



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 29 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Troy E. Giles, Esq.  
Reinhart Boerner Fan Deuren s.c.  
N16 W23250 Stone Ridge Drive, Suite 1  
Waukesha, Wisconsin 53188-1194  
[TGiles@reinhartlaw.com](mailto:TGiles@reinhartlaw.com)

Re: Consent Agreement and Final Order  
Veolia ES Technical Solutions, LLC  
Docket No: **RCRA-05-2019-0012**

Dear Mr. Giles:

Attached please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on July 29, 2019, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$40,872 in the manner prescribed in paragraph 65 of the CAFO, and reference all checks with the docket number **RCRA-05-2019-0012**. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions, your staff may contact me at (312) 886-0989 or at [gangwisch.bryan@epa.gov](mailto:gangwisch.bryan@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Gangwisch".

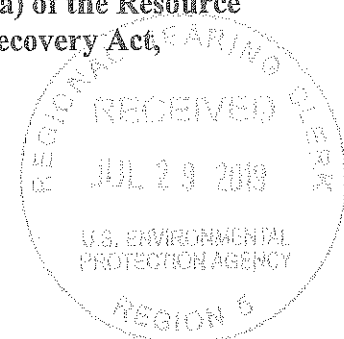
Bryan Gangwisch  
Land and Chemicals Enforcement and Compliance Assurance Branch

Enclosure

cc: Steven Sisbach ([steven.sisbach@wisconsin.gov](mailto:steven.sisbach@wisconsin.gov)) (w/CAFO)  
Michael Ellenbecker ([michael.ellenbecker@wisconsin.gov](mailto:michael.ellenbecker@wisconsin.gov)) (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No. RCRA-05-2019-0012</b>
	)	
<b>Veolia ES Technical Solutions, LLC</b>	)	<b>Proceeding to Commence and Conclude</b>
<b>Menomonee Falls, Wisconsin,</b>	)	<b>an Action to Assess a Civil Penalty</b>
	)	<b>Under Section 3008(a) of the Resource</b>
	)	<b>Conservation and Recovery Act,</b>
<b>Respondent.</b>	)	<b>42 U.S.C. § 6928(a)</b>
_____	)	



**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Veolia ES Technical Solutions, LLC, a limited liability company doing business in the State of Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at Wis. Admin. Code Chapters NR 660 - 679 (2007) (40 C.F.R. Parts 260 – 279).

#### **Statutory and Regulatory Background**

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Among other requirements, U.S. EPA promulgated regulations at 40 C.F.R. Part 270, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 3005(a), 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 to have a permit issued under that Section.

14. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

16. Under Section 3006(d) of RCRA, 42 U.S.C. § 6926(d), *Effect of State Permit*, any action taken by a State under a hazardous waste program authorized under that section has the same force and effect as an action taken by the Administrator under subchapter III of RCRA.

17. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that

occurred after January 12, 2009 through November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

18. Respondent was and is a “person” as defined by Wis. Admin. Code § NR 660.10(90), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. Respondent is the “owner” or “operator,” as those terms are defined under Wis. Admin. Code § NR 660.10(88) and (87), and 40 C.F.R. § 260.10, of a facility located at W124 N9451 Boundary Road, Menomonee Falls, Wisconsin 53051 (the Facility).

20. On August 28-29, 2014, U.S. EPA conducted an inspection of the Facility.

21. The Facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

22. At all times relevant to this CAFO, Respondent created solid wastes including spent laboratory wastes, solvents, acids, flammables, personal protective equipment, stabilization and treatment wastes, and hazardous waste solids.

23. Respondent’s processes at the facility produce several hazardous wastes identified or listed in or cause a hazardous waste to become subject to regulation under Wis. Admin. Code Chapter NR 661. [40 C.F.R. Parts 260-270].

24. Respondent is a “generator,” as that term is defined in Wis. Admin. Code § NR 662.10(50) [40 C.F.R. § 260.10].

25. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2014, prior to the inspection, and was a large quantity generator.

26. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Wisconsin regulations as part of the applicable state hazardous waste management program for the state of Wisconsin, or both.

27. The State of Wisconsin issued Respondent a RCRA hazardous waste license on April 3, 2014, and a Final Determination Feasibility and Plan of Operation Report on March 27, 2014, that permit Respondent to treat and store hazardous waste at certain units at the Facility (the State RCRA License). These documents have the same force and effect as a permit EPA issues under RCRA.

28. At all times relevant to this Complaint, Respondent operated a licensed storage facility for hazardous waste. Respondent collected, consolidated, temporarily stored, treated, and transported hazardous waste.

