

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2019 NOV 22 PM 12:33

In the Matter of:

Yingling Aircraft, Inc. d/b/a
Yingling Aviation,

Respondent.

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Docket No. RCRA-07-2020-0009

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Yingling Aircraft, Inc. d/b/a Yingling Aviation (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Kansas Statutes Annotated 65-3431, Sections 3002, 3005, and 3007 of RCRA, 42 U.S.C §§ 6922, 6925 and 6927, and Kansas regulations which incorporate the following federal regulations by reference: the standards applicable to generators of hazardous waste (40 C.F.R. Part 262), the interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 C.F.R. Part 265), and other Kansas regulations set forth below.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Yingling Aircraft, Inc. d/b/a Yingling Aviation, a corporation authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

9. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

10. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

11. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

12. The regulation at 40 C.F.R. § 260.10 defines “disposal” 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.

13. “Solid waste” is defined at 40 C.F.R. § 261.2.

14. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

15. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

16. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

17. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

18. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

19. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$99,681 for

violations that occur after November 2, 2015, and are assessed after February 6, 2019. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

20. Respondent is a corporation and authorized to conduct business within the State of Kansas. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent owns and operates a facility that is located at 1440 South Ridge Road in Wichita, Kansas (“facility”), which provides maintenance, repairs, and service on aircraft propellers at the facility.

22. On or about October 7, 2015, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, of its status as a small quantity generator (SQG) of hazardous waste. On or about March 20, 2018, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, of its status as a large quantity generator of hazardous waste.

23. On or about December 17-18, 2019, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, and at all times relevant herein, as an SQG of hazardous waste, a Small Quantity Handler of universal waste, and a used oil generator.

24. Respondent has been assigned the following EPA ID Number: KSR 353944297.

Violations

25. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

26. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

27. Section 3005 of RCRA, 42 U.S.C. § 6925, K.S.A. 65-3431 and the regulations at 40 C.F.R. Part 270 and K.A.R. 28-31-270 require each person owning or operating a facility for

the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

28. At the time of the inspection, Respondent did not have a permit or interim status.

Generator Requirements

29. The regulations at 40 C.F.R. § 262.34(d) state that an SQG may accumulate hazardous waste on-site for one hundred eighty (180) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(d)(1)-(5) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to Store Hazardous Waste in a Container

30. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. §§ 262.34(a)(2) and (3), require an SQG to store accumulated hazardous waste in a container and the regulation at 40 C.F.R. § 262.34(d)(2) requires that an SQG's use and management of containers comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

31. At the time of the inspection, the inspector observed Respondent storing accumulated bead blast waste, a D006 and D008 solid hazardous waste, on the floor of the bead blast room, rather than in a container that complied with Subpart I of 40 C.F.R. Part 265.

Failure to label hazardous waste accumulation containers

32. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(a)(3), require an SQG to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

33. At the time of the inspection, the inspector observed in the hazardous waste central accumulation area one 55-gallon container of Alodine 1200S and water rinse, a D002 and D007 solid hazardous waste, that was not marked with the words "Hazardous Waste."

Failure to Establish Hazardous Waste Training Program

34. The regulations at K.A.R. 28-31-262a(d)(1) require an SQG to establish a hazardous waste training program for its employees.

35. At the time of the inspection, Respondent had not established a hazardous waste training program for its employees.

Failure to Maintain Adequate Aisle Space

36. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(d)(4) require, in part, that an SQG comply with Subpart C of 40 C.F.R. Part 265.

37. Pursuant to 40 C.F.R. § 265.35, as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

38. At the time of the inspection, it was discovered that Respondent failed to maintain adequate aisle space in the hazardous waste storage area. The inspector observed six containers of hazardous waste in the central accumulation area which were blocked by a black metal propeller rack and empty propane cylinder, and therefore did not allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to this area of facility operation in an emergency.

Failure to Familiarize Hospitals with Properties of Hazardous Waste

39. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 265.37(a)(4), require an SQG to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

40. At the time of the inspection, Respondent had not made arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

Failure to Conduct Weekly Inspections

41. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(d)(2), require that an SQG's use and management of containers comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

42. Pursuant to 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265, Subpart I, the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

43. At the time of the inspection, Respondent had not conducted weekly inspections of the hazardous waste containers in the central accumulation area prior to April 4, 2018.

Satellite Accumulation

44. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(c)(1), allow a generator to accumulate as much as fifty-five (55) gallons of hazardous

waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as “satellite accumulation.” At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

Failure to label satellite accumulation containers

45. The regulation at K.A.R. 28-31-262(c)(7) requires that satellite accumulation containers be marked with the words “Hazardous Waste.”

46. At the time of the inspection, the inspector observed in the blade dip room one 30-gallon container of Alodine 1200S and water rinse, a D002 and D007 hazardous waste, that was not marked with the words “Hazardous Waste.”

47. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 28 through 46 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3431.

CONSENT AGREEMENT

48. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

49. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to the performance of the compliance actions described below.

50. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

51. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

52. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twenty-Four Thousand Dollars (\$24,000).

53. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

54. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Britt Bieri, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

55. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be

assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

56. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

57. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order,

- a. if Respondent is operating as a large quantity generator of hazardous waste, Respondent shall:
 - i. submit documentation of the establishment of a hazardous waste training program that complies with the requirements of K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 265.16, as referenced in 40 C.F.R. § 262.34(a)(4); and
 - ii. submit documentation that all current employees that handle hazardous waste at the facility have undergone hazardous waste training in accordance with the requirements of K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 265.16, as referenced in 40 C.F.R. § 262.34(a)(4).
- b. if Respondent is operating as small quantity generator of hazardous waste, Respondent shall:
 - i. submit documentation of the establishment of a hazardous waste training program that complies with the requirements of K.A.R. 28-31-262a(d) and K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(d)(5)(iii); and
 - ii. submit documentation that all current employees that handle hazardous waste at the facility have undergone hazardous waste training in accordance with the requirements of K.A.R. 28-31-262a(d) and K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(d)(5)(iii).

58. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph to the following address:

Rebecca Wenner, ECAD/CB/RS
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

59. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

60. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

61. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

62. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

63. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty Thousand Thirty-Nine Dollars (\$60,039) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

64. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), 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 Respondent's facility.

65. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should 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 and the environment.

66. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

67. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

68. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

69. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

70. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

71. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

72. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

11/22/19

Date



David Cozad, Director
Enforcement and Compliance Assurance Division

11/22/19

Date



Britt Bieri
Office of Regional Counsel

RESPONDENT:

YINGLING AIRCRAFT, INC. D/B/A YINGLING AVIATION

11/18/19
Date

Andrew Nichols
Signature

ANDREW NICHOLS
Printed Name

PRESIDENT
Title

FINAL ORDER

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.


~~Karina Borromeo~~ Kathleen Clever
Regional Judicial Officer

11/22/19
Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Britt Bieri

Copy via Email to Respondent's Attorney:

Milo Unruh

Copy via Email to the State of Kansas:

Julie Coleman, Director
Bureau of Waste Management
Kansas Department of Health and Environment

Ken Powell
Compliance and Enforcement, Waste Reduction, and Assistance Section
Kansas Department of Health and Environment

Dated this 22 day of November, 2019.


Signed