTD system area.

97. During the 2008 CEI, EPA inspectors observed a crack in the pad of one of the hazardous waste storage areas at the facility.

98. Therefore, EPA alleges that Respondent failed to comply with Permit conditions 4.2.1 and 3.8.

COUNT 14
Subpart CC – Container Level 2 Requirements

99. Paragraphs 1 through 98 above are incorporated herein by this reference as if they were set forth here in their entirety.

100. 40 CFR Part 265 Subpart CC, 40 CFR §265.1080, *et seq.* requires owners and operators of facilities that treat, store, or dispose of hazardous waste to control air pollutant emissions from containers.

101. Pursuant to 40 CFR §265.1087, there are three levels of air emission controls for containers (container levels 1, 2 and 3) based on the size of the container, whether the container is in light material service, and whether the container is used in a waste stabilization process.

102. Pursuant to 40 CFR §265.1087(b)(1)(iii), for a container having a design capacity greater than 0.46 cubic meters that is in light material service, the facility shall control air pollutant emissions from the container in accordance with the container level 2 standards specified in §265.1087(d).

103. Container level 2 controls are applicable to the facility's open bins, also referred to as "dinos," in which the facility stores spent carbon generated by the LTTD system prior to treatment in the LTTD system.

104. 40 CFR §265.1087(d)(1) identifies the following container level 2 controls:

a. A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in 40 CFR §1087(f).

b. A container that operates with no detectable organic emissions as defined in 40 CFR §265.1081 and determined in accordance with the procedure specified in 40 CFR §1087(g).

c. A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in 40 CFR §1087(h).

105. During and subsequent to the 2008 CEI, EPA inspectors determined that the facility:

a. was not using a container meeting applicable DOT regulations (40 CFR §265.1087(d)(1)(i));

b. was not testing the dinos in order to ensure that no detectable emissions were being released from the dinos (40 CFR §265.1087(d)(1)(ii)); and

c. had not demonstrated the dinos were vapor-tight (40 CFR §265.1087(d)(1)(iii)).

106. Therefore, EPA alleges that Respondent failed to comply with 40 CFR §265.1087(b)(1)(iii).

COUNT 15
TSCA Marking Violation

107. Paragraphs 1 through 106 above are incorporated herein by this reference as if they were set forth here in their entirety.

108. "PCB container" means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs. 40 CFR §761.3.

109. PCB containers shall be marked in accordance with 40 CFR §761.45. 40 CFR §761.40(a)(1).

110. During the TSCA inspection, EPA inspectors observed a drum at the facility that contained PCB waste.

111. The drum is a "PCB container," as that term is defined at 40 CFR §761.3.

112. The drum was not marked with a Large PCB Mark, "M_L," in accordance with 40 CFR §761.45(a).

113. Therefore, EPA alleges that Respondent's failure to mark the drum containing PCB waste in accordance with 40 CFR §761.45 constitutes a violation of 40 CFR §761.40(a)(1) and Section 15(1)(C) of TSCA, 15 U.S.C. §2614(1)(C).

COUNT 16
TSCA Approval Violations

114. Paragraphs 1 through 113 above are incorporated herein by this reference as if they were set forth here in their entirety.

115. "Chemical waste landfill" means a landfill at which protection against risk of injury to health or the environment from migration of PCBs to land, water, or the atmosphere is provided from PCBs and PCB Items deposited therein by locating, engineering and operating the landfill as specified in 40 CFR §761.75. 40 CFR §761.3.

116. A chemical waste landfill used for the disposal of PCBs and PCB Items shall be approved by the EPA Regional Administrator pursuant to 40 CFR §761.75(c). The landfill shall meet all of the requirements specified in 40 CFR §761.75(b), unless a waiver is obtained, and shall meet any other requirement that may be prescribed pursuant to 40 CFR §761.75(c)(3). 40 CFR §761.75(a).

117. The facility is a "chemical waste landfill," as that term is defined at 40 CFR §761.3.

118. Respondent has a written approval for the facility from EPA Region IX pursuant to 40 CFR §761.75(c) ("the Approval").

119. Section E.10 of the Approval required the owner or operator of the facility to submit a monthly written report that includes a description of any event that is not normal to the operation of the facility, "such as accidents, spills, leaks, or other uncontrolled discharges" of PCBs.

120. Section E.10 of the Approval is a requirement prescribed pursuant to 40 CFR §761.75(c)(3).

121. Between February 6, 2006 and February 11, 2008, six (6) incidents of spills, leaks, or other uncontrolled discharges of PCBs occurred at the facility.

