

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

** FILED **
19AUG2015 - 03:30PM
U.S.EPA - Region 09

In the matter of)	U.S. EPA Docket No.
)	RCRA- 9-2015- 0007
United States Department of the Interior)	
)	
)	CONSENT AGREEMENT AND
EPA ID No. CA5141790118)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Department of the Interior ("Respondent" or "DOI").
2. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the federal government in the same manner and under the same circumstances as against any other person.
3. Respondent owns and operates Yosemite National Park ("Yosemite") in Tuolumne County, California. In the course of its operations, Yosemite generates and accumulates hazardous waste, primarily at 5083 Foresta Rd., Yosemite, California, 95318 (the "Facility"). The Facility's EPA Identification Number is CA5141790118.
4. On October 1 through 3, 2012, a contractor representing EPA conducted an unannounced RCRA Compliance Evaluation Inspection ("CEI") at the Facility. The purpose of the inspection was to determine the Facility's compliance with applicable federal environmental statutes and regulations, and in particular RCRA, as amended; the regulations in 40 C.F.R. Parts 261-265, 268, 270, 273 and 279; the regulations adopted by the California authorized program under RCRA in the California Code of Regulations ("C.C.R."), Title 22, Division 4.5; and the California Health and Safety Code, Division 20. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated

California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.

5. In August 2012 just before this inspection by EPA, Yosemite National Park was involved in a major public health crisis. Ten visitors had contracted Hantavirus with three tragic fatalities. The office charged with managing hazardous waste was fully engaged in dealing with this unprecedented health and safety event to reduce future risk to park visitors.
6. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) meet training program requirements, a violation of 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16]; (2) maintain adequate aisle space in hazardous waste storage areas, a violation of 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35]; (3) perform weekly inspections of hazardous waste storage areas, a violation of 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174]; and (4) obtain a permit for storage of hazardous waste (storage over 90 days and failure to properly mark and label hazardous waste accumulation containers), a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1]. These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.¹

B. JURISDICTION

7. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
8. As a Federal Agency, Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. Respondent is the "owner" and "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
10. Respondent is a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. Corresponding Federal citations are provided in brackets.

11. Respondent is or has been engaged in “storage” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. §260.10].
12. Respondent generates and accumulates, or has generated and accumulated, materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
13. At the Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, waste hypochlorite solutions (RCRA D002), waste paint related material (RCRA D001), lead-based paint chips (RCRA D008), and waste combustible liquid (petroleum naphtha, aerosols) (RCRA D035).
14. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
15. A violation of California’s authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California’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.
16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
17. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has re-delegated this authority to the EPA signatory below.

C. ALLEGED VIOLATIONS

COUNT I

Failure to meet hazardous waste training requirements

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
19. 22 C.C.R. § 66262.34(a) provides that generators who accumulate hazardous waste on site without a permit or grant of interim status shall comply with 22 C.C.R. § 66265.16(a) [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.16(a)].

20. 22 C.C.R. § 66262.16(a) requires that large quantity generators must ensure all facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the RCRA hazardous waste management requirements.
21. 22 C.C.R. § 66265.16(c) states that facility personnel must take part in an annual review of the initial training required above. 22 C.C.R. § 66265.16(d) requires the owner or operator of the facility to maintain relevant training documents and records at the facility [*see also* 40 C.F.R. § 265.16].
22. Information obtained by EPA showed that one individual managing hazardous waste at the Facility had not received annual hazardous waste training.
23. In addition Respondent could not provide documentation of training.
24. Therefore EPA alleges that Respondent failed to meet hazardous waste training requirements, a violation of 22 C.C.R. § 66262.16 [*see also* 40 C.F.R. § 265.16].

COUNT II

Failure to maintain adequate aisle space

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.
26. 22 C.C.R. § 66262.34(a) requires that generators may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 262.34 and 40 C.F.R. §265.35].
27. 22 C.C.R. § 66265.35 states that the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes [*see also* 40 C.F.R. § 265.35].
28. At the time of the inspection, the Inspector noted that there was inadequate aisle space in the hazardous waste central accumulation area to allow unobstructed movement between drums and containers of hazardous waste.
29. Therefore EPA alleges that Respondent violated 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35].

COUNT III

Failure to perform weekly inspections

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.
31. 22 C.C.R. § 66262.34(a) requires that generators may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 262.34 and 40 C.F.R. § 265.174].
32. 22 C.C.R. § 66265.174 states that the owner or operator shall inspect areas used for container storage or transfer, at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
33. At the time of the inspection in October 2012, Respondent's weekly inspection logs were only available from January 2011 until September 2011. The hazardous waste manager indicated he had not performed weekly inspections for a period of time after September 2011.
34. Yosemite staff indicated that environmental staff was in and out of the CAA at least twice a week to take in waste received, however these were not documented as inspections.
35. Therefore EPA alleges that Respondent violated 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174].

