BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X

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| In the Matter of:<br><br>The United States Department of the Air Force<br><br>and<br><br>The 176th Wing of the Alaska Air National Guard<br><br>and<br><br>Aurora Military Housing III, LLC<br><br>Respondents<br><br>Joint Base Elmendorf-Richardson, Anchorage, Alaska<br><br>Facility. | DOCKET NO. RCRA-10-2017-0064<br><br>**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. Pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), EPA may take enforcement action against departments, agencies, and instrumentalities of the Federal government in the same manner and under the same circumstances as against any other person.

1.3. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA,



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**Seattle, Washington 98101**
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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 enforce the federal hazardous waste program in the State of Alaska.

1.4. 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 the U.S. Department of the Air Force, the 176th Wing of the Alaska Air National Guard, and Aurora Military Housing III, LLC (Respondents) agree 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 the 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.

2.4. Respondents state that none of the Respondents admit liability, but in the interest of settlement agree to resolve this matter by executing this Consent Agreement.

## III. ALLEGATIONS

3.1 Respondents are the United States Department of the Air Force (Air Force), the 176th Wing of the Alaska Air National Guard (AKANG), and Aurora Military Housing III, LLC (Aurora), collectively, "Respondents."

3.2 Respondent Air Force is a department, agency, and/or other instrumentality of the United States.

3.3 Respondent AKANG is a department, agency, and/or other instrumentality of the United States.

3.4 Respondent Air Force 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.

3.5 Respondent AKANG 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.

3.6 Respondent Aurora 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.

3.7 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.

3.8 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).

3.9 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.

3.10 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.

3.11 At all times relevant to the allegations set forth herein, Respondent Air Force is and has been the "owner" and "operator" of Joint Base Elmendorf-Richardson (JBER), the Facility, as those terms are defined at 40 C.F.R. § 260.10.

3.12 At all times relevant to the allegations set forth in this Complaint, Respondent Aurora is and has been an "operator" of Aurora Military Housing, a housing development located at the Facility, including Building 293.

3.13 At all times relevant to the allegations set forth in this Complaint, Respondent AKANG is and has been an "operator" at the Facility, including buildings 16456 (176 MXS/MXMFS) and 17470 (176 AMXS/MXAAA).

3.14 At all times relevant to the allegations set forth in this Complaint, Respondent Air Force and Respondent Aurora have been "co-generators", as that term has been explained at 45 Fed. Reg. 72,026-27 (1980), for solid and hazardous wastes generated at Respondent Aurora's housing at the Facility, including building 293.

3.15 At all times relevant to the allegations set forth in this Complaint, Respondent Air Force and Respondent AKANG have been "co-generators", as that term has been explained at 45

Fed. Reg. 72,026-27 (1980), for solid and hazardous wastes generated at the Facility, including buildings 16456 and 17470.

3.16 Respondent Air Force operates a Treatment, Storage, and Disposal Facility (TSDF), as those terms are defined in 40 C.F.R. § 260.10 and Part 264, at the Defense Logistics Agency Disposition Services Anchorage Treatment, Storage, and Disposal Facility (DLA TSDF) located at 11735 Vandenberg Avenue at the Facility, under a RCRA Part B permit issued by EPA to Elmendorf Air Force Base on April 1, 1993 (the Permit). Respondent Air Force's Permit was renewed for ten years on December 15, 2003, modified on December 1, 2010, to reflect the merger of Elmendorf Air Force Base with Fort Richardson U.S. Army Base, and has been administratively continued while EPA reviews Respondent Air Force's June 3, 2013 RCRA Permit Renewal Application.

3.17 Pursuant to 40 C.F.R. § 270.1(c)(4), EPA may issue permits for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status, or lack thereof, of any unit is not affected by the issuance or denial of a permit to any other unit at the facility.