122. Between February 6, 2006 and February 11, 2008, Respondent did not include descriptions of the six spills, leaks, or other uncontrolled discharges of PCBs that occurred in five (5) monthly written reports.

123. Therefore, EPA alleges that Respondent's failures to comply with Section E.10 of the Approval between February 6, 2006 and February 11, 2008 constitute five violations of 40 CFR §761.75(a) and Section 15(1)(C) of TSCA, 15 U.S.C. §2614(1)(C).

COUNT 17
TSCA Continued Use Violation

124. Paragraphs 1 through 123 above are incorporated herein by this reference as if they were set forth here in their entirety.

125. No person may use any PCB or PCB Item, regardless of concentration, in any manner other than in a totally enclosed manner within the United States, unless authorized under 40 CFR §761.30 or excepted under 40 CFR §761.20(a). 40 CFR §761.20(a); *See also* Section 6(e)(2)(A) of TSCA, 15 U.S.C. §2605(e)(2)(A).

126. A "totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs. 40 CFR §761.3.

127. Any person may use porous surfaces contaminated by spills of liquid PCBs at concentrations in excess of 10 micrograms per 100 square centimeters ($10\mu g/100cm^2$) for the remainder of the useful life of the surface and subsurface material if the conditions of 40 CFR §761.30(p) are met. 40 CFR §761.30(p).

128. "Porous surface" means any surface that allows PCBs to penetrate or pass into itself, including, but not limited to, concrete or cement. 40 CFR §761.3.

129. During the TSCA inspection, EPA inspectors collected wipe samples from the floor of the PCB storage area that were later found to contain PCBs at concentrations in excess of $10\mu g/100cm^2$, ranging from 12.2 to 8,700 $\mu g/100cm^2$.

130. The floor of the PCB storage area is a "porous surface," as that term is defined at 40 CFR §761.3.

131. From June 24, 2008 to March 20, 2009, Respondent used the floor in the PCB storage area without meeting the conditions for use under 40 CFR §761.30(p).

132. Therefore, EPA alleges that Respondent's use of the floor in the PCB storage area without meeting the conditions for use under 40 CFR §761.30(p) constitutes a violation of 40 CFR §§761.20(a) and §761.30(p), and Sections 6(e)(2)(A) and 15(1)(C) of TSCA, 15 U.S.C. §§2605(e)(2)(A) and 2614(1)(C).

COUNT 18
TSCA Improper Disposal Violation

133. Paragraphs 1 through 132 above are incorporated herein by this reference as if they were set forth here in their entirety.

134. "Disposal" means intentionally or accidentally to discard, throw away or otherwise complete or terminate the useful life of PCBs or PCB Items. Disposal includes spills, leaks and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items. 40 CFR §761.3.

135. Any person storing or disposing of PCB waste must do so in accordance with Subpart D of 40 CFR Part 761. 40 CFR §761.50(a).

136. Under 40 CFR §761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of $\geq$ 50 parts per million (ppm) constitute the disposal of PCBs, and such spills and other uncontrolled discharges are not disposals in accordance with Subpart D of 40 CFR Part 761.

137. During the inspection of the facility on June 24, 2008, EPA inspectors collected soil samples from the facility tank farm that were later found to contain PCBs at concentrations ranging from 58 ppm to 900 ppm.

138. The PCBs at concentrations in excess of 50 ppm in the soil at the facility tank farm resulted from spills and other uncontrolled discharges of PCBs at concentrations greater than 50 ppm.

139. The disposal of PCBs in the soil in the facility tank farm was not in accordance with Subpart D of 40 CFR Part 761.

140. Therefore, EPA alleges that Respondent's failure to dispose of PCBs in accordance with Subpart D of 40 CFR Part 761 constitutes a violation of 40 CFR §761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C. §2614(1)(C).

E. CIVIL PENALTY

141. Section 3008(g) of RCRA, 42 U.S.C. §6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701 (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to $32,500 per day for violations of Subtitle C of RCRA, 42 U.S.C. §6921 *et seq.*, occurring between March 15, 2004 and January 12, 2009 (69 Fed. Reg. 7121 (Feb. 13, 2004)), and a civil penalty of up to $37,500 per day for such violations after January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 11, 2008)). *See* 40 CFR §19.4. Additionally, Section 16(a) of TSCA, 15 U.S.C. §2615(a), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701 (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty not to

exceed $32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009, and a civil penalty of up to $37,500 per day for such violations after January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 11, 2008)); 40 CFR §19.4.

