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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2016-0013
	)	
UIC ROOFING, LLC,	)	CONSENT AGREEMENT
	)	
Anchorage, Alaska	)	
	)	
Respondent.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928.

1.2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may directly enforce the federal hazardous waste program in the State of Alaska.

1.3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"

40 C.F.R. Part 22, EPA issues, and UIC Roofing, LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## 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 Office of Compliance and Enforcement, 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

### ALLEGATIONS COMMON TO ALL COUNTS

3.1 In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. The Hazardous Waste and Solid Waste Amendments of 1984 (HSWA) provides additional authority under RCRA to regulate hazardous wastes. Under Subtitle C of RCRA, RCRA Section 3001 *et seq.*, 42 U.S.C. § 6921 *et seq.*, EPA has the authority to identify and list hazardous wastes. RCRA Subtitle C also authorizes EPA to regulate hazardous waste generators, transporters, exporters, and the owners and operators of hazardous

waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270, 273, and 279.

3.2 Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are “hazardous wastes.” These regulations are set forth in 40 C.F.R. Part 261.

3.3 “Solid waste” is defined at 40 C.F.R. § 261.2 to mean any discarded material that is not otherwise excluded by regulation.

3.4 “Discarded material” is defined at 40 C.F.R. § 261.2(a)(2)(i) to mean any material which is abandoned.

3.5 Pursuant to 40 C.F.R. § 261.2(b), materials are solid waste if they are abandoned by being disposed of; or burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

3.6 In accordance with 40 C.F.R. § 261.3, a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and it exhibits any of the characteristics of hazardous waste in 40 C.F.R. Part 261, Subpart C or is listed in 40 C.F.R. Part 261, Subpart D.

3.7 “Generator” is defined at 40 C.F.R. § 260.10 to mean any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.8 “Transporter” is defined at 40 C.F.R. § 260.10 to mean a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

3.9 "Facility" is defined at 40 C.F.R. § 260.10 to mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.10 Prior to October 21, 2010, Respondent was known as Rain Proof Roofing, LLC.

3.11 Respondent is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

3.12 At all times relevant to the allegations set forth herein, Respondent is and has been the "operator" of the "Rain Proof Roofing Facility" located at 2201 East 84th Court, Anchorage, Alaska.

3.13 Prior to October 19, 2010, Respondent conducted activities at the Rain Proof Roofing Facility that generated waste paint related material, waste Fields 460 and Diesel, and waste Code Blue.

3.14 The waste paint related material, waste Fields 460 and Diesel, and waste Code Blue were "solid waste" as that term is defined at 40 C.F.R. § 261.2.

3.15 The waste paint related material, waste Fields 460 and Diesel, and waste Code Blue were contained in twelve 55-gallon metal drums and one cubic-yard box.

3.16 The waste paint related material, waste Fields 460 and Diesel, and waste Code Blue contained in the twelve 55-gallon metal drums and one cubic-yard box exceeded 1,000 kilograms in weight.

3.17 The waste paint related material exhibited the characteristics of ignitability and toxicity in accordance with 40 C.F.R. §§ 261.21 and 261.24. Therefore, in accordance with 40 C.F.R. § 261.3, the waste paint related material was hazardous waste with EPA Hazardous

Waste Numbers D001, D004 (Arsenic), D005 (Barium), D006 (Cadmium), D007 (Chromium), and D008 (Lead).

3.18 The waste Fields 460 and waste Diesel exhibited the characteristic of ignitability in accordance with 40 C.F.R. §§ 261.21. Therefore, in accordance with 40 C.F.R. § 261.3, the waste Fields 460 and waste Diesel was hazardous waste with the EPA Hazardous Waste Number D001.

3.19 The waste Code Blue exhibited the characteristic of ignitability in accordance with 40 C.F.R. §§ 261.21. Therefore, in accordance with 40 C.F.R. § 261.3, the waste Code Blue was hazardous waste with the EPA Hazardous Waste Number D001.

3.20 Therefore, prior to October 19, 2010, Respondent was a “generator” as that term is defined at 40 C.F.R. § 260.10.

3.21 On October 19, 2010, Respondent transported the twelve 55-gallon drums and one cubic-yard box of waste paint related material, waste Fields 460 and Diesel, and waste Code Blue (“Hazardous Waste”) from the Rain Proof Roofing Facility to the UIC Construction Yard located at 200 West 87th Avenue, Anchorage, Alaska.

3.22 Therefore, Respondent was a “transporter” of hazardous waste as that term is defined at 40 C.F.R. § 260.10.

**COUNT I: FAILURE TO OBTAIN AN EPA IDENTIFICATION NUMBER FOR  
HAZARDOUS WASTE GENERATION**

3.23 The allegations set forth in paragraphs 3.1 through 3.22 are realleged and incorporated by reference herein.

3.24 In accordance with 40 C.F.R. § 262.12(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

3.25 In accordance with 40 C.F.R. § 262.12(b), a generator may obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12.

3.26 EPA Form 8700-12 requires the applicant to specify the regulated waste activities conducted by the applicant, including hazardous waste generation and hazardous waste transportation.

3.27 Respondent failed to obtain an EPA identification number using EPA Form 8700-12 prior to transporting the Hazardous Waste on October 19, 2010, in violation of 40 C.F.R. § 262.12(a).

**COUNT II: FAILURE TO OBTAIN AN EPA IDENTIFICATION NUMBER FOR HAZARDOUS WASTE TRANSPORTATION**

3.28 The allegations set forth in paragraphs 3.1 through 3.27 are realleged and incorporated by reference herein.

3.29 In accordance with 40 C.F.R. § 263.11(a), a transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator.

3.30 Respondent failed to obtain an EPA identification number using EPA Form 8700-12 prior to transporting the Hazardous Waste on October 19, 2010, in violation of 40 C.F.R. § 263.11(a).

**COUNT III: FAILURE TO PREPARE A MANIFEST**

3.31 The allegations set forth in paragraphs 3.1 through 3.30 are realleged and incorporated by reference herein.

3.32 In accordance with 40 C.F.R. § 262.20(a)(1), a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to 40 C.F.R. Part 262.20.

3.33 Respondent failed to prepare a manifest for the shipment of the Hazardous Waste to the UIC Construction Yard located at 200 West 87th Avenue, Anchorage, Alaska on October 19, 2010, in violation of 40 C.F.R. § 262.20(a)(1).

**COUNT IV: FAILURE TO DESIGNATE A FACILITY ON THE MANIFEST PERMITTED TO HANDLE THE WASTE**

3.34 The allegations set forth in paragraphs 3.1 through 3.33 are realleged and incorporated by reference herein.

3.35 In accordance with 40 C.F.R. § 262.20(b), a generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

3.36 Respondent failed to designate on the manifest one facility which was permitted to handle the Hazardous Waste, in violation of 40 C.F.R. § 262.20(b).

**COUNT V: OFFERING WASTE TO A TREATMENT, STORAGE, AND DISPOSAL FACILITY THAT DOES NOT HAVE AN EPA IDENTIFICATION NUMBER**

3.37 The allegations set forth in paragraphs 3.1 through 3.36 are realleged and incorporated by reference herein.

3.38 In accordance with 40 C.F.R. 262.12(c), a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

3.39 The UIC Construction Yard located at 200 West 87th Avenue, Anchorage, Alaska, did not have an EPA identification number prior to or on October 19, 2010, therefore, Respondent violated 40 C.F.R. § 262.12(c).

#### **ENFORCEMENT AUTHORITY**

3.40 Under Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per violation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, or 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. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$59,724.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment 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 ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
luna.teresa@epa.gov

Kristin McNeill  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
mcneill.kristin@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of 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 penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed 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 penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8 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. 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. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

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

DATED:

FOR RESPONDENT:

October 14, 2015

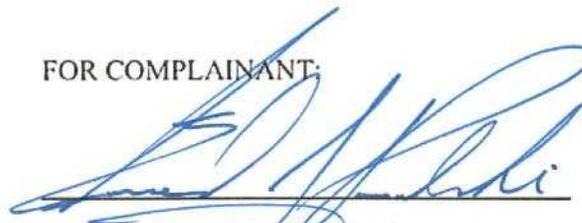
UIC Roofing, LLC  
By: UIC Design Plan Build, LLC, (Member and Manager)  
By: Ukpeagvik Inupiat Corporation (Member and Manager)

By:   
ANTHONY E. EDWARDSSEN,  
President and Chief Executive Officer

DATED:

FOR COMPLAINANT:

10/15/2015

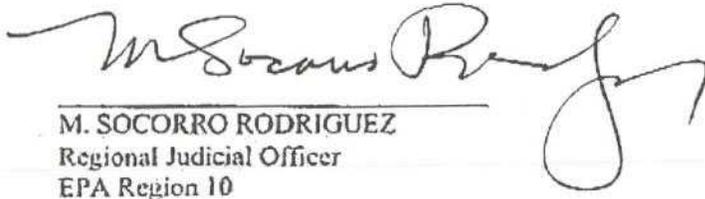


EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10



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

SO ORDERED this 16<sup>th</sup> day of October 2015.

  
M. SOCORRO RODRIGUEZ  
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: UIC Roofing, LLC, Docket No.: RCRA-10-2016-0013**, 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:

Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
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:

Anthony E. Edwardsen  
President and Chief Executive Officer  
Ukpeagvik Inupiat Corporation  
3201 C Street, Suite 801  
Anchorage, Alaska 99503

Nicholas Targ, Partner  
Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, California 94111

DATED this 16 day of October, 2015.

  
\_\_\_\_\_  
TERESA LUNA  
Regional Hearing Clerk  
EPA Region 10