3.18 At all times relevant to the allegations set forth herein, the only location at the Facility that was permitted to accumulate or store hazardous waste was the DLA TSDF at 11735 Vandenberg Avenue at the Facility. Respondent Air Force's RCRA Permit does not now, nor has it ever, authorized storage of hazardous waste at the following locations: buildings 293, 667, 982, 5337, 5955, 6538, 8549, 9696, 15455, 16456, 17470, 17508, 27-011, 45-715, 4280 Gibson Avenue, or the Unit Company 2 Mission Training Complex. At no time relevant to the

allegations contained in this Consent Agreement were any of the locations at the Facility operating under interim status.

3.19 At all times relevant to the allegations contained in this Consent Agreement, Respondents have generated, accumulated, and/or stored hazardous waste at buildings 293, 667, 982, 5337, 5955, 6538, 8549, 9696, 15455, 16456, 17470, 17508, 27-011, 45-715, 4280 Gibson Avenue, or the Unit Company 2 Mission Training Complex.

3.20 In its 2003 RCRA Part B permit renewal application, as well as in its 2010 permit modification and 2013 permit renewal application, Respondent Air Force identified as a large quantity generator (LQG) of hazardous waste and a large quantity handler of universal waste.

3.21 At all times relevant to this Consent Agreement and Final Order, Respondent Air Force has generated more than 1000 kilograms per month of hazardous waste at the Facility.

3.22 40 C.F.R. § 262.11 requires a person who generates solid waste, as defined in 40 C.F.R. § 261.2, to determine if that waste is a hazardous waste using the method provided in 40 C.F.R. § 262.11(a)-(d).

3.23 40 C.F.R. § 262.20(a)(1) requires that a generator who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest on EPA Form 8700-22 and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to 40 C.F.R. Part 262.

3.24 40 C.F.R. § 262.20(b) requires that a generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

3.25 Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person that treats, stores, or disposes of hazardous waste must have a permit or interim

3.33 On September 10 through 13, 2012; September 23 through 27, 2013; and April 13 through 16, 2015, authorized EPA representatives conducted RCRA compliance inspections of the Facility (2012 Inspection; 2013 Inspection; and 2015 Inspection, respectively).

3.34 On December 15, December 19, and December 23, 2014, Respondent Air Force notified EPA that, in November 2014, it had generated and disposed of hazardous waste at the Anchorage Regional Landfill and did not manage additional hazardous waste generated during November 2014 as hazardous waste until December 2014.

3.35 EPA has identified RCRA violations at the Facility based on information collected during and as a result of the 2012, 2013, and 2015 Inspections. EPA has also identified violations associated with management of hazardous waste during November and December 2014 based on information provided by Respondent Air Force.

3.36 On October 14, 2016, Complainant executed agreements with Respondent Aurora and Respondent Air Force to toll the statute of limitations for certain tolled claims which are addressed in this Consent Agreement until April 17, 2017.

3.37 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 MAKE A HAZARDOUS WASTE DETERMINATION**

3.38 The allegations set forth in paragraphs 3.1 through 3.37 are realleged and incorporated by reference herein.

3.39 During calendar year 2012, a contractor for Respondent Air Force, Weldin Construction, generated solid waste within the meaning of 40 C.F.R. § 261.2 when it used

status. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.

3.26 40 C.F.R. § 262.34 provides that certain generators may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.34(a)(1)-(4).

3.27 40 C.F.R. § 262.34(a)(1)(i) requires that generators who accumulate hazardous waste in containers for 90 days or less without a permit or interim status must place hazardous waste in a container and comply with 40 C.F.R. Part 265, subpart I.

3.28 40 C.F.R. § 265.174 requires that generators must inspect containers and container storage areas at least weekly for evidence of leaking and deterioration of containers caused by corrosion or other factors.

3.29 40 C.F.R. § 262.34(a)(2) requires that generators who accumulate hazardous waste on-site for 90 days or less must clearly mark containers and make visible for inspection the date upon which each period of accumulation began.

