



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 19 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Laurie Fisher  
Chief, Environmental Compliance  
45 CES/CEIE  
United States  
Department of the Air Force  
Patrick Air Force Base  
1224 Jupiter Street  
Patrick Air Force Base, Florida 32925-3343

RE: Patrick Air Force Base  
Consent Agreement and Final Order- Docket No. RCRA-04-2016-4001(b)

Dear Ms. Fisher:

Enclosed is a copy of the final executed Consent Agreement and Final Order (CA/FO) in the above referenced matter. Pursuant to the terms of the CA/FO, Patrick Air Force Base shall submit the penalty payment of \$40,500 within thirty (30) calendar days of the effective date of this CA/FO. If you have any questions, please feel free to contact Brooke York, of my staff, at (404) 562-8025. Legal questions should be directed to Greg Luetscher at (404) 562-9677.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Lamberth".

Larry Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
 United States )  
 Department of the Air Force )  
 Patrick Air Force Base )  
 1224 Jupiter Street )  
 Patrick Air Force Base, Florida )  
 EPA ID No.: FL2570024404 )  
 )  
 Respondent )  
 \_\_\_\_\_ )

DOCKET NO.: RCRA-04-2016-4001(b)  
 Proceeding Under Section 3008(a) of the  
 Resource Conservation and Recovery Act,  
 42 U.S.C. § 6928(a)

2016 JUN 19 AM 9:11  
 HEADQUARTERS CLERK  
 OFFICE OF REGIONAL COUNCIL

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. §§ 403.702 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at Rule 62-730 *et seq.* of the Florida Administrative Code Annotated (Fla. Admin. Code Ann.) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, and 279]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] and Rule 62-730 *et seq.* of the Fla. Admin. Code Ann. [40 C.F.R. Parts 260 through 270, & 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Patrick Air Force Base, a department, agency, or instrumentality of the United States. Respondent is the owner and/or the operator of a military base, located at 1224 Jupiter Street, Patrick Air Force Base, Florida (the Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Chapter 403 of the Fla. Stat. §§ 403.702 *et seq.* Rule 62-730 *et seq.* of the Fla. Admin. Code Ann..
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State of Florida has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in Fla. Admin. Code Ann. r. 62-730.160 [40 C.F.R. Part 262].

12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180(1) (permitted) and Fla. Admin. Code Ann. r. 62-730.180(2) (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)].
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.21-24] are “characteristic” hazardous wastes and are identified with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for cadmium is a hazardous waste identified with the EPA Hazardous Waste Number D006.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for chromium is a hazardous waste identified with the EPA Hazardous Waste Number D007.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for lead is a hazardous waste identified with the EPA Hazardous Waste Number D008.
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for benzene is a hazardous waste identified with the EPA Hazardous Waste Number D018.
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], solid wastes that are listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261.31(a)] are “listed” hazardous wastes from non-specific sources and are identified with the EPA Hazardous Waste Numbers F001 through F039.
21. The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent

non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures, are listed hazardous waste in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D] at Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.31(a)] and are identified with the EPA Hazardous Waste Number F003.

22. The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures are listed hazardous waste in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D] at Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.31(a)] and is identified with the EPA Hazardous Waste Number F005.
23. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], certain off-spec commercial chemical products, container residues, and spill residues when discarded or when intended to be discarded are solid wastes and those listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.33(e)], are “listed” acute hazardous wastes due to toxicity or reactivity, and are identified with the EPA Hazardous Waste Numbers P001 through P205.
24. Upon disposal, Warfarin when present in concentrations of greater than 0.3 percent is a listed hazardous waste under Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.33(e)] and is identified with the EPA Hazardous Waste Number P001.
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], certain off-spec commercial chemical products, container residues, and spill residues when discarded or when intended to be discarded are solid wastes and those listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.33(f)], are “listed” toxic wastes due to toxicity, reactivity, ignitability and corrosivity, and are identified with the EPA Hazardous Waste Numbers U001 through U411.
26. Upon disposal, Warfarin when present in concentrations of 0.3 percent or less is a listed hazardous waste under Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.33(f)] and is identified with the EPA Hazardous Waste Number U248.
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “disposal” is defined as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or

hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

29. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 261.7(a)(2)], any hazardous waste remaining in either a container that is not “empty” or an inner liner removed from a container that is not “empty” is subject to regulation under RCRA.
30. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 261.7(b)(3)], a container or an inner liner that has held an acute hazardous waste listed in 40 C.F.R. § 261.33(e) is “empty” or “RCRA empty” if one of the conditions set out in 40 C.F.R. § 261.7(b)(3)(1)(i)-(iii) has been satisfied.
31. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “facility” includes all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
32. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “Federal agency” means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.
33. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “generator” is defined as 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.
34. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 262.34(g)], a “large quantity generator” is defined as a generator who generates 1,000 kilograms (kg) or greater of hazardous waste per calendar month.
35. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “manifest” means a shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A) or an electronic manifest, originated and signed in accordance with the applicable requirements of 40 C.F.R. Parts 262 - 265.
36. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “on-site” means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way, which it controls and to which the public does not have access, is also considered on-site property.
37. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility and an “operator” is the person responsible for the overall operation of a facility.

38. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “person” includes, *inter alia*, a Federal Agency.
39. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
40. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
41. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1)-.01(2) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in Fla. Admin. Code Ann. r. 62-730.160(1)-.01(2) [40 C.F.R. § 262.11].
42. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [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 must prepare a manifest, according to the instructions included in the Fla. Admin. Code Ann. r. 62-730.160(1) [Appendix to 40 C.F.R. § 262].
43. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], a generator of greater than 1,000 kilograms of hazardous waste per month may accumulate hazardous waste on-site for 90 days or less, without a permit or interim status, provided that the generator complies with the management requirements of Fla. Admin. Code r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).
44. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.183 [40 C.F.R. Part 268], a condition of the LQG Permit Exemption requires a facility to determine the applicable treatment standards for hazardous wastes as they are at the point of generation prior to disposal of said waste and to comply with the other notice, certification, and waste analysis requirements.
45. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)], a generator may accumulate as much as 55 gallons of hazardous waste, or one quart of acutely hazardous waste, in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status, and without complying with Fla. Admin. Code r. 62-730.160(1) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area (SAA) conditions of Fla. Admin. Code r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).

46. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)], a condition of the SAA Permit Exemption requires that containers storing hazardous waste are located at or near the point of generation and are under control of the operator of the process generating the waste.
47. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
48. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark SAA containers either with the words “Hazardous Waste” or with such other words that identify the contents of the containers.
49. Pursuant to Sections 403.721 and 430.727 of the Florida Statutes, Fla. Stat. §§ 403.721, and 430.272(1)(b) [Section 3005 of RCRA], codified at Fla. Admin. Code Ann. r. 62-730.220(1) [40 C.F.R. § 270.10] and Fla. Admin. Code Ann. r. 62-730.240(1)(b) [40 C.F.R. § 270.1(c)], no person shall begin operation of a hazardous waste treatment, storage, or disposal facility without first properly applying for and receiving a valid operation permit prior to treating, storing, or disposing of any hazardous waste.
50. Pursuant to Fla. Admin. Code Ann. r. 62-710.210(2) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” Any container storing used oil must be properly labeled with the words “Used Oil” in accordance with 40 C.F.R. § 279.22(c)(1).

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

51. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
52. Respondent is the “owner/operator” of a “Facility” located at 1224 Jupiter Street, Patrick Air Force Base, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
53. Respondent is a “generator” of “hazardous waste” as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10] and Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3].
54. The Facility is Patrick Air Force Base, a military base that, among other things, conducts airplane maintenance and operates an on-site pharmacy.



55. Respondent is a "large quantity generator" and also operates a permitted hazardous waste storage unit in accordance with Permit 0070733-03-HO issued by the Florida Department of Environmental Protection (FDEP) on August 10, 2012, which expires on June 3, 2017.
56. As a result of the operations at the Facility, Respondent generates used oil.
57. On July 15 - 16, 2014, inspectors from the EPA and the FDEP conducted a compliance evaluation inspection (joint CEI) at the Facility. The findings of the joint CEI were documented in a CEI Report mailed to Respondent dated January 16, 2015.
58. At the time of the joint CEI, the inspectors observed that Respondent had not made a hazardous waste determination on certain solid waste streams that had been accumulated, stored, and were being managed on-site. These waste streams included floor sweepings and vacuums containing spent blast media, which are D006 hazardous wastes exceeding toxicity limits for cadmium.
59. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid wastes generated at its Facility.
60. At the time of the joint CEI, the inspectors observed that Respondent's pharmacies (located within the area designated Facility #1380) were stocking containers of Warfarin tablets in strengths of 1 mg, 2 mg, 2.5 mg, 3 mg, 4 mg, 5 mg, 6 mg, 7.5 mg, and 10 mg. Respondent informed the inspectors that once all the tablets in a container had been dispensed, its practice was to dispose of such containers as nonhazardous waste although the containers were not "RCRA empty" of their P001 and/or U248 listed hazardous waste residues.
61. At the time of the joint CEI, Respondent further informed the inspectors that its practice was not to use EPA Form 8700-22 to manifest the disposal of the P001 and/or U248 listed hazardous waste residues remaining in the containers when the containers were offered for transport to a RCRA Subtitle D disposal facility.
62. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.20(a)(1)] by failing to prepare a manifest when hazardous waste, Warfarin a P001 and/or U248 listed hazardous waste, was transported or offered for transport for treatment, storage, or disposal.
63. At the time of the joint CEI, the Respondent was failing to determine the applicable treatment standards for the P001/U248 listed hazardous waste prior to their disposal and was also failing to comply with associated notice, certification, and waste analysis requirements.
64. The EPA therefore alleges that Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to

meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not determining the applicable treatment standards for hazardous wastes at the point of generation prior to disposal of said waste as required by Fla. Admin. Code Ann. r. 62-730.183 [40 C.F.R. Part 268] and not complying with the other notice, certification, and waste analysis requirements of 40 C.F.R. Part 268.

65. At the time of the joint CEI, the inspectors observed that the Respondent, within the area designated Facility #313, had failed to keep the following SAA containers closed:
  - a. In the Blasting and Painting Area, one 55-gallon container of air pollution control device sludge, which is a D006 hazardous waste exceeding toxicity limits for cadmium;
  - b. In a metal locker in the Paint Shop, one 55-gallon container of spent aerosol cans, a F003, F005, D001, D005, D006, D007, D008, D018 hazardous waste;
  - c. In a metal locker in the Paint Shop, one 55-gallon container of waste paint, a F003, F005, D001, D005, D006, D007, D008, D018 hazardous waste.
  
66. The EPA therefore alleges that Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)].
  
67. At the time of the joint CEI, the Respondent failed to mark the following containers, which were located in SAAs at the Facility, either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
  - a. Two Gansow CT100 walk-behind floor scrubbers, each with a 25-gallon waste storage tank containing a D008 hazardous waste from cleaning the floors located in the Heavy Equipment Maintenance area, within the area designated Facility #313;
  - b. One Smart 2000 ride-on floor scrubber with a 55-gallon waste storage tank, containing a D008 hazardous waste from cleaning the floors located in the Heavy Equipment Maintenance area, within the area designated Facility #313;
  - c. Three 5-gallon (approx.) rolling mop buckets, containing a D008 hazardous waste, located in the Heavy Equipment Maintenance area, within the area designated Facility #313;
  - d. Shop-vacuums used at multiple locations to clean up, inter alia, spilled spent blast media exceeding toxicity limits for cadmium, a D006 characteristic hazardous waste; and
  - e. One green 55-gallon drum of air pollution control device sludge, a hazardous waste exceeding the toxicity limits for cadmium (D006) and at times chromium (D007), located in the rear of the blasting booth in the Blasting and Painting area, within the area designated Facility #313.

68. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(ii)].
69. At the time of the joint CEI, Respondent was storing two 55-gallon drums (Drum numbers 196283, and 196274), of spent blasting media mixed with sludge, which is a D006 and/or D007 hazardous waste, exceeding the TCLP toxicity limits for cadmium (D006) and at times chromium (D007), in the Rescue Squadron Storage Area in Facility #313. At least one of the drums had been stored at the facility since June 12, 2013.
70. The EPA therefore alleges Respondent violated Sections 403.721 and 430.727 of the Florida Statutes, Fla. Stat. §§ 403.721, and 430.727(1)(b) [Section 3005 of RCRA], codified at Fla. Admin. Code Ann. r. 62-730.220(1) [40 C.F.R. § 270.10] and Fla. Admin. Code Ann. r. 62-730.240(1)(b) [40 C.F.R. § 270.(1)(c)], no person shall begin operation of a hazardous waste treatment, storage, or disposal facility without first properly applying for and receiving a valid operation permit prior to treating, storing, or disposing of any hazardous waste.
71. At the time of the joint CEI, the inspectors observed that Respondent had failed to label or mark clearly with the words “Used Oil” the following containers and aboveground tanks used to store used oil at the Facility:
- a. Numerous oil drain pans and rolling used oil containers in Heavy Equipment Maintenance area, within the area designated Facility #313;
  - b. Small portable used oil containers in the Auto Hobby Shop, within the area designated Facility #331; and
  - c. A 55-gallon used oil drum on the Inspection Deck, with in the area designated Facility #751.
72. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-710.210(2) [40 C.F.R. § 279.22(c)(1)], by storing used oil in containers that were not labeled or marked clearly with the words “Used Oil.”