Count IV

Failure to obtain a permit for storage of hazardous waste

36. Paragraphs 1 through 35 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. 22 C.C.R. §§ 66262.34(a) and (f) allow a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status, provided that the generator complies with certain requirements [*see also* 40 C.F.R. § 262.34(a)].
38. In addition to the requirements set out in Counts I through III above, the requirements include that each hazardous waste container must be labeled with the following: the words "hazardous waste;" the date accumulation of the waste begins; the composition and physical state of the wastes; a statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.); and the name and address of the person producing the waste. The label must be visible for inspection [*see also* 40 C.F.R. § 262.34(a)].

39. At the time of the CEI, the Inspector observed several containers of RCRA hazardous waste that were not labeled with the required information.
40. Because Respondent failed to meet the conditions at 22 C.C.R. § 66262.34, it was not entitled to store hazardous waste without a permit.
41. The Inspector also observed several containers with accumulation start dates indicating that Respondent was accumulating hazardous waste for longer than 90 days.
42. 22 C.C.R. § 66262.34(c) states that a generator who accumulates hazardous waste for more than 90 days is subject to the permit requirements at 22 C.C.R. § 66270.1 *et seq.*
43. Therefore EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. §§ 262.34 and 270.1].

D. CIVIL PENALTY

44. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy (“Penalty Policy”), including Respondent’s good faith efforts to comply with applicable requirements as well as such other matters as justice may require, EPA proposes that Respondent be assessed FIFTY THOUSAND DOLLARS (\$50,000.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

E. ADMISSIONS AND WAIVERS OF RIGHTS

45. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO 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 or to impose sanctions for violations of this CA/FO.
46. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights it may have to contest the allegations set forth in this CA/FO, waives any rights it may have to an administrative hearing or appeal and its opportunity to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this CA/FO, and hereby consents to the issuance of this CA/FO without adjudication. In

addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

47. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
48. 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.
49. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

50. Respondent consents to the assessment of and agrees to pay a civil penalty of FIFTY THOUSAND DOLLARS (\$50,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
51. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with RCRA, the applicable regulations thereunder, or this CA/FO. Nothing in this CA/FO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
52. Respondent shall submit payment of the FIFTY THOUSAND DOLLARS (\$50,000.00) within thirty (30) calendar days of the Effective Date of this CA/FO in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

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

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"

Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 – checking

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.

53. At the time payment is made, a copy of the payment transmittal shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both the following Region IX addresses:

Regional Hearing Clerk (ORC-1)

U.S. Environmental Protection Agency - Region 9

75 Hawthorne Street

San Francisco, CA 94105

and

Chris Rollins (ENF 2-2)
Enforcement Division
Waste and Chemical Section
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

H. CERTIFICATION OF COMPLIANCE

54. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste management program including 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.34], 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16], 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35], and 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 265.174], that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. RESERVATION OF RIGHTS

55. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); 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.
56. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.

- 57. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations as set forth in Section C of this CA/FO.
- 58. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

- 59. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

- 60. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 61. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 62. 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.

6 August 2015 Don L. Neubacher
Date

Don L. Neubacher
Superintendent
Yosemite National Park
Department of the Interior

8/18/15
Date

Daniel
Douglas K. McDaniel, Chief
Waste and Chemical Section
Enforcement Division
U.S. Environmental Protection Agency, Region 9

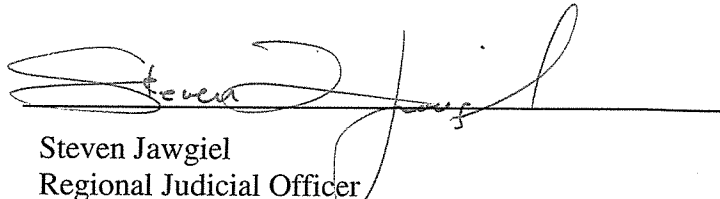
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2015- 0007) be entered and that the United States Department of the Interior pay a civil penalty of fifty thousand dollars (\$50,000.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

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

08/19/15

Date


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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **U.S. Department of the Interior (Docket #: RCRA-09-2015-0007)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

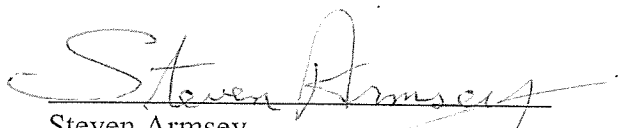
A copy was mailed via CERTIFIED MAIL to:

Mr. Don L. Neubacher
Superintendent
Yosemite National Park
National Park Service
U.S. Department of the Interior
P.O. Box 577
Yosemite, CA 95389

CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 5416

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugerman, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Steven Armsey
Acting Regional Hearing Clerk
U.S. EPA, Region IX

Aug. 19, 2015
Date