3.30 40 C.F.R. § 262.34(a)(4) requires that generators who accumulate hazardous waste on-site for 90 days or less comply with, among other things, the requirements of 40 C.F.R. § 265.16.

3.31 40 C.F.R. § 265.16(a)(1) requires that facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 265.

3.32 40 C.F.R. § 265.16(c) requires that facility personnel take part in an annual review of the initial training required by 40 C.F.R. § 265.16(a).

solvent containing 30 to 60 percent methylene chloride to clean paint guns at the Weldin Construction lay down area at 4280 Gibson Ave, located at the Facility.

3.40 Spent solvent which contained more than 10 percent methylene chloride by volume before use is a F001 listed hazardous waste, as defined at 40 C.F.R. § 261.31.

3.41 During the 2012 inspection, Respondent Air Force and its contractor, Weldin Construction, demonstrated to the EPA inspector that it cleaned paint guns at the Weldin Construction lay down area at 4280 Gibson Ave by adding solvent containing more than 10 percent methylene chloride before use to the guns and then spraying the spent solvent on to the floor of the paint booth. Personnel for Respondent Air Force told the EPA inspector that this occurred at least four times during calendar year 2012.

3.42 Respondent Air Force failed to make a hazardous waste determination for the spent solvent at its point of generation as required by 40 C.F.R. § 262.11 when it sprayed spent solvent out of paint guns onto the floor of the Weldin Construction lay down area paint booth.

3.43 Respondent Air Force failed to make a determination whether the solid waste described in paragraph 3.39 was hazardous waste in violation of 40 C.F.R. § 262.11.

**COUNT 2: FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION**

3.44 The allegations set forth in paragraphs 3.1 through 3.43 are realleged and incorporated by reference herein.

3.45 On or around November 24, 2014, Respondent Air Force's tenant unit, Respondent AKANG, generated solid waste within the meaning of 40 C.F.R. § 261.2 when it dismantled a media blast booth at Building 16456 (176 MXS/MXMFS), located at the Facility, and removed 24 filters which were later determined to exhibit cadmium and chromium toxicity

characteristics, discarding 20 of those filters into a dumpster without making a hazardous waste determination.

3.46 On or around December 10, 2014, Respondent Air Force tested four of the filters described in paragraph 3.45 and received laboratory results on or around December 15, 2014 indicating that the analysis by the Toxic Characteristic Leaching Procedure had determined that the concentrations of cadmium and chromium in the filters exceeded the regulatory maximum concentrations for the toxicity characteristic for the two constituents. The waste was therefore newly identified, pursuant to 40 C.F.R § 268.34(a), on December 15, 2014.

3.47 Because all 24 filters described in paragraph 3.45 were used during the operation of the media blast booth at Building 16456 (176 MXS/MXMCF), the four which were tested are representative samples. Therefore, the 24 filters were D006 and D007 hazardous waste.

3.48 Respondent Air Force and Respondent AKANG failed to make a timely determination whether the solid waste described in paragraph 3.45 was hazardous waste in violation of 40 C.F.R. § 262.11.

**COUNT 3: FAILURE TO PREPARE A MANIFEST**

3.49 The allegations set forth in paragraphs 3.1 through 3.48 are realleged and incorporated by reference herein.

3.50 On or around November or December, 2014, Respondent Air Force's tenant unit, Respondent AKANG, deposited 20 of the 24 filters described in paragraph 3.45 into a dumpster from which the waste was subsequently transported to the Anchorage Regional Landfill, a municipal solid waste landfill, without preparing a manifest.

3.51 Respondent Air Force and Respondent AKANG failed to prepare a manifest for the transport of the hazardous waste described in paragraph 3.45 in violation of 40 C.F.R. § 262.20(a)(1).