## **V. TERMS OF AGREEMENT**

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

73. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
74. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

75. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
76. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
77. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
78. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
79. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
80. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program, and further asserts that it has incorporated the following changes into its waste-handling procedures:
  - a. All hazardous spent blast media will be managed as hazardous waste in compliance with RCRA;
  - b. Containers with individual container numbers will be used for the accumulation and storage of hazardous waste. Facility 947 will provide and/or be made aware of each container number and will record the individual container number in the operating record;
  - c. Following the pick-up of hazardous waste containers, all such containers will remain sealed for transportation and will not be opened while at Facility 947;
  - d. Vacuums, floor scrubbers, and mop buckets at accumulation sites will be labeled with their shop location and dedicated use or process; and
  - e. The hazardous waste site listing will be updated at least annually, and included in the Facility specific Contingency Plan.
81. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
82. Each party will pay its own costs and attorneys' fees.

## VI. PAYMENT OF CIVIL PENALTY

83. Respondent consents to the payment of a civil penalty in the amount of **FORTY THOUSAND FIVE HUNDRED DOLLARS (\$40,500.00)**, which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
84. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.
85. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

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, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

86. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Brooke York, Environmental Engineer  
Hazardous Waste Compliance and Enforcement Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division, US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

87. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

## **VII. PARTIES BOUND**

88. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
89. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
90. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

### **VIII. RESERVATION OF RIGHTS**

91. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
92. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
93. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

### **IX. OTHER APPLICABLE LAWS**

94. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

### **X. SERVICE OF DOCUMENTS**

95. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Gregory D. Luetscher  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9677  
luetscher.greg@epa.gov

96. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Laurie Fisher  
Chief, Environmental Compliance  
45 CES/CEIE  
Patrick Air Force Base  
1224 Jupiter Street  
Patrick Air Force Base, Florida 32925-3343

#### **XI. SEVERABILITY**

97. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

#### **XII. EFFECTIVE DATE**

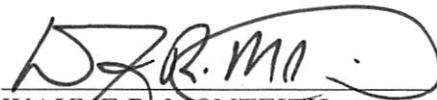
98. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.



*In the Matter of United States Department of the Air Force, Patrick AFB, Docket No. RCRA-04-2016-4001(b):*

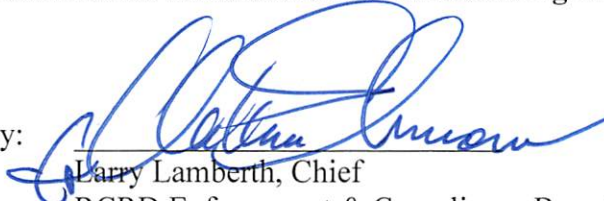
**AGREED AND CONSENTED TO:**

**United States, Department of the Air Force**

By:   
WAYNE R. MONTEITH  
Brigadier General, USAF  
Commander, 45th Space Wing

Dated: 24 JUN 16

**United States Environmental Protection Agency**

By:   
Larry Lamberth, Chief  
RCRD Enforcement & Compliance Branch  
RCR Division

Dated: 7/7/2016

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2016-4001(b)
United States	)	
Department of the Air Force	)	Proceeding Under Section 3008(a) of the
Patrick Air Force Base	)	Resource Conservation and Recovery Act,
1224 Jupiter Street	)	42 U.S.C. § 6928(a)
Patrick Air Force Base, Florida	)	
EPA ID No.: FL2570024404	)	
	)	
Respondent	)	
_____	)	

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 18<sup>th</sup> day of July, 2016.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), *In the Matter of United States Department of the Air Force, Patrick Air Force Base, Docket No. RCRA-04-2016-4001(b)*, and have served the parties listed below in the manner indicated:

Gregory D. Luetscher  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

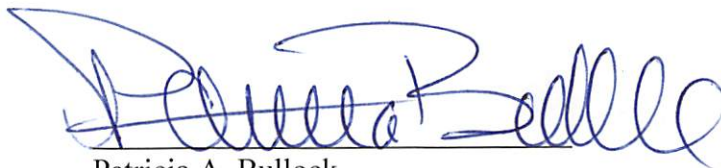
Quantindra Smith  
Enforcement and Compliance Branch  
RCR Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Laurie Fisher  
Chief, Environmental Compliance  
45 CES/CEIE  
Patrick Air Force Base  
1224 Jupiter Street  
Patrick Air Force Base, Florida 32925-3343

(Via Certified Mail - Return  
Receipt Requested)

Date: 7-19-16



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511