

“Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Perma-Fix Northwest Richland, Inc. (“Respondent”) agrees to issuance of the Final Order attached to this Consent Agreement (“Final Order”). Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation formed under the laws of the State of Washington, and authorized to do business in the State of Washington.

3.2. Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Washington Administrative Code (“WAC”) 173-303-040.

3.3. WAC 173-303-016(3)(a) defines "solid waste" as any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by a variance granted under WAC 173-303-017(5).

3.4. "Dangerous waste" is defined as "those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in [Chapter 173-303], the words 'dangerous waste' will refer to the full universe of wastes regulated by this chapter." The universe of wastes regulated by Chapter 173-303 includes "hazardous waste."

3.5. WAC 173-303-040 defines a "generator" as any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

3.6. "Owner" is defined in WAC 173-303-040 as "the person who owns a facility or part of a facility."

3.7. "Operator" is defined in WAC 173-303-040 as "the person responsible for the overall operation of the facility."

3.8. "Facility" is defined in WAC 173-303-040 as "all contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste."

3.9. Respondent operates the facility located at 2025 Battelle Boulevard, Richland, Washington 99354 ("Richland facility").

3.10. The Richland facility identified in Paragraph 3.9 above is a "facility" as that term is defined by WAC 173-303-040.

3.11. Respondent is the “operator” of the Richland facility identified in Paragraph 3.9 above, as that term is defined in WAC 173-303-040.

3.12. Respondent is the “owner” of the Richland facility identified in Paragraph 3.9 above, as that term is defined by WAC 173-303-040.

3.13. Respondent operates the Richland facility as a permitted dangerous waste storage and treatment facility pursuant to a Permit for the Storage and Treatment of Mixed Waste and for Storage and Disposal of Mixed-Toxic Substances Control Act (TCSA) Regulated Polychlorinated Biphenyl (PCB) Wastes (Permit No. WAR 0000 10355) issued by the Washington State Department of Ecology and the EPA to Respondent on May 29, 1999 with an effective date of July 7, 1999 (“the Permit”).

3.14. Prior to August 5, 2003, the Richland facility was owned and operated by the ATG Richland Corporation (ATG). On August 5, 2003, a bankruptcy court approved the sale of ATG’s facility, license and brokered waste to Pacific EcoSolutions, Incorporated. On June 13, 2007, Pacific EcoSolutions, Incorporated changed its name to Perma-Fix Northwest Richland, Incorporated.

3.15. On or about May 15, 2018, EPA conducted a compliance evaluation inspection of the Richland facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

3.16. On or about August 30, 2018, EPA sent an information request to Respondent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604(e).

3.17. On or about October 3, 2018, Respondent provided a response to EPA’s information request.

3.18. On or about October 10, 2018 and October 31, 2018, EPA notified Respondent that the response received on or about October 3, 2018 was incomplete.

3.19. On or about October 18, 2018 and November 7, 2018, Respondent provided supplemental responses to EPA's information request.

VIOLATION

Failure to Establish Adequate Financial Responsibility for Sudden Accidental Occurrences

3.20. The allegations in Paragraphs 1 through 3.19 are realleged and incorporated herein by reference.

3.21. As drafted in 1999, Permit Condition 1-4a, Coverage for Sudden Accidental Occurrences, required that "[c]overage for sudden accidental occurrences will be established prior to receipt of any waste at the MWF. It is currently planned to use a surety bond to provide coverage in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, as specified in WAC 173-303-620(8)(a) and 40 CFR 264.147(a)."

3.22. In 2013-2014, Respondent obtained insurance coverage for sudden accidental occurrences.

3.23. In 2013-2014, the RCRA authorized regulation at WAC-173-303-620(8)(a) required that the owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. Owners or operators must meet the requirements of 40 C.F.R. § 264.147(a), which is incorporated by reference.

3.24. The EPA alleges that between September 1, 2013 and September 1, 2014, Respondent failed to establish adequate financial responsibility exclusive of legal defense costs in Policy Number PLS-1959292 for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Richland facility as required by Permit Condition 1-4a and WAC-173-303-620(8)(a).

3.25. The EPA alleges that Respondent's failure to establish adequate financial responsibility as required by the RCRA authorized regulation at WAC-173-303-620(8)(a) constitutes a violation of Permit Condition 1-4a.

3.26. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$23,375 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
schanilec.kevin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, 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 attached hereto.

4.8.2. 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.

4.8.3. 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 shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

08/12/2019

FOR RESPONDENT:

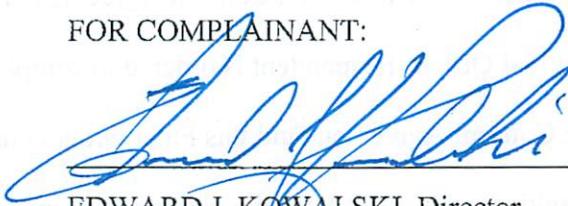


Richard Grondin
Perma-Fix Northwest Richland, Inc.

DATED:

8/12/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|------------------------------------|---|------------------------------|
| In the Matter of: |) | DOCKET NO. RCRA-10-2019-0130 |
| |) | |
| Perma-Fix Northwest Richland, Inc. |) | FINAL ORDER |
| Richland, Washington |) | |
| |) | |
| |) | |
| Respondent. |) | |

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 13th day of August, 2019.


RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Perma-Fix Northwest Richland, Inc., Docket No.: RCRA-RCRA-10-2019-0130** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Lynne Davies
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 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 to:

Richard Grondin
2025 Battelle Blvd.
Richland, Washington 99354

Sara Leverette, Attorney
719 Second Avenue, Suite 1150
Seattle, Washington 98104-1728

DATED this 14 day of August, 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10