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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
U.S. Department of Energy, Hanford)
Nuclear Reservation, and CH2M HILL,)
Hanford, Group, Inc.,)
Richland, Washington)
)
Respondents)
)
)
)
_____)

Docket No. CERCLA-10-2008-0064

CONSENT AGREEMENT AND FINAL
ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 109 of CERCLA, and in accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and the U.S. Department of Energy (DOE), Hanford Nuclear Reservation and CH2M HILL, Hanford Group, Inc. ("Respondents") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. DOE owns and operates the Hanford Nuclear Reservation, a facility located in Richland, Washington ("the Facility").

2.3. CH2M HILL is a contractor performing work at the Facility.

2.4. The Facility was acquired by the United States government in 1943. The site occupies 586 square miles in southeastern Washington State. Nuclear generators were used to produce plutonium for nuclear weapons. There are mixed wastes stored in large underground single-walled tanks at the facility. Wastes are being removed from deteriorating tanks and transferred into more stable storage.

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

III. ALLEGATIONS

3.1. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to immediately notify the National Response Center (NRC) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity (RQ).

3.2. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), “person” means, among other things, the United States Government, and any corporation.

3.3. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located.

3.4. Under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), “hazardous substance” means among other things any element, compound, mixture, solution, or substance designated pursuant Section 102 of CERCLA, 42 U.S.C. § 9602.

3.5. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.6. Under 40 C.F.R. § 302.3 “reportable quantity” means that quantity the release of which requires notification.

3.7. 40 C.F.R. Part 302 identifies reportable quantities (“RQs”) for the release of hazardous substances.

3.8. DOE is a department of the United States Government, and is therefore a “person” as defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) of CERCLA.

3.9. CH2M HILL, Hanford Group, Inc. is a corporation incorporated in the state of Delaware, and is therefore a "person" as defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3.10. The Hanford Nuclear Reservation is a "facility" as defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3.11. On July 27, 2007, in an area at the Facility where CH2M HILL, Hanford Group, Inc. was performing work for DOE a spill of radioactive hazardous waste occurred. Approximately 114 gallons of mixed waste containing a number of radionuclides was released. Two radionuclides (Cesium-137 and Strontium-90) were initially calculated by DOE to be above the RQ. Preliminary data from the S-102 dilution hose line sample later confirmed that the RQ was exceeded for Cesium-137. The quantity of Cesium-137 released was calculated to be 2.83 Ci, compared to the RQ of 1.0 Ci.

3.12. Cesium-137 is a "hazardous substance" as defined under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), and listed in 40 C.F.R. Part 302, Table 302.4, Appendix B. The RQ for Cesium-137 is 1.0 Ci. *Id.*

3.13. Respondents failed to immediately notify the NRC of the release of mixed waste from the Facility.

3.14. Under Section 109 of CERCLA, 42 U.S.C. § 9609, the EPA Administrator may assess a civil penalty of up to \$25,000 for each day of violation of Section 103 of CERCLA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing

regulations at 42 C.F.R. Part 19, increased the statutory maximum penalty to \$32,500 per day of violation occurring after March 15, 2004.

IV. CONSENT AGREEMENT

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in Part III of this CAFO.

4.3. Respondents expressly waive any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondents and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.10., below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondents' willingness to settle this matter without litigation, the nature of the violations, Respondents' agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$6,800.

4.7. Respondents consent to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "EPA Hazardous Substances Superfund" and shall be delivered to the

following address: U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

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

4.9. Respondents shall submit a photocopy of the check described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.10. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondents may be subject to a civil action

under Section 109(a)(4) of CERCLA, 42 U.S.C. § 9609(a)(4), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Respondents shall implement and complete the SEP described below within 90 days of the effective date of this CAFO, in accordance with all provisions described in this Consent Agreement. Respondents agree that the SEP is intended to improve emergency management by allowing a more immediate and effective response in the event of an emergency.

4.13. Respondents shall donate the following equipment to the Tri-County Hazardous Materials Response Team: two Panasonic Tough Book Laptop Computers capable of running

the "Cameo" plume modeling module, and eight MSA 1 hour high pressure SCBA bottles. The equipment represents the Tri-County Hazardous Materials Response Teams' highest priority needs that are not currently funded and will be used to improve their capabilities in responding to hazardous materials emergencies in a safe and effective manner.

4.14. Respondents' deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondents, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents the performance of the SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.15. The cost to Respondents of implementing the SEP in accordance with the Paragraph 4.13. above, shall be not less than \$24,000. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.16. Respondents hereby certify that, as of the date of this Consent Agreement, Respondents are not required to perform or develop the SEP by any federal, state, or local law or regulation, nor are Respondents required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondents further certify that they have

not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP. For federal income tax purposes, CH2M HILL, Hanford Group, Inc. agrees that it will neither capitalize in inventory or basis nor deduct any cost or expenditures incurred in performing this SEP.

4.17. Respondents shall submit a SEP Completion Report to EPA within 90 days of the effective date of the CAFO. The SEP Completion Report shall contain the following information:

- (a) A description of the SEP as implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (c) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (d) A description of the environmental and public health benefits resulting from implementation of the SEP.

4.18. Respondents agree that failure to submit the SEP Completion Report required by Paragraph 4.17, above, shall be deemed a violation of this CAFO and Respondents shall become liable for stipulated penalties pursuant to this CAFO.

4.19. Unless otherwise instructed in writing by EPA, Respondents shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, WA 98503

4.20. Respondents agree that EPA may inspect Respondents' records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.21. Respondents shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.22., and Respondents shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondents shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.22. Following receipt of the SEP Completion Report described in Paragraph 4.17 above, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.24.

4.23. In the event the SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.14., above, then stipulated penalties shall be due and payable by Respondents to EPA in accordance with Paragraph 4.24., below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. In the event that Respondents fail to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in the preceding and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

(i) For a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$24,000 less the amount actually expended.

(ii) For failure to submit the SEP Completion Report as required by Paragraph 4.17., above, Respondent shall pay a stipulated penalty in the amount \$100.00 for each day after the report is due until the report is received by EPA, not to exceed \$2,500.00.

4.25. Stipulated penalties under Paragraph 4.24., above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.24.(ii), above.

4.26. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8., above. Interest and late charges shall be paid as stated in Paragraph 4.11, above.

4.27. Except as provided in Paragraph 4.31, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

4.28. Any public statement, oral or written, in print, film, or other media, made by Respondents making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act."

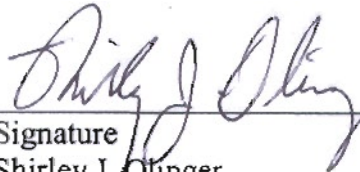
4.29. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology provided by Respondents in connection with the SEP under the terms of this CAFO.

4.30. Respondents represent that they are duly authorized to execute this CAFO and that each party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.31. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR THE U.S. DEPARTMENT OF ENERGY,
OFFICE OF RIVER PROTECTION



Signature
Shirley J. Olinger
Manager, Office of River Protection

Dated: 5/19/08

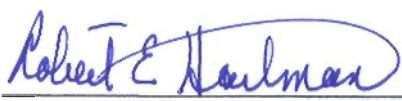
FOR CH2M HILL HANFORD GROUP, INC.



Signature
John C. Fulton
President, CH2M HILL Hanford Group, Inc.

Dated: 5/19/08

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Robert E. Hartman
Assistant Regional Counsel

Dated: 5/30/08

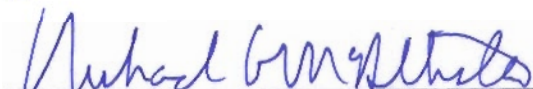
V. FINAL ORDER

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

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of CERCLA and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 2^d day of June, 2008.


Richard G. McAllister
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: U.S. Department of Energy, Hanford Nuclear Reservation, and CH2M HILL, Hanford Group, Inc., DOCKET NO.: CERCLA-10-2008-0064** was filed with the Regional Hearing Clerk on June 02, 2008.

On June 02, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on June 02, 2008, to:

CH2MHILL
S.J. Bensussen, Vice President
and Chief Counsel
P.O. Box 1500
Richland, WA 99352

Scott D. Stubblebine
Legal Counsel
Office of River Protection
U.S. Dept. of Energy
P.O. Box 450, MSIN H6-60
Richland, WA 99352

DATED this 02nd day of June 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10