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EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
Corvias Air Force Living, LLC) DOCKET NO. RCRA-10-2017-0054
Respondent)
Eielson Air Force Base, Alaska)
Facility.)
_____)
)

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928.

1.2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may directly enforce the federal hazardous waste program in the State of Alaska.

1.3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Corvias Air Force Living, LLC ("Respondent") agrees to

issuance of the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of EPA's factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 At all times relevant to the allegations set forth herein, the United States Department of the Air Force ("Air Force") has been and is the owner and operator of Eielson Air Force Base, located at 2310 Central Avenue, Eielson Air Force Base, Alaska 99702 ("Facility").

3.2 At all times relevant to the allegations set forth herein, Respondent, a limited liability corporation doing business in Alaska, has been and is the owner of privatized family housing units and licensee and operator of ancillary facilities located on certain land leased by the Air Force to Respondent pursuant to the Department of the Air Force Lease of Property on Eielson Air Force Base, Alaska, dated as of September 1, 2013, hereinafter referred to as the

“Corvias Leased Premises.” The Corvias Leased Premises includes the Corvias Maintenance Shop.

3.3 Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

3.4 40 C.F.R. § 261.2(a)(1) defines “solid waste” as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34.

3.5 40 C.F.R. § 261.3 defines “hazardous waste” as a “solid waste” (as defined in 40 C.F.R. § 261.2) that has not been excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.6 40 C.F.R. § 260.10 defines a “generator” 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.

3.7 40 C.F.R. § 260.10 defines “facility” as all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.8 The Facility is a “facility” as that term is defined in 40 C.F.R. § 260.10.

3.9 At all times relevant to the allegations set forth herein, the Air Force is and has been an “owner” and “operator” of the Facility, as those terms are defined at 40 C.F.R. § 260.10.

3.10 At all times relevant to the allegations set forth herein, Respondent is and has been the licensee and “operator” of the Maintenance Shop of the Corvias Leased Premises, as that term is defined at 40 C.F.R. § 260.10.

3.11 The Air Force is a large-quantity generator (“LQG”) of hazardous waste that generates hazardous waste at the Facility in an amount greater than 1,000 kilograms per month, and is assigned EPA ID AK1570028646.

3.12 The Air Force is a small quantity handler of universal waste as defined in 40 C.F.R. § 273.9.

3.13 Respondent is a small quantity handler of universal waste as defined in 40 C.F.R. § 273.9.

3.14 At all times relevant to the allegations set forth herein, EPA has determined that Respondent is and has been a “co-generator” with the Air Force, as that term has been explained at 45 F.R. 72026-27 (1980), for solid and hazardous wastes generated at the Corvias Leased Premises.

3.15 On May 11 – 13, 2015, an authorized representative of EPA (“EPA inspector”) conducted an inspection of the Facility, including the Corvias Maintenance Shop, to determine compliance with RCRA.

3.16 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

Count 1: Failure to Properly Manage Universal Waste

3.17 The allegations in each of the preceding paragraphs of this Consent Agreement are realleged and incorporated by reference herein.

3.18 "Universal waste" includes, among other things, "lamp(s)" as that term is defined at 40 C.F.R. §§ 273.5 and 273.9.

3.19 40 C.F.R. § 273.13(d)(1) requires that a small quantity handler of universal waste must manage lamps, as that term is defined in 40 C.F.R. § 273.9, in a way that prevents releases of any universal waste or component of a universal waste to the environment. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

3.20 Pursuant to 40 C.F.R. § 273.14(e), a small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste. Each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

3.21 40 C.F.R. § 273.15(c) requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

3.22 At the time of the EPA Inspection, the EPA inspector observed a container of four-foot lamps that was not closed, that was not labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." Facility staff indicated that the universal waste lamps were generated at the Corvias Maintenance Shop.

3.23 At the time of the EPA Inspection, the EPA inspector observed two individual eight-foot lamps that were not in containers or packages which were structurally sound or adequate to prevent breakage, not labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." Facility staff indicated that these lamps were generated at the Corvias Maintenance Shop

3.24 At the time of the EPA Inspection, the Respondent could not demonstrate the length of time it had been accumulating these universal waste lamps at the Corvias Maintenance Shop located at the Facility.

3.25 Respondent violated 40 C.F.R. § 273.13(d)(1) by failing to manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

3.26 Respondent violated 40 C.F.R. § 273.14(e) by failing to properly label or mark the container of four-foot lamps and two individual eight-foot lamps with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

3.27 Respondent violated 40 C.F.R. § 273.15(c) by failing to demonstrate the length of time that the universal waste lamps had been accumulated from the date it became a waste or was received at the Facility.

Count 2: Failure to Comply with Recordkeeping Requirements

3.28 The allegations in each of the preceding paragraphs of this Consent Agreement are realleged and incorporated by reference herein.

3.29 40 C.F.R. § 262.23(a) requires that a generator must keep the signed copy of each hazardous waste manifest from the designated facility as a record for at least three years from the date it was accepted by the initial transporter.

3.30 40 C.F.R. § 262.40(a) requires that a generator must keep a copy of each hazardous waste manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years or until the generator receives a signed copy from the designated facility which receives the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

3.31 At the time of the EPA Inspection, Respondent informed the EPA inspector that it generated waste aerosol cans at the Corvias Maintenance Shop. These spent aerosol cans are hazardous waste as defined by 40 C.F.R. § 261.3.

3.32 At the time of the EPA Inspection, Respondent did not have any records that demonstrated how it was disposing of spent aerosol spray cans. The Respondent could not demonstrate that it had kept a signed copy of any hazardous waste manifests from a designated facility for the past three years.

3.33 Respondent violated 40 C.F.R. § 262.23(a) by failing to maintain the hazardous waste manifests signed by the designated facility for three years from the date the spent aerosol cans were accepted by the initial transporter.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$4,500 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and 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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC 113
Seattle, Washington 98101
young.teresa@epa.gov

Cheryl Williams
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Mail Stop OCE 101
Seattle, Washington 98101
williams.cheryl@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, 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 attached hereto.

4.8.2. 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.

4.9. 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 shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8 and 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signatures of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

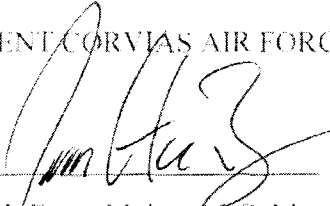
4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/2/17

FOR RESPONDENT CORVIAS AIR FORCE LIVING, LLC:

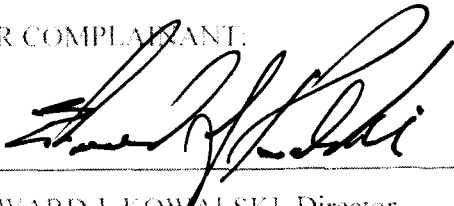


Corvias Air Force Living, LLC Member
By: James Heath Burleson
Senior Vice President and Authorized Representative

DATED:

3/6/2017

FOR COMPLAINANT:



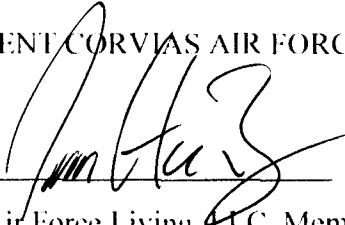
EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/2/17

FOR RESPONDENT CORVIAS AIR FORCE LIVING, LLC:



Corvias Air Force Living, LLC, Member
By, James Heath Burleson
Senior Vice President and Authorized Representative

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. RCRA-10-2017-0054
Corvias Air Force Living, LLC)	
Respondent)	FINAL ORDER
)	
Eielson Air Force Base, Alaska)	
Facility,)	
_____)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 9th day of March, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Corvias Air Force Living, LLC Docket No.: RCRA-10-2017-0054**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

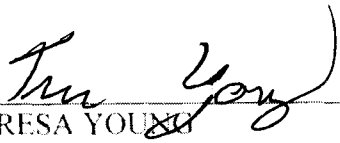
The undersigned certifies that a true and correct copy of the document was delivered to:

Gracie Pendleton
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
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 to:

Corvias Air Force Living, LLC, Member
By: James Heath Burleson
Senior Vice President and Authorized Representative
1405 South County Trail, Suite 530
East Greenwich, RI 02818

DATED this 9 day of March, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10