



authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with Section 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and Kincaid Project Group, the Municipality of Anchorage, Land Design North, and Roger Hickel Contracting, Inc., (Respondents) hereby agree to issuance of the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of RCRA.

2.3. The State of Alaska has not been granted final authorization to administer and enforce a hazardous waste program pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b).

## **III. ALLEGATIONS**

3.1. At all times pertinent to the violations alleged in this action, Respondents were the owners and/or operators and/or generators at the former Kincaid Park Biathlon range site (Kincaid Park), located in Anchorage, Alaska, where hazardous waste was generated. Kincaid Park is a “facility” as defined in 40 C.F.R. § 260.10.

3.2. Respondents are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, and are transacting business in the State of Alaska.

3.3. Respondents generated, stored, disposed, or otherwise handled hazardous waste as defined in Sections 1004 of RCRA, 42 U.S.C. 6903(5).

3.4. The violations alleged herein are based on information collected during inspections of the Kincaid Park, facility conducted by EPA on July 16, 2008, and provided in Respondents’ April 10, 2009, response to EPA’s January 27, 2009, Request for Information issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6907.

**COUNT I. Failure to Determine if a Solid Waste is a Hazardous Waste**

3.5. The regulation at 40 C.F.R § 262.11 requires that a person who generates a solid waste must determine if that waste is a hazardous waste.

3.6. On May 8 and 9, 2008, during the closure of a biathlon range at Kincaid Park, Respondents generated waste soil and debris, which is a solid waste within the meaning of RCRA. On July 15, 2008, Respondents identified the waste soil and debris as a D008 hazardous waste. Respondents did not determine if this solid waste was a hazardous waste prior to July 15, 2008.

3.7. Respondents’ failure to determine if the waste soil and debris is a hazardous waste is a violation of 40 C.F.R. § 262.11.

**COUNT II. Illegal Storage and Disposal of Hazardous Waste**

3.8. An owner and/or operator of a facility that stores or disposes of hazardous waste must have a permit or interim status as required by Section 3005 of RCRA, 42 U.S.C. § 6925,

and 40 C.F.R. § 270.1(c).

3.9. On May 8 and 9, 2008, Respondents generated approximately 35 cubic yards of waste soil and debris by removing it from the northern two-thirds of the target range area of the former biathlon range at Kincaid Park. The waste soil and debris was a D008 hazardous waste due to lead contamination.

3.10. As the waste was generated, it was disposed of in a wastepile a few yards west of the excavation. On May 12, 2008 the wastepile was moved to a location south of the main work area. This second wastepile was placed on a 6 mil plastic liner and partially covered with another plastic liner. Respondents stored this waste at Kincaid Park in the second wastepile until September 24, 2008.

3.11. Between May 21, 2008 and June 6, 2008, Respondents disposed of an unknown quantity of hazardous waste soil and debris by removing it from the target range area and floor of the former biathlon range at Kincaid Park and spreading it throughout the site during cut and fill operations. In addition, any hazardous waste soil and debris remaining in the location of the original wastepile was also removed and disposed of during these cut and fill operations.

3.12. Respondents' storage and disposal of hazardous waste without a permit or interim status is a violation of Section 3005 of RCRA and 40 C.F.R. § 270.1(c).

**COUNT III. Failure to Comply with 40 C.F.R. Part 268 Land Disposal Restrictions**

3.13. 40 C.F.R. Part 268 sets forth requirements for hazardous waste that is land disposed. These requirements apply to persons who generate or transport hazardous waste, as

well as owners and operators of hazardous waste treatment, storage, and disposal facilities.

These requirements include, but are not limited to the following:

(a) 40 C.F.R. § 268.7(a)(1) requires, among other things, that a generator of hazardous waste must determine if the waste needs to be treated before it can be land disposed.

(b) 40 C.F.R. § 268.9(a) requires, among other things, that the initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under 40 C.F.R. Part 268, Subpart D.

(c) 40 C.F.R. § 268.9(c) requires, among other things, that a prohibited waste which exhibits a characteristic under 40 CFR Part 261, Subpart C may not be land disposed unless the waste complies with the treatment standards under 40 C.F.R. Part 268, Subpart D.

(d) 40 C.F.R. § 268.40(a) requires, among other things, that a prohibited waste identified in the table “Treatment Standards for Hazardous Wastes” may be land disposed only if it meets the requirements found in the table; D008 nonwastewater hazardous waste must be treated to 0.75 mg/L lead by TCLP, and must also meet 40 C.F.R. § 268.48 standards.

(e) 40 C.F.R. § 268.48 requires, among other things, that D008 nonwastewater hazardous waste must be treated to 0.75 mg/L lead by TCLP.