**COUNT 4: FAILURE TO DESIGNATE A FACILITY PERMITTED TO HANDLE THE WASTE ON A MANIFEST**

3.52 The allegations set forth in paragraphs 3.1 through 3.51 are realleged and incorporated by reference herein.

3.53 On or around November or December 2014, 20 of the 24 filters described in paragraph 3.45 were transported to a facility that is not permitted to handle hazardous waste from generators who produce more than 1000 kg of hazardous waste per month.

3.54 Respondent Air Force and Respondent AKANG failed to designate on a manifest one facility which was permitted to handle the hazardous waste described in paragraph 3.45, in violation of 40 C.F.R § 262.20(b).

**COUNT 5: FAILURE TO PREPARE A ONE-TIME WRITTEN LAND DISPOSAL RESTRICTION NOTICE**

3.55 The allegations set forth in paragraphs 3.1 through 3.54 are realleged and incorporated by reference herein.

3.56 40 C.F.R. § 268.7(a)(2) requires that a generator of hazardous waste that does not meet treatment standards, or which chooses not to make the determination of whether its waste must be treated, with the initial shipment of waste to each treatment or storage facility, must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The notice must include all the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table at 40 C.F.R. § 268.7(a)(4) or, if the generator chooses

not to make a treatment determination, the notice must include EPA Hazardous Waste Numbers and the statement found in 40 C.F.R. § 268.7(a)(2).

3.57 Because neither Respondent Air Force, nor its tenant unit, Respondent AKANG, determined whether the 20 waste filters described in paragraph 3.45 met treatment standards and neither chose to make such a determination, they were required to prepare a one-time written notice when it sent the 20 waste filters described in paragraph 3.45 to the Anchorage Regional Landfill.

3.58 Respondent Air Force and Respondent AKANG failed to comply with Land Disposal Restriction generator paperwork requirements in violation of 40 C.F.R. § 268.7(a)(2).

**COUNT 6: FAILURE TO DETERMINE UNDERLYING HAZARDOUS CONSTITUENTS FOR HAZARDOUS WASTE EXHIBITING A HAZARDOUS CHARACTERISTIC**

3.59 The allegations set forth in paragraphs 3.1 through 3.58 are realleged and incorporated by reference herein.

3.60 40 C.F.R. § 268.9(a) requires 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 applicable treatment standards under 40 C.F.R. Part 268, Subpart D; and if the generator determines that their waste displays a hazardous characteristic, the generator must determine the underlying hazardous constituents in the characteristic waste.

3.61 40 C.F.R. § 268.34(a) prohibits land disposal of wastes specified in 40 CFR Part 261 as EPA Hazardous Waste numbers D004-D011, that are newly identified.

3.62 40 C.F.R. § 268.34(f) requires that if toxicity characteristic metal wastes contain underlying hazardous constituents in excess of the applicable Universal Treatment Standard levels of 40 C.F.R. § 268.48, the waste is prohibited from land disposal.

3.63 40 C.F.R. § 268.40 requires that prohibited waste may be land disposed only if it meets the requirements found in the table, "Treatment Standards for Hazardous Wastes."

3.64 40 C.F.R. § 268.40(e) requires that characteristic wastes that are subject to the treatment standards in the table "Treatment Standards for Hazardous Wastes," and are not managed in an exempt wastewater treatment system or injection well, must meet Universal Treatment Standards found in 40 C.F.R. § 268.48, Table Universal Treatment Standards for all underlying hazardous constituents prior to land disposal.

3.65 Respondent Air Force's testing, as described in paragraph 3.46, determined that the hazardous waste filters described in paragraph 3.45 were D006 and D007 characteristic hazardous waste.

3.66 Respondent Air Force and Respondent AKANG were prohibited from land disposing its D006 and D007 characteristic hazardous waste in a landfill unless the waste met the treatment standards of 40 C.F.R. Part 268, Subpart D, which include the Universal Treatment Standards of 40 C.F.R. § 268.48.

