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U.S. EPA REGION IX  
REGIONAL HEARING CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of	)	U.S. EPA Docket No.
	)	RCRA- <del>9</del> -2008- 00 1 7
VETERANS ADMINISTRATION	)	09
PALO ALTO HEALTH CARE SYSTEM	)	
	)	CONSENT AGREEMENT AND
EPA ID No. CAD981374853	)	FINAL ORDER PURSUANT TO
	)	40 C.F.R. SECTIONS 22.13 AND
Respondent.	)	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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Veterans Administration Palo Alto Health Care System ("Respondent").
2. Respondent owns and operates a facility located at 3801 Miranda Ave, in Palo Alto, California, 94304 (the "Facility"). The Facility's EPA Identification Number is CAD981374853. Respondent provides health care for United States military service veterans.
3. 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: (1) stored hazardous waste without a permit in violation of California Health and Safety Code ("H&SC") Section 25200 and 22 California Code of Regulations ("C.C.R.") §§ 66262.34, and 66270.1 [see also 40 C.F.R. §§ 262.34 & 270.1]; (2) failed to close containers of hazardous waste, a violation of 22 C.C.R. §§ 66262.34 and 66265.173(a) [see also 40 C.F.R. §§ 262.34 & 265.173(a)]; (3) failed to

maintain a facility to prevent releases in violation of 22 C.C.R. §§ 66262.34 and 66265.31 [*see also* 40 C.F.R. §§ 262.34 and 265.31]; (4) failed to keep ignitable waste from within 50 feet of the facility's property line in violation of 22 C.C.R. §§ 66262.34 and 66265.176 [*see also* 40 C.F.R. §§ 262.34 & 265.176; and (5) failed to make a hazardous waste determination, a violation of 22 C.C.R. § 66262.11 (*see also* 40 C.F.R. § 262.11). 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.<sup>1</sup>

**B. JURISDICTION**

4. 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.
5. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
7. Respondent's hazardous waste manifests indicate it is a small quantity "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].
8. 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].

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<sup>1</sup> 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 on August 1, 1992, *see* 57 Fed. Reg. 32726 (July 23, 1992), and September 26, 2001, *see* 66 Fed. Reg. 49118 (Sept. 26, 2001). Corresponding Federal citations are provided in brackets.

9. Respondent generates and accumulates, or has generated and accumulated, materials that are "solid wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
10. 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, solvent based wastes (RCRA waste codes D001 and F003), corrosives (RCRA waste code D002) and assorted toxic wastes (RCRA waste codes D004, D005, D006, D007, D008, D010, D011).
11. On March 20, 2007, EPA, accompanied by a representative of the Santa Clara County Department of Environmental Health, conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility. 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.
12. 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.
13. 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.
14. 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.*
15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. **ALLEGED VIOLATIONS**

**COUNT I**

**Storage of Hazardous Wastes Without a Permit or Interim Status**

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].
18. 22 C.C.R. § 66262.34(d) provides that a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit or grant of interim status provided the generator meets certain conditions. 22 C.C.R. § 66262.34(f) requires that generators label containers with the words "hazardous waste" and with the date accumulation of the waste begins, and the label must be visible for inspection [*see also* 40 C.F.R. § 262.34(a)]. Generators who fail to label containers of hazardous waste accordingly fail to meet the requirements of 22 C.C.R. § 66262.34, and are subject to the permitting requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].
19. In order to be eligible to accumulate hazardous waste without a permit or interim status for less than 180 days, small quantity generators of hazardous waste must, among other requirements:
  - a. mark containers of hazardous waste with the date they start accumulating hazardous waste in each container pursuant to 22 C.C.R. § 66262.34(f)(1) (*see also* 40 C.F.R. § 262.34(a)(2)), and
  - b. mark each container of hazardous waste clearly with the words "Hazardous Waste," with information about the composition and physical state of the wastes, with statements that call attention to the particular hazardous properties of the wastes, and with the name and address of the person producing the wastes, pursuant to 22 C.C.R. § 66262.34(f)(3) (*see also* 40 C.F.R. § 262.34).
20. At the time of the CEI, Respondent accumulated numerous containers of hazardous waste throughout the facility without marking the start date of accumulation of the hazardous waste, the words "Hazardous Waste," information about the composition and physical state of the wastes, statements about the particular hazardous properties of the wastes, or

the name and address of the person producing the wastes.

21. Respondent's failure to meet the labelling requirements set forth or referenced by 22 C.C.R. § 66262.34 subject it to the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. §§ 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].

## COUNT II

### **Failure to Close Containers of Hazardous Waste**

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
23. 22 C.C.R. § 66262.34(d) provides that a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit or grant of interim status provided the generator meets certain requirements, including 22 C.C.R. § 66265.173(a), which requires that generators keep containers holding hazardous waste closed during transfer and storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173(a)].
24. During the March 20, 2007 inspection, the EPA Inspector observed an open bucket of asphalt (D001) in the Hazardous Waste Storage Area next to the universal waste shed, a broken bottle of sodium hydroxide crystals in the flammable Hazardous Waste Storage Area and an open drum of D001 paint waste behind the paint storage waste building.
25. Therefore, EPA alleges that Respondent violated the closed container requirements of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 265.173].

## COUNT III

### **Failure to Maintain Facility to Prevent Releases of Hazardous Wastes**

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. 22 C.C.R. § 66265.31 requires facilities to be maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous wastes which could threaten human health or the environment. [*see also* 40 C.F.R. § 265.31].

28. On March 20, 2007, the EPA Inspector found that housekeeping in the three hazardous waste storage areas was on a generally low level as indicated by a 1 gallon cardboard box of xylene (D001), identified as leaking, a broken bottle sodium hydroxide crystals (D002), and numerous unidentified containers stored in a haphazard manner.
29. Therefore, EPA alleges that Respondent failed to maintain the facility to minimize the possibility of a release of hazardous wastes, which could threaten human health or the environment, in violation of 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 265.31].

#### COUNT IV

##### **Failure to Keep Ignitable Waste from Within 50 Feet of the Facility Property Line**

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. § 66265.176 prohibits the storage of ignitable waste within 50 feet of the facility's property line. [*see also* 40 C.F.R. § 265.176].
32. During the March 20, 2007 inspection, the EPA Inspector found that ignitable waste, including an open 55 gallon drum of discarded aerosol cans, an open bucket of coal tar asphalt, a 5 gallon bucket of aerosol spray cans, a can of paint thinner and 4 spray cans, were located in the universal waste storage shed, which is within 50 feet of the property line.
33. Therefore, EPA alleges that Respondent has violated the special requirements for ignitable wastes. 22 C.C.R. § 66265.176 [*see also* 40 C.F.R. § 265.176].

#### COUNT V

##### **Failure To Conduct A Hazardous Waste Determination**

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were set forth here in their entirety.
35. Pursuant to 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 22 C.C.R. 66261.2 [*see also* 40 C.F.R. § 261.2], must determine if that waste is a hazardous waste.
36. Respondent generates medical wastes and paint wastes. Lack of labeling of the wastes indicates that the Respondent failed to determine if they were hazardous waste.

37. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

**D. CIVIL PENALTY**

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), and the Civil Monetary Penalty Inflation Adjustment Rule, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule issued in February 2004 authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) for violations that occur after March 15, 2004. 69 Fed. Reg. 7121 (Feb. 13, 2004). 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 RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed THIRTY-TWO THOUSAND FIVE HUNDRED FORTY TWO DOLLARS (\$32,542.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

**E. ADMISSIONS AND WAIVERS OF RIGHTS**

38. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B 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.
39. 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 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.

**F. PARTIES BOUND**

40. 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, any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
41. 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.
42. 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**

43. Respondent consents to the assessment of and agrees to pay a civil penalty of THIRTY-TWO THOUSAND FIVE HUNDRED FORTY TWO DOLLARS (\$32,542.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
44. Respondent shall submit payment of the THIRTY-TWO THOUSAND FIVE HUNDRED FORTY TWO DOLLARS (\$32,542.00) within thirty (30) calendar days of the Effective Date of this CA/FO. 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. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent to:

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

At the time payment is made, a copy of the check shall be sent to:

Danielle Carr  
Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

and

Clint Seiter (WST-3)  
Waste Management Division  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105.

If payment instructions change, EPA will provide the Respondent written notice of the change.

45. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 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 its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

**H. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

46. 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) per day for first to fifteenth day of delay, ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for sixteenth to thirtieth day of delay, and TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per day for each day of delay thereafter.

47. 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 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
48. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 44.
49. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

50. 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.

**I. RESERVATION OF RIGHTS**

51. 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. 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, 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.
52. 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.
53. 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 and facts as set forth in Section C of this CA/FO.
54. 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**

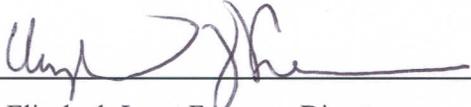
55. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, 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**

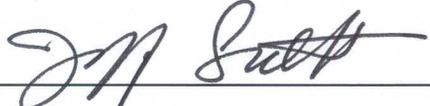
- 56. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 57. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 58. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

**IT IS SO AGREED.**

7-31-08  
Date

  
\_\_\_\_\_  
Elizabeth Joyce Freeman, Director  
Veterans Administration Palo Alto Health Care  
System

9/3/08  
Date

  
\_\_\_\_\_  
Jeff Scott, Director  
Waste Management 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-9-2008-0017) be entered and that Veterans Administration Palo Alto Health Care System pay a civil penalty of THIRTY-TWO THOUSAND FIVE HUNDRED FORTY TWO DOLLARS (\$32,542.00) 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.

09/04/08

Date



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

**CERTIFICATE OF SERVICE**

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

Elizabeth Joyce Freeman, Director  
Veterans Administration Palo Alto Heath Care System  
3801 Miranda Ave.  
Palo Alto, CA 94304

9-5-08

Date

Danielle L Carr

Danielle Carr  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX