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U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)	U.S. EPA Docket No.
)	
)	RCRA(3008)-09-2019- <u>CO15</u>
Veolia ES Technical Solutions LLC)	
1704 W. 1st St.)	CONSENT AGREEMENT AND
Azusa, California)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
<u>Respondent.</u>)	

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, as codified at 40 Code of Federal Regulations (C.F.R.) Part 22 ("Consolidated Rules").
2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
3. Respondent is Veolia ES Technical Solutions LLC, a Delaware limited liability company ("Respondent").
4. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 3008 of RCRA, 42 U.S.C. § 6928, and state regulations adopted pursuant to the approved California hazardous waste management program.
5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management 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.
7. The State of California ("State") received authorization to administer the hazardous waste

management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on August 1, 1992. The authorized hazardous waste 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 has been authorized for all the hazardous waste management regulations referenced in this CA/FO.

8. A violation of California's authorized hazardous waste program, found at Health & Safety Code § 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.

C. EPA'S GENERAL ALLEGATIONS

9. Respondent owns and operates the facility located at 1704 West 1st St., Azusa, California (the "Facility"). At the Facility, Respondent stores and treats a wide range of hazardous wastes as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3. The Facility processes, stores, treats, recycles, and ships hazardous wastes received from off-site sources. The Facility receives and ships wastes off-site by tanker truck, truck van, railcar, and in containers such as drums and roll-off bins.

10. From May 17-20, 2016, EPA conducted a compliance evaluation inspection ("CEI") at the Facility pursuant to Subtitle C of RCRA. 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.

11. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or 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 enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, redelegate that authority to the Director of the Enforcement Division, Region IX, with delegation R9-120 TN 111, dated January 22, 2016.

13. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R.

§ 260.10].¹

14. Respondent is the “owner” of a facility as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

15. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

16. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

17. Respondent is engaged in “treatment,” “storage,” or “disposal” of “hazardous waste” as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [see also 40 C.F.R. §§ 260.10 and 261.3].

18. The hazardous wastes that Respondent treats, stores, or disposes of at the Facility include characteristic hazardous wastes, listed hazardous wastes from non-specific sources and specific sources (F- and K-listed wastes), and commercial chemical products (P- and U-listed wastes).

19. On November 29 2010, DTSC received the Respondent’s Part B Application (“Part B”) to DTSC. Part B was incorporated into the March 31, 2011 Hazardous Waste Facility Permit issued by DTSC (“Permit”) to the Respondent.

D. EPA’S ALLEGED VIOLATIONS

COUNT I

(Failure to Comply with Air Emission Standards for Equipment Leaks)

20. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.

21. Title 22, Division 4.5, Chapter 14, Article 28 (Air Emission Standards for Equipment Leaks) of the California Code of Regulations (“Article 28”) [see also 40 C.F.R. §§ 264.1050-1065] requires owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes to control air emissions from equipment leaks, by, *inter alia*, determining the percent-by-weight total organics in the hazardous waste stream at the equipment, tagging all equipment subject to Article 28, conducting leak detection monitoring and keeping records.

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. As a convenience, corresponding Federal citations are provided in brackets.

22. During the inspection, EPA observed that Respondent was unaware of the Article 28 air emission standards and had not complied with them, including the requirements to, *inter alia*:
- (1) determine the percent-by weight total organics in the hazardous waste stream at the equipment, as required by 22 C.C.R. § 66264.1064(b)(1)(D) [*see also* 40 C.F.R. § 264.1064(b)(1)(iv)];
 - (2) mark each piece of equipment subject to Article 28, as required by 22 C.C.R. § 66264.1050(d) [*see also* 40 C.F.R. § 264.1050(d)];
 - (3) conduct leak detection monitoring, as required by 22 C.C.R. §§ 66264.1052-1062 [*see also* 40 C.F.R. §§ 264.1052-1062];
 - (4) record information in the facility operating record for each piece of equipment to which Article 28 applies, including the equipment identification number, the type of equipment, the hazardous waste state at the equipment, and the method of compliance with the applicable standard, as required by 22 C.C.R. § 66264.1064(b)(1) [*see also* 40 C.F.R. § 264.1064(b)(1)]; and
 - (5) submit semiannual reports to DTSC, as required by 22 C.C.R. § 66264.1065(a) [*see also* 40 C.F.R. § 264.1065(a)].

23. Therefore, EPA alleges that Respondent failed to comply with the requirements for air emission standards for equipment leaks, in violation of 22 C.C.R. §§ 66264.1050-1065 [*see also* 40 C.F.R. §§ 264.1050-1065].

COUNT II
(Failure to Keep Records of Inspections)

24. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 22 C.C.R. § 66264.1089(b)(1)(B) [40 C.F.R. § 264.1089(b)(1)(ii)(B)] requires owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes in tanks, surface impoundments, or containers to prepare and maintain records of tank inspections that include, for each defect detected during an inspection, the corrective action taken to repair the defect.
26. In reviewing Respondent's records, EPA observed three records of inspections that did not include the corrective action taken to repair the defects detected.
27. Therefore, EPA alleges that Respondent failed to record the corrective action taken to repair defects on tanks, in violation of 22 C.C.R. § 66264.1089(b)(1)(B) [40 C.F.R. § 264.1089(b)(1)(ii)].

COUNT III
(Failure to Include a Written Inspection Plan)

28. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.

29. 22 C.C.R. § 66264.1088(b) [*see also* 40 C.F.R. § 264.1088(b)] requires owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes in tanks, surface impoundments, or containers to develop and implement a written plan and schedule to perform required inspections and monitoring, and incorporate the plan and schedule into the facility inspection plan.

30. In reviewing Respondent's records, EPA observed the Facility did not have, either in its inspection plan or in its other records, an inspections and monitoring program for Unit AA16, the cryogenic air pollution control device.

31. Therefore, EPA alleges that Respondent failed to develop and implement a written plan and schedule to perform required inspections and monitoring, and incorporate the plan and schedule into the facility inspection plan, in violation of 22 C.C.R. § 66264.1088(b) [*see also* 40 C.F.R. § 264.1088(b)].

E. CIVIL PENALTY

32. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay FORTY-THREE THOUSAND SIX HUNDRED AND SIX DOLLARS (\$43,606) as the civil penalty for the violations alleged herein.

33. The proposed penalty was calculated in accordance with the "June 2003 RCRA Civil Penalty Policy," and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

34. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. 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.

35. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations and to appeal the proposed Final Order accompanying this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

36. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Sections E and H has been paid in accordance with Section H, the Supplemental Environmental Project ("SEP") required under Section I has been completed in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

37. 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.

38. 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.

H. PAYMENT OF CIVIL PENALTY

39. Respondent consents to the assessment of and agrees to pay a civil penalty of FORTY-THREE THOUSAND SIX HUNDRED AND SIX DOLLARS (\$43,606) in full settlement of the federal civil penalty claims set forth in this CA/FO.

40. Respondent shall submit payment of FORTY-THREE THOUSAND SIX HUNDRED AND SIX DOLLARS (\$43,606) 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, 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, United States of America," and sent as follows:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

In the Matter of Veolia ES Technical Solutions LLC
Consent Agreement and Final Order

PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:
U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

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
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

In the Matter of Veolia ES Technical Solutions LLC
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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.

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

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

With an electronic copy to:

Sharon Lin (ENF-2-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Lin.Sharon@epa.gov

And

Xiao Zhang (ORC-3-3)
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 9
Zhang.Xiao@epa.gov

42. 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. In addition, a 6% per annum penalty assessed monthly 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.

43. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. SUPPLEMENTAL ENVIRONMENTAL PROJECT

44. As a condition of settlement, Respondent shall perform the supplemental environmental project ("SEP") as set forth in Paragraphs 44 through 53 and Appendix A to this CA/FO. Respondent has selected the South Coast Air Quality Management District ("SCAQMD") as the SEP Implementer for the installation of at least one School Air Filtration System ("AFS") to reduce harmful air pollutants in classrooms in schools in the South Coast Air Basin. SCAQMD is a governmental entity that is authorized to receive funding from non-governmental sources to be used to assist in implementation of this SEP. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

45. Respondent shall provide ONE HUNDRED SIXTY-ONE THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$161,352) to the SEP Implementer within 60 calendar days of the Effective Date of this CA/FO to be utilized in the AFS SEP.

46. The AFS SEP shall be implemented as set forth in Paragraphs 44 through 53 and Appendix A of this CA/FO in compliance with the schedule and the other terms of this CA/FO.

47. The AFS SEP shall be for the purpose of improving air quality. The funding shall be utilized to: (1) install high performance filtration systems in classrooms and common areas, (2) conduct post-installation testing to verify the performance of the systems and report test results, (3) train school staff on the maintenance of these AFSs to ensure proper and efficient operation, (4) provide a three (3) year supply of replacement filters, (5) prepare reports to document the status of the SEP, and (6) provide for reasonable administrative costs charged by the AFS SEP Implementer for implementing the AFS SEP.

48. Within 60 days of completion of installation of the AFS SEP, a SEP Completion Report that includes the information specified in Appendix A of this CA/FO shall be submitted to EPA at the address specified in Appendix A. Respondent may place reasonable reliance on the accuracy of reports or other information provided by the AFS SEP Implementer.

49. After receipt of the SEP Completion Report described in Paragraph 48 above, EPA shall, within 30 days, notify Respondent, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties as specified in Section J below.

50. If EPA elects to exercise option (a) in Paragraph 49 above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 49 within ten (10) days of receipt of such notification. EPA and Respondent shall

have an additional thirty (30) days from receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision on the adequacy of completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA as specified below in Section J.

51. Respondent shall request the SEP Implementer to maintain, and present to EPA upon request, all documents to substantiate the funds expended and work completed to implement the SEP described in Paragraphs 44 through 53 and Appendix A of this CA/FO, and to provide these documents to EPA within thirty (30) calendar days of any request for the documents. Respondent may place reasonable reliance on the accuracy of reports or other information provided by the SEP Implementer to satisfy this obligation.

52. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following:

- a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate;
- b. That, as of the date of this Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Agreement;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. That Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this Agreement and has inquired of the SEP Implementer whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the SEP Implementer that to its knowledge it is not a party to such a transaction.

53. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of Respondent's execution of this CA/FO shall include the following language: "This project was undertaken in connection with

the settlement of an enforcement action, In the Matter of Veolia ES Technical Solutions LLC, (Docket No. RCRA(3008)-09-2019-~~0015~~), taken by the Environmental Protection Agency to enforce federal laws.”

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

54. In the event Respondent fails to meet any requirement set forth in this CA/FO, including the requirement to provide \$161,352 to the SEP Implementer within 60 calendar days of the Effective Date of this CA/FO, Respondent shall pay stipulated penalties as follows: 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 THREE THOUSAND DOLLARS (\$3,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

55. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of TWO HUNDRED FORTY-TWO THOUSAND TWENTY-SEVEN DOLLARS (\$242,027) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 56.

56. For failure to timely complete the SEP, including installation of the air filtration system and submittal of the SEP Completion Report required by Section I, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after that performance was due until the date of correction of the noncompliance. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed TWO HUNDRED FORTY-TWO THOUSAND TWENTY-SEVEN DOLLARS (\$242,027).

57. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

58. 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.

59. All penalties shall be remitted in the same manner described in Section H.

60. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

61. 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.

62. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions that may be available to EPA because of Respondent's failure to comply with any of the requirements of this CA/FO.

63. The payment of stipulated penalties specified in the Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

K. CERTIFICATION OF COMPLIANCE

64. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has fully complied with Section 3008 of RCRA, 42 U.S.C. § 6928, and its implementing regulations that formed the basis for the violations alleged in Section D, above, and that it has completed the following tasks:

- a. Implemented an enhanced leak detection and repair program that follows EPA's Leak Detection and Repair: A Best Practices Guide (2007), in order to comply with the air emissions standards of Title 22, Division 4.5, Chapter 14, Articles 27, 28, and 28.5 of the California Code of Regulations [*see also* 40 C.F.R. §§ 264.1030-1091];
- b. Modified its Permit to:
 - i. Add that a railcar loading and unloading unit is subject to air emissions standards of Title 22, Division 4.5, Chapter 14 of the California Code of Regulations [*see also* 40 C.F.R. Part 264];
 - ii. Add procedures for complying with 22 C.C.R. § 66264.1035(b) [*see also* 40 C.F.R. § 1035(b)]; and
 - iii. Clarify the descriptions of other equipment subject to the air emissions standards of Title 22, Division 4.5, Chapter 14, Articles 27, 28, and 28.5 of the California Code of Regulations [*see also* 40 C.F.R. §§ 264.1030-1091].

65. 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.

L. RESERVATION OF RIGHTS

66. Except as addressed in this CA/FO, 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 of RCRA, 42 U.S.C. § 6928. 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, or any other statutory, regulatory or common law enforcement authority of the United States.

67. 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.

68. 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 alleged violations and facts as set forth in Section D of this CA/FO.

69. 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.

M. OTHER CLAIMS

70. 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.

N. MISCELLANEOUS

71. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

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

73. Each party to this action shall bear its own costs and attorneys' fees.

74. EPA and Respondent consent to entry of this CA/FO without further notice.

In the Matter of Veolia ES Technical Solutions LLC
Consent Agreement and Final Order

O. APPENDIX

75. The following appendix is attached to and incorporated into this CA/FO: Appendix A – Air Filtration System Supplemental Environmental Project (“AFS SEP”).