142. Based upon the facts alleged herein and upon those factors that EPA must consider pursuant to: Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), including the seriousness of the violations and any good faith efforts by Respondent to comply with applicable requirements; Section 16(a) of TSCA, 15 U.S.C. §2615(a), including the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, as well as such other matters as justice may require; as well as those factors in the June 2003 "RCRA Civil Penalty Policy" and the April 1990 "PCB Penalty Policy", EPA proposes that Respondent be assessed FOUR HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED EIGHTY-TWO DOLLARS ($497,982) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the June 2003 RCRA Civil Penalty Policy and April 1990 PCB Penalty Policy.

F. ADMISSIONS AND WAIVERS OF RIGHTS

143. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations of facts and law set forth in Sections B and C 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.

144. Respondent neither admits nor denies any allegations of fact or law set forth in Paragraph 14 or Section D 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.

G. PARTIES BOUND

145. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Sections E and H has been paid in accordance with Section H. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

146. 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.

147. Until the termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the facility and shall notify EPA at least seven (7) days prior to such transfer.

148. The undersigned representative of Respondent hereby certifies he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

149. Respondent consents to the assessment of and agrees to pay a civil penalty of FOUR HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED EIGHTY-TWO DOLLARS ($497,982), in full settlement of the federal civil penalty claims set forth in this CA/FO.

150. Respondent shall submit payment of the FOUR HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED EIGHTY-TWO DOLLARS ($497,982) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. (As defined in Paragraph 164, the Effective Date of this CA/FO is the date the Regional Hearing Clerk files the Final Order signed by the Regional Judicial Officer.) All payments shall indicate the name of the facility, EPA identification number of the facility, Respondent's name and address, and the EPA docket number of this action.

151. All penalties shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," or be paid by one of the other methods listed below, and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Automated Clearinghouse (ACH) for receiving US currency (also known as REX or remittance express):

PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
U.S. Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case name, and case docket number, to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Kaoru Morimoto (WST-3)
Waste Management Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

152. In accordance with the Debt Collection Improvement Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described in 40 CFR §13.11. A late penalty charge of $15.00 will be imposed after thirty (30) calendar days with an additional $15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

153. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

> For failure to submit a payment to EPA by the time required in this CA/FO: ONE THOUSAND DOLLARS ($1,000.00) per day for the first to fifteenth day of delay, ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) per day for the sixteenth to thirtieth day of delay, and TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) per day for each day of delay thereafter.

154. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations. EPA will notify Respondent when penalties are due.

155. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 CFR §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

156. All penalties shall be made payable by certified or cashier's check to "Treasurer, United States of America", or by one of the other methods described in Paragraph 151, and shall be remitted as described in Paragraph 151.

157. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. RESERVATION OF RIGHTS

158. In accordance with 40 CFR §22.18(c), this CA/FO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section D of this CA/FO. EPA hereby reserves (i) 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, and (ii) 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, under 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.

159. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA, TSCA or any other applicable local, State or federal laws and regulations.

160. 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 it relates to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO.

161. 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.

K. ATTORNEYS' FEES AND COSTS

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

L. MISCELLANEOUS

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

164. 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.

US ECOLOGY NEVADA, INC.

9/2/2010
Date

Name: Simon Bell
Title: VP Operations

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9/30/10
Date

Jeffrey B. Scott
Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 CFR Sections 22.13 and 22.18 (U.S. EPA Docket Nos. RCRA-09-2010-0018 and TSCA-09-2010-0016) be entered and that US Ecology Nevada, Inc. pay a civil penalty of FOUR HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED EIGHTY-TWO DOLLARS ($497,982), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. In accordance with Section H of this CA/FO, payment must be made by: certified or cashier's check, made payable to the Treasurer of the United States of America, and sent to the U.S. Environmental Protection Agency Cincinnati Finance Center (if by regular mail), or sent to U.S. Bank (if by overnight mail); wire transfer sent to the Federal Reserve Bank of New York; remittance express sent to PNC Bank; or through online payment (www.pay.gov). A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to the EPA Region IX address specified in Section H of this CA/FO within such 30-day period.

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

09/30/10
Date

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

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, certified mail, return receipt requested, to:

Bob Marchand
General Manager
US Ecology Nevada, Inc.
P.O. Box 578
Beatty, NV 89003

and

Gary J. Smith, Esq.
Beveridge & Diamond, PC
456 Montgomery Street, Suite 1800
San Francisco, CA 94104

9/30/10

Date

FOR: STEVEN ARMSEY, PHC

Hazardous Waste Management Division