3.14. At the time of generation, May 8 and 9, 2008, Respondents failed to determine if the waste soil and debris needed to be treated prior to land disposal, and failed determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the

applicable treatment standards. On May 8, 9, and 12, 2008, Respondents disposed of D008 waste soil and debris without meeting the treatment standard of 0.75 mg/L lead by TCLP.

3.15. Respondents' failure to determine if the D008 waste soil and debris needed to be treated prior to land disposal, to determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards, and to treat the waste to the applicable treatment standards prior to land disposal constitute violations of 40 C.F.R. § 268.7(a)(1), 40 C.F.R. § 268.9(a), 40 C.F.R. § 268.9(c), 40 C.F.R. § 268.40(a) and 40 C.F.R. § 268.48.

**COUNT IV. Failure to Obtain an EPA Identification Number**

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

3.17. On May 8, 2008, Respondents began storing and disposing of D008 hazardous waste at Kincaid Park. On July 24, 2008, the Municipality of Anchorage applied for an EPA identification number for the facility. EPA issued an identification number to the Kincaid Park facility on July 25, 2008.

3.18. Respondents' failure to obtain an EPA identification number prior to the storage and disposal of hazardous waste is a violation of 40 C.F.R. § 262.12 (a).

3.19. When EPA determines that any person has violated or is in violation of Subtitle C of RCRA, EPA may, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issue an order

assessing a civil penalty for any past or current violation of Subtitle C of RCRA, and require compliance immediately or within a specified time period.

#### **IV. CONSENT AGREEMENT**

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in Part III of this CAFO.

4.3. For the purposes of the proceeding, Respondents expressly waive any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of the CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11., below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), and based on the allegations above, the seriousness of the violations, and any good faith efforts to comply with applicable requirements, Complainant has determined and Respondents agree that an appropriate penalty to settle this action is SIXTY-THREE THOUSAND THREE HUNDRED FOUR DOLLARS (\$63,304.00). Each of the four Respondents shall pay FIFTEEN THOUSAND EIGHT HUNDRED TWENTY SIX DOLLARS (\$15,826).

4.7. In settlement of the violations alleged in Section III above, Respondents consent to the issuance of the Final Order set forth in Part V below, and each Respondent agrees to pay

the civil penalty set forth in Paragraph 4.6 above within 30 days of the effective date of the Final Order, and to undertake the following actions immediately upon issuance of the Final Order:

(a) Within 90 days of the effective date of the Final Order Respondent must submit to EPA a closure plan in accordance with 40 C.F.R. Part 265, Subpart G for the areas subject to closure as a result of the violations alleged in this CAFO. Upon approval by EPA of the closure plan, Respondents shall implement the closure plan as approved. In the event that Respondents or EPA determines that the hazardous waste management area addressed by this closure plan must be closed as a landfill, subject to the requirements of 40 C.F.R. §§ 265.117 through 265.120, then within 60 days of such determination, Respondents must:

i. Submit to EPA a post-closure plan in accordance with 40 C.F.R. § 265.118, and upon approval, the closure plan must be implemented in accordance with its terms;

ii. Comply with the other post-closure requirements for landfills 40 C.F.R. §§ 265.117 through 265.120; and.

iii. Establish and maintain financial assurance for post-closure in accordance with 40 C.F.R. Part 265, Subpart H.

(b) Within 60 days of completion of the closure activities in the areas addressed in the closure plan, Respondents must submit to EPA certification of closure as required by the appropriate state and federal regulations.

(c) EPA and its authorized representatives shall have access to Respondents' facility in accordance with 42 U.S.C. § 6927(a) to monitor Respondents' implementation of and compliance with the terms of this Agreement.



(d) All work to be performed pursuant to the CAFO shall be under the direction and supervision of qualified personnel. Respondents shall provide a copy of the CAFO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this CAFO. Respondents shall provide a copy of this CAFO to any successor(s) in interest prior to any transfer of ownership or operation of the Facility.

(f) Attached to this CAFO is a Certificate of Completion which must be executed by Respondents and returned to EPA at the address set forth in Paragraph 4.9 below within fourteen (14) days after full compliance with all of the provisions of Paragraph. 4.7.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

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

Respondents shall note on the check the title and docket number of this case.

4.9. Respondents shall submit a photocopy of the check described above to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900 (ORC-158)  
Seattle, Washington 98101

Kevin Schanilec  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900 (OCE-127)  
Seattle, Washington 98101

4.10. If Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondents fails to pay the penalty assessed, Respondents may be subject to a civil action to collect the assessed penalty, together with interest, fees, costs, and additional penalties described below.