P. EFFECTIVE DATE

76. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

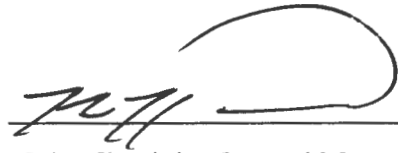
IT IS SO AGREED.

In the Matter of Veolia ES Technical Solutions LLC
Consent Agreement and Final Order

FOR RESPONDENT VEOLIA ES TECHNICAL SOLUTIONS LLC:

13 Dec 2018

Date



John Flaminio, General Manager
Veolia California Branch

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

20 December 2016

Date



Amy C. Miller, Acting Director
Enforcement Division

In the Matter of Veolia ES Technical Solutions LLC
Consent Agreement and Final Order

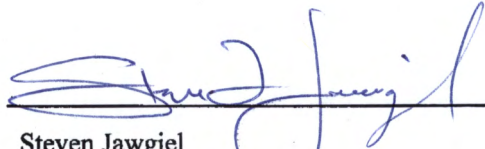
FINAL ORDER

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(3008)-09-2019-0015) be entered and that Respondent pay a civil penalty of FORTY-THREE THOUSAND SIX HUNDRED AND SIX DOLLARS (\$43,606), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order and implement the Supplemental Environmental Project described in Section I of this CA/FO, in accordance with all terms and conditions of this CA/FO.

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

12/21/18

Date



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

APPENDIX A
AIR FILTRATION SYSTEM SUPPLEMENTAL ENVIRONMENTAL PROJECT
("AFS SEP")

A. SEP Purpose

The Air Filtration System ("AFS") Supplemental Environmental Project ("SEP") shall be for the purpose of installing an AFS at an entire school to reduce exposures to Ultrafine Particles ("UFP"),¹ Black Carbon ("BC"), and Fine Particulate Matter ("PM_{2.5}") emitted from trucks operating on highways near the school.

B. SEP Implementation

1. Veolia ES Technical Solutions LLC ("Veolia"), has selected the South Coast Air Quality Management District ("SCAQMD") as the SEP Implementer to implement the AFS SEP. SCAQMD is a governmental entity that is authorized to receive funding from non-governmental sources to be used to assist implementation of this SEP.
2. Veolia shall provide \$161,352 to the SEP Implementer within sixty (60) days of the effective date of this CA/FO for the purpose of accomplishing the AFS SEP in accordance with Paragraphs 44 through 53 and Appendix A of this CA/FO.
3. The SEP funds shall be expended in accordance with Paragraphs 44 through 53 and Appendix A of this CA/FO to: 1) install high performance air filtration units in classrooms and common areas, 2) conduct post-installation testing to verify the performance of the systems and to report test results, 3) train school staff on the maintenance of these AFSs to ensure proper and efficient operation, 4) provide a three-year supply of replacement filters, 5) prepare reports to document the status of the SEP, and 6) provide for reasonable administrative costs charged by the SEP Implementer for implementing the SEP.
4. Unless SCAQMD, as the SEP Implementer, determines in its professional judgment that there is a more effective installation strategy, the SEP funds shall be used to purchase at least one AFS for at least one entire school. For purposes of Appendix A of this CA/FO, "entire school" shall mean all classrooms and common areas in a school for which the installation of an air filtration unit is reasonably practicable and must include a substantial percentage of total classrooms and common areas in the school. If there are remaining funds, Veolia shall purchase an additional AFS for another entire school(s). If there are insufficient funds to purchase an additional AFS for an entire school, Veolia can direct the remaining balance to pay for the cost of additional replacement filters, future maintenance costs, air filtration unit(s) for a classroom or common area within a school

¹ UFP are particles roughly defined by an aerodynamic diameter less than 0.1 µm, estimated by measuring the total number concentration of all airborne particles down to at least 10 nm in diameter.

(but not the entire school), and other associated costs for the AFS and/or air filtration unit(s) purchased.

5. Veolia shall direct the SEP Implementer to evaluate potential school sites in terms of proximity to major roadways and the type of the current heating, ventilation and air conditioning (“HVAC”) units. School boundaries will be located within approximately 500 feet of major roadways. Site visits shall be conducted as necessary to verify the existing HVAC system/specifications. Veolia shall direct the SEP Implementer to determine the type of AFS to install in accordance with the Performance Specifications identified below. Consideration will be given to whether the type of AFS has been installed in schools/classrooms in proximity to major sources of particulate matter and whether the AFS vendor or contractor for that type of AFS has design and operational proposals appropriate for classroom conditions. Veolia shall direct the SEP Implementer to consult, as appropriate, other air pollution control agencies that have programs installing AFSs.
6. Veolia shall direct the SEP Implementer to present a detailed schedule for the installation of the AFS. Installation and other implementation issues shall be coordinated with the appropriate school and school district.
7. Veolia shall direct the SEP Implementer to ensure that there is a maintenance program established to provide training for the selected school(s)’ maintenance staff for ongoing maintenance of the AFS following installation of the AFS at the school. An operation and maintenance manual shall be provided to the school/school districts, and shall include, but not be limited to, the required frequency for cleaning and replacement of the filters and other maintenance procedures.
8. Within 60 days after completion of the AFS SEP, Veolia shall submit an AFS SEP Completion Report to EPA at the address specified in Paragraph E herein. The SEP Completion Report must include the following information: 1) the type of AFS installed, 2) the number of schools/classrooms/common areas where AFSs are installed, 3) the expenditures associated with the project, 4) the operation and maintenance manual, and 5) a written certification of project completion. For purposes of the AFS SEP Completion Report, Veolia may place reasonable reliance on the accuracy of reports or other information provided to it by the SEP Implementer. The AFS SEP Completion Report should be certified by an appropriate corporate official.
9. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: “I certify under penalty of law that I have examined and am familiar with the information submitted in this document and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

C. Environmental Benefit

Exposure to traffic-related air pollution has been linked to a variety of short-term and long-term health effects, including asthma, reduced lung function, impaired lung development in children, and cardiovascular effects in adults. Children's exposure to traffic-related air pollution while at school is a concern because many schools across the country are located near heavily traveled roadways and children are particularly vulnerable to air traffic pollution.² Certain filtration systems have been independently tested and proven to remove up to 87 to 96% of UFP and BC from classrooms.

D. Performance Specifications

In order to ensure that the environmental benefit will be achieved and that the AFS will function effectively within the classroom setting, the following performance specifications are hereby incorporated, as required by the AFS SEP, unless they differ from local requirements. The AFS will meet these performance specifications at the time the AFS is installed at the selected school.

1. Definitions

- a. **Baseline Conditions** – Percentage reduction in the indoor concentration of a particular air pollutant relative to its concurrent outdoor level before installation of any air filtration unit.
- b. **Minimum Average Removal Efficiency** – Minimum percentage reduction in the indoor air concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration units, averaged over all time periods and installations.
- c. **Potential Average Removal Efficiency** – Potential percentage reduction in the indoor concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration units, demonstrated for several time periods and installations.

2. Removal Efficiency Standard

The AFS must demonstrate, from Baseline Conditions, Minimum Average Removal Efficiencies of 50% for UFC, BC and PM_{2.5} and should have demonstrated Potential Average Removal Efficiencies of at least 90% for the same pollutants unless local school authorities require different standards.

3. Minimal Impact on Air Flow

The AFS shall lower the indoor concentrations of pollutants identified in D(2) above, but shall not significantly reduce the existing air flow rates through the HVAC system and shall not require significantly higher power consumption to achieve similar flow rates. Determinations regarding impacts on air flow may require coordination and consultation with local school authorities.

² www.epa.gov/sites/production/files/2015-10/documents/ochp_2015_near_road_pollution_booklet_v16_508.pdf.

4. Low Noise

The AFS shall not exceed a 45 decibels noise threshold for any new in-classroom equipment, a standard required by many school districts unless local rules have different requirements.

5. Filter Lifetime

To minimize labor costs associated with filter replacement, the advertised lifetime of the installed high-performance filters should be at least three months.

E. Schedule

Veolia shall provide the funds for the AFS SEP within 60 days of the effective date of this CA/FO to the SEP Implementer.

Veolia shall complete the AFS SEP no later than one year after the effective date of this CA/FO.

Within 60 days of completion of the AFS SEP, Veolia shall submit the AFS SEP Completion Report to:

Sharon Lin
Enforcement Division, ENF-2-2
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St
San Francisco, CA 94105

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Veolia ES Technical Solutions LLC. (Docket #: RCRA-09-2019-0015)** 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:

John Flaminio
Veolia North America - California Branch
107 South Motor Avenue
Azusa, CA 91702

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 5475


And to:

Philip Kief, Esq.
Veolia North America
4760 World Houston Pkwy, Suite 100
Houston, TX 77032

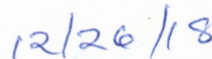
CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 5482

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

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



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



Date