29. At all times relevant to this Complaint, Respondent operated two 90-day hazardous waste container storage areas (the two 90-day areas) and certain other units not covered by the State RCRA license.

30. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

31. During the August 2014 inspection, the inspector observed two 55-gallon drums labeled "hazardous waste" and "F002 and F003" located on a pallet at a unit not covered by the State RCRA License outside the Waste Stabilization Building marked with the wrong accumulation start date.

32. A representative for Respondent corrected the accumulation dates on the two drums described in paragraph 31 during the inspection.

33. During the August 2014 inspection, the inspector reviewed inspection logs that indicated Respondent had not conducted inspections on the four Sundays in April 2014 in areas where the State RCRA license required daily inspection.

34. A review of the records and observations during the inspection indicated that Respondent would accumulate characteristic hazardous waste in roll-off containers in the two 90-day areas until laboratory samples could confirm it met treatment standards after undergoing stabilization treatment.

35. Respondent prepared annual Waste Stabilization Reports that documented the processing of characteristic hazardous waste, including the date Respondent first processed the characteristic hazardous waste from a specific container in the 90-day storage and each date that container's contents were processed until they met the Toxicity Characteristic Leaching Procedure (TCLP) regulatory limits.

36. After the August 2014 inspection, the inspector reviewed Waste Stabilization Reports Respondent provided to determine the length of time Respondent had accumulated characteristic hazardous waste in specific roll-off containers.

37. EPA issued Respondent a Notice of Violation (NOV) on October 6, 2015, alleging certain violations based on EPA's inspection and the review of records.

38. Respondent provided a response to the NOV on November 5, 2015, that, among other things, indicated Respondent was calculating the accumulation date using each date a characteristic waste stream was processed in stabilization, instead of the date treatment successfully met treatment standards; and did not conduct inspections on Sundays or holidays when it did not conduct business.

39. EPA issued Respondent an information request pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, on July 6, 2016, to follow up on Respondent's November 5, 2015 response to the NOV, and obtain additional information.

40. On August 8, 2016, Respondent provided a response to the EPA's July 6, 2016 RCRA Section 3007 information request.

41. The State modified the State RCRA License on May 22, 2017, to allow daily inspection to not be conducted during company holidays and inclement weather for up to four consecutive calendar days.

42. EPA issued a Notice of Intent dated August 23, 2017, notifying Respondent it planned to file an administrative complaint alleging the violations cited in the November 5, 2015 NOV that it enclosed.

43. The parties have exchanged correspondence and held calls and meetings to discuss the allegations and the resolution of this matter.

44. Respondent indicates it no longer accumulates hazardous waste for more than 90 days in the 90-day storage area.

#### Count 1

45. Complainant incorporates paragraphs 1 through 44 of this CAFO as though set forth in this paragraph.

46. Pursuant to 3005(a) or RCRA, 42 U.S.C. § 6925(a), and the regulations at Wis. Admin. Code ch. NR 270 and 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a License.

47. Pursuant to Wis. Admin. Code § NR 662.034(1) - (3) and 40 C.F.R. § 262.34(a), and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous



waste on-site for 90 days or less without having a license or interim status, provided the generator complies with all applicable conditions. Wis. Admin. Code § NR 662.034(1) - (3) and 40 C.F.R. § 262.34(a).

48. If the conditions of Wis. Admin. Code § NR 662.034(1) [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating license under Wis. Admin. Code ch. NR 670 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

49. In order to avoid the need for a license, a large quantity generator must have the date upon which each period of accumulation begins clearly marked and visible for inspection on each container. See Wis. Admin. Code § NR 662.034(1)(b) [40 C.F.R. § 262.34(a)(2)]

50. Respondent failed to satisfy the condition of marking the date upon which each period of accumulation began, when the drums located in the unlicensed area outside the Waste Stabilization Building were marked with the wrong accumulation start date. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating license or interim status.

51. Wis. Admin. Code § NR 662.034(2) says a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of chs. NR 664 and 665 and the license requirements of ch. NR 670 unless the generator has been granted an extension to the 90-day period.

52. Information in the Waste Stabilization Reports and the Respondent's responses to NOV and the RCRA Section 3007 information request indicated Respondent had accumulated hazardous waste over 90 days in containers in the 90 day storage areas.

53. At all times relevant to this Complaint, Respondent accumulated hazardous waste in containers at unlicensed units over 90 days and had not been granted an extension to accumulate hazardous waste for more than 90 days.

54. By accumulating hazardous waste for more than 90 days in the 90-day areas, Respondent became an operator of a storage facility and was required to obtain a hazardous waste storage license that permitted it to store hazardous wastes in these areas. Respondent failed to apply for such a license as required under Wis. Admin. Code §§ NR 670.001(3), 670.010(1) and (4) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

55. At all times relevant to this Complaint, the State RCRA License did not authorize Respondent to store hazardous waste in the 90-day areas or the area where the drums with mismarked accumulation dates were located.

56. As a result of its failure to meet all of the applicable conditions for the generator exemption and accumulating waste for more than 90 days without an extension, Respondent was required to obtain a license for such storage as provided by Wis. Admin. Code § NR 662.034(1), (2) and (3) [40 C.F.R. § 262.34(a), (b) and (c)].

57. Therefore, Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of Wis. Admin. Code §§ NR 662.034(3)(a) and 662.034(3)(a)(1), 670.001, 670.010, and 670.013 [40 C.F.R. §§ 262.34(c)(1) and 262.34(c)(1)(i), 270.1(c), 270.10(a) and (d), and 270.13].

#### Count 2

58. Complainant incorporates paragraphs 1 through 44 of this CAFO as though set forth in this paragraph.

59. At all times relevant to this Complaint, the State RCRA License required the Facility to be operated in accordance with the approved Feasibility and Plan of Operation Report (FPOR), the requirements of ch 291, Wis. Stats., chs. NR 660 to 670, Wis. Admin. Code, and the conditions of that approval.

60. At all times relevant to this Complaint, Appendix A of the FPOR, *Inspection Program Plan*, requires “daily” inspections for certain equipment and areas at the Facility.

61. During the inspection of records, the inspector reviewed inspection logs that indicated Respondent was not conducting inspections on Sundays in April of 2014 (4/6/14; 4/13/14; 4/20/14; 4/27/14) at areas where Appendix A requires daily inspections. FPOR inspection schedule- Appendix A “Inspection Program Plan” requires daily inspection.

62. During the inspection, Respondent’s representatives stated that inspections were not conducted on Sundays.

63. At all times relevant to this Complaint, Respondent was treating, storing or disposing of hazardous waste without complying with a condition of the State RCRA license in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the requirements of Wis. Admin. Code ch. NR 270 [40 C.F.R. Part 270].

#### Civil Penalty

64. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$40,872. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA’s RCRA Civil Penalty Policy, dated June 23, 2003.

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,872 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must state "In re: Veolia ES Technical Solutions, LLC" and the docket number of this CAFO.

66. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Bryan Gangwisch (LR-17J)  
RCRA Branch  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Maria Gonzalez (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5

77 West Jackson Blvd.  
Chicago, IL 60604

67. This civil penalty is not deductible for federal tax purposes.

68. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

69. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### General Provisions

70. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [gonzalez.maria@epa.gov](mailto:gonzalez.maria@epa.gov) (for Complainant), and [TGiles@rcinhardt.com](mailto:TGiles@rcinhardt.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

71. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

72. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

73. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

74. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

75. The terms of this CAFO bind Respondent, its successors, and assigns.

76. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


77. Each party agrees to bear its own costs and attorney's fees in this action.

78. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:**  
**Veolia ES Technical Solutions, LLC**  
**Docket No. RCRA-05-2019-0012**

**Veolia ES Technical Solutions, LLC, Respondent**

6/20/19  
Date

  
\_\_\_\_\_  
Paul McShane  
Senior Vice President, Operations  
Veolia ES Technical Solutions, LLC

In the Matter of:  
Veolia ES Technical Solutions, LLC  
Docket No. RCRA-05-2019-0012

United States Environmental Protection Agency, Complainant

7/25/2019  
Date

Michael D. Harris  
Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division



In the Matter of:  
Veolia ES Technical Solutions, LLC  
Docket No. RCRA-05-2019-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/12/19  
Date

Ann L. Coyle  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the Matter of: Veolia ES Technical Solutions, LLC  
Docket Number: RCRA-05-2019-0012

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number [RCRA-05-2019-0012], which was filed on 7/29/19, in the following manner to the following addressees:

Copy by E-mail to Respondent: Veolia ES Technical Solutions, LLC

Paul.mcshane@veolia.com

Copy by E-mail to  
Attorney for Complainant:

Maria Gonzalez  
Gonzalez.maria@epa.gov

Copy by E-mail to  
Attorney for Respondent:

Troy E. Giles  
TGiles@reinhardtllaw.com

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

July 29, 2019



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5