4.11. If Respondents fail to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.7, Respondents shall be responsible for payment of the amounts described below:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. The penalty described Paragraph 4.6 above, including any additional costs incurred under Paragraph 4.11 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

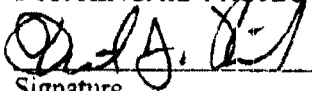
4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of any issue related to any federal, state, or local permit.

4.14. By entering into and performing this CAFO, Respondents are not waiving releasing or satisfying, in whole or in part, any claims, defenses, or contribution, indemnity, defense, contract, tort or equitable fault allocation rights or remedies which they may jointly or severally have, or later acquire, against one another or any other person other than Complainant which arise out of, result from, or are based upon any of the alleged occurrences which led to this CAFO.

4.15. The undersigned representatives of Respondents each represent that he or she is duly authorized to enter into the terms and conditions of this CAFO and to bind Respondents to the terms of this CAFO.

4.16. The above provisions are STIPULATED AND AGREED UPON by Respondents and Complainant.

FOR KINCAID PROJECT GROUP

  
Signature

Dated: 9/30/10

Print Name: DAVID PARISH

Title: BOARD CHAIR

FOR THE MUNICIPALITY OF ANCHORAGE



Signature

Dated: 9/30/10

Print Name: George Vakalis

Title: Municipal Manager

FOR LAND DESIGN NORTH

*Wm Dwayne Adams, Jr*

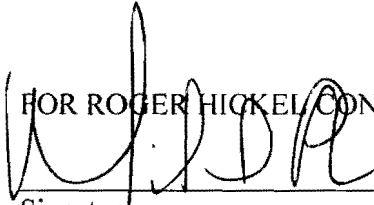
Signature

Dated: *9/30/2010*

Print Name: *Wm Dwayne Adams, Jr*

Title: *President*

FOR ROGER HICKEL CONTRACTING, INC.

  
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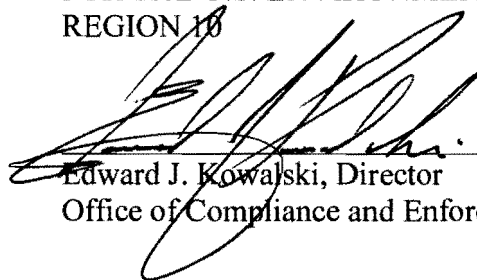
Signature

Print Name: MICHAEL I. SHAW

Title: PRESIDENT

Dated: SEPT 30 - 2010

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10



Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: 10/1/2010

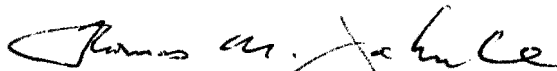
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims pursuant to RCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 4<sup>th</sup> day of October, 2010.



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Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kincaid Project Group	)	
Anchorage, Alaska	)	
	)	
Municipality of Anchorage	)	Docket No. RCRA-10-2010-0273
Anchorage, Alaska	)	
	)	
Land Design North	)	CERTIFICATION
Anchorage, Alaska	)	
	)	
Roger Hickel Contracting, Inc.	)	
Anchorage, Alaska	)	
	)	
Respondents.	)	
_____	)	

\_\_\_\_\_ certifies under penalty of  
perjury that the following statement is true, accurate and correct:

Each and every one of the requirements contained Paragraph 4.7 in the  
Consent Agreement and Final Order issued on \_\_\_\_\_ to the  
above named Respondents has been fully and timely complied with.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_ 2010

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
(Title)

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of Kincaid Project Group., Docket No. RCRA-10-2010-0273**, was filed with the Regional Hearing Clerk on October 6, 2010.

On October 6, 2010, the undersigned certifies that a true and correct copy of the document was placed in the mailbox of:

Robert Hartman, Esq.  
U.S. EPA  
Region 10, Suite 900  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on October 6, 2010, to:


Peter Van Tuyn  
Bessenvey & Van Tuyn, L.L.C.  
310 K. Street, Suite 200  
Anchorage, Alaska, 99501  
Counsel for Kincaid Project Group

Brian Stibitz  
Reeves, Amodio LLC  
500 L Street, Suite 300  
Anchorage, AK 99501  
Counsel for the Municipality of Anchorage

Nelson Page  
Burr, Pease & Kurtz  
810 N. Street, Suite 300  
Anchorage, Alaska 99501  
Counsel for Land Design, North, Inc.

Terrance A. Turner  
Turner & Mede, P.C.  
1500 W. 33<sup>rd</sup> Avenue, Suite 200  
Anchorage, Alaska 99503  
Counsel for Roger Hickel Contracting, Inc.

DATED this 6<sup>th</sup> day of October 2010.

  
Signature  
Print Name *Carol D. Kennedy*  
Regional Hearing Clerk  
EPA Region 10