3.67 Respondent Air Force and Respondent AKANG did not determine the underlying hazardous constituents for the characteristic hazardous waste described in paragraph 3.45 and the waste was not treated to meet the Universal Treatment Standards before the waste was disposed on land at the Anchorage Regional Landfill.

3.68 Respondent Air Force and Respondent AKANG failed to determine the underlying hazardous constituents for the hazardous waste described in paragraph 3.45 in violation of 40 C.F.R. § 268.9(a).

## COUNT 7: FAILURE TO COMPLY WITH THE CONDITIONS TO OPERATE WITHOUT A PERMIT OR INTERIM STATUS AT BUILDING 16456

3.69 The allegations set forth in paragraphs 3.1 through 3.68 are realleged and incorporated by reference herein.

3.70 Between November 25, 2014 and December 9, 2014, Respondent Air Force and Respondent AKANG stored four hazardous waste filters, described in paragraphs 3.45 and 3.46, uncontained in Building 16456 (176 MXS/MXMCF). The JBER Facility RCRA Permit does not now, nor has it ever, authorized the storage of hazardous waste at Building 16456 nor did Building 16456 operate under interim status at any time relevant to the allegations contained in this Consent Agreement.

3.71 Because Respondent Air Force and Respondent AKANG failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R. § 262.34, by failing to store hazardous waste in containers pursuant to 40 C.F.R. § 262.34(a)(1)(i), Respondent Air Force and Respondent AKANG operated Building 16456 at the Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

## COUNT 8: FAILURE TO COMPLY WITH THE CONDITIONS TO OPERATE WITHOUT A PERMIT OR INTERIM STATUS DURING CALENDAR YEAR 2012

3.72 The allegations set forth in paragraphs 3.1 through 3.71 are realleged and incorporated by reference herein.

3.73 At the time of the 2012 Inspection, Respondent Air Force indicated to EPA that its contractor, Weldin Construction, was generating, accumulating, and/or storing hazardous waste at the Weldin Construction lay down area at 4280 Gibson Ave and the Unit Company 2 Mission Training Complex at the Facility.

3.74 At the time of the 2012 Inspection, Respondent Air Force and Respondent Aurora indicated to EPA that they were generating, accumulating, and/or storing hazardous waste at the Davis Constructors and Engineers site at Building 293 at the Facility.

3.75 The JBER Facility RCRA Permit does not now, nor has it ever, authorized the storage of hazardous waste at the Weldin Construction laydown area at 4280 Gibson Ave, the Unit Company 2 Mission Training Complex, or the Davis Constructors and Engineers site at Building 293 at the Facility, nor were either of those locations operating under interim status at any time relevant to the allegations contained in this Consent Agreement.

3.76 At the time of the 2012 Inspection, certain employees of Respondent Air Force's contractor, Weldin Construction, who were performing services on behalf of the Air Force at the Weldin Construction lay down area at 4280 Gibson Ave at the Facility had not received initial training, as required by 40 C.F.R. §§ 262.34(a) and 265.16(a)(1).

3.77 During calendar year 2012, Respondent Air Force's contractor, Weldin Construction, failed to place certain hazardous wastes in containers at the Unit Company 2 Mission Training Complex and the Weldin Construction lay down area at 4280 Gibson Ave at the Facility, as required by 40 C.F.R. § 262.34(a)(1)(i).

3.78 During calendar year 2012, Respondent Air Force and Respondent Aurora failed to label a container used for accumulating hazardous waste with accumulation start dates at the Davis Constructors and Engineers site at Building 293 at the Facility, as required by 40 C.F.R. § 262.34(a)(2).

3.79 Because Respondent Air Force failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R.

§ 262.34, by failing to ensure employees successfully completed hazardous waste training pursuant to 40 C.F.R. § 265.16(a)(1), and to store hazardous waste in containers pursuant to 40 C.F.R. § 262.34(a)(1)(i), Respondent Air Force operated the Weldