

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA- 9-2015-0010
EAST BAY MUNICIPAL)	
UTILITY DISTRICT)	
)	
EPA ID No. CAD980584684)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

I. 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, Title 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is East Bay Municipal Utility District ("EBMUD" or "Respondent").

II. ALLEGATIONS

A. BACKGROUND

2. EBMUD is a municipal utility district which supplies water to customers in Alameda and Contra Costa Counties in California, and operates as a Publicly Owned Treatment Works ("POTW"), treating wastewater before it is discharged to the San Francisco Bay. The POTW is located at 2020 Wake Avenue in Oakland, California (the "Facility"). The Facility's EPA Identification Number is CAD980584684.
3. On January 16 and 21, 2015, inspectors from the 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, and the regulations in 40 C.F.R. Parts 261-265, 268, 273 and 279, and 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 alleges 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.

4. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) properly mark and label hazardous waste accumulation containers, a violation of 22 C.C.R. § 66262.34(f) [*see also* 40 C.F.R. § 262.34(a)]; and (2) obtain a permit for treatment of hazardous waste, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1]. EPA alleges that 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
5. 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.
6. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §§ 260.10 and 270.2].
7. Respondent is the "operator" of a "facility" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
8. Respondent is or has been engaged in the management of "hazardous waste" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
9. 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.

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.

10. 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.
11. 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.*
12. 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 signatory below.

B. ALLEGED VIOLATIONS

COUNT I

Failure to properly label containers of hazardous waste

13. Paragraphs 1 through 12 above are incorporated herein by this reference as if they were set forth here in their entirety.
14. 22 C.C.R. § 66262.34(f) requires that generators who accumulate hazardous waste must label or mark clearly each hazardous waste tank or container 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 [40 C.F.R. § 262.34(a)].
15. 22 C.C.R. § 66262.34(e) provides that up to 55 gallons of a hazardous waste stream may be accumulated at the point of generation (commonly known as a satellite accumulation area) without meeting the requirements above, so long as the generator does not hold the waste onsite for more than one year from the initial date of accumulation, and the container is labelled with the words hazardous waste and the initial date of waste accumulation [40 C.F.R. § 262.34(c)].
16. At the time of the CEI, the EPA Inspectors observed several satellite accumulation area containers that had labels lacking some of the required information.
17. Therefore EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66262.34(f) [40 C.F.R. § 262.34(a)].

COUNT II

Failure to obtain a permit for treatment of hazardous waste

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. § 66270.1(c) [40 C.F.R. § 270.1(c)] requires a permit for the “treatment,” “storage,” and “disposal” of any hazardous waste.
20. At the time of the violations, Respondent did not have a full permit or grant of interim status to treat hazardous waste under 22 C.C.R. § 66270.1(c) [40 C.F.R. § 270.1].
21. Respondent attempted unsuccessfully to qualify for a RCRA permit under 22 C.C.R. § 66270.60 (“Permits by rule”) [40 C.F.R. § 270.60], which provides that a POTW may be deemed to have a RCRA permit if it meets certain conditions.
22. Respondent failed to meet two of the conditions required by 22 C.C.R. § 66270.60 [40 C.F.R. § 270.60(c)], and therefore did not have a Permit by rule.
23. Between December 2012 and May 2014, EBMUD received twenty-six (26) shipments of RCRA ignitable hazardous waste (D001).
24. Upon receipt, Respondent mixed the hazardous waste with non-hazardous waste, rendering the mixture non-hazardous.
25. Pursuant to 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10] “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
26. Therefore, EPA alleges that Respondent treated hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1(c) [40 C.F.R. § 270.1(c)].

C. CIVIL PENALTY

27. 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 December 6, 2013. 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 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 NINETY NINE THOUSAND NINE HUNDRED DOLLARS (\$99,900.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

D. ADMISSIONS AND WAIVERS OF RIGHTS

28. For the purposes of this proceeding, Respondent admits the jurisdictional allegations 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, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
29. Respondent neither admits nor denies the non-jurisdictional allegations of fact and law set forth in 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.

E. PARTIES BOUND

30. 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 C and F has been paid in accordance with Section F, and 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.
31. 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.

32. 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.

F. PAYMENT OF CIVIL PENALTY

33. Respondent consents to the assessment of and agrees to pay a civil penalty of NINETY NINE THOUSAND NINE HUNDRED DOLLARS (\$99,900.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
34. Respondent shall submit payment of the of NINETY NINE THOUSAND NINE HUNDRED DOLLARS (\$99,900.00) 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.

35. At the time payment is made, a copy of the payment transmittal shall be sent to:

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

and

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

36. 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. Respondent further will be liable for

stipulated penalties as set forth below for any payment not received by its due date.

G. DELAY IN PERFORMANCE/STIPULATED PENALTIES

37. 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: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and TWO THOUSAND DOLLARS (\$2,000) per day for each day of delay thereafter.
38. 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.
39. All penalties shall be paid as described in Paragraph 34.
40. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
41. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
42. 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.

H. CERTIFICATION OF COMPLIANCE

43. 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], and 22 C.C.R. §§ 66270.1 and 66270.60 [*see also* 40 C.F.R. §§ 270.1 and 270.60], 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

44. 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.
45. 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.
46. 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 B of this CA/FO.
47. 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

48. 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

49. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
50. The parties shall bear their own costs in this proceeding, including attorneys' fees.

51. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
52. 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.

9/3/2015
Date

9/28/15
Date

Bennett K. Horenstein
Bennett K. Horenstein, Director of Wastewater
East Bay Municipal Utility District

Douglas K. McDaniel
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- 0010) be entered and that East Bay Municipal Utility District pay a civil penalty of ninety-nine thousand nine hundred dollars (\$99,900.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section F of the Consent Agreement.

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

09/29/15

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 pursuant to 40 C.F.R. 22.13 and 22.18 (Docket No. RCRA-09-2015-) against East Bay Municipal Utility District was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. Ben Horenstein
Director of Wastewater
East Bay Municipal Utility District
2020 Wake Ave.
Oakland, CA 94621

Certified Mail No. 7009 0820 0001 3646 6127



Fek: Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

9/30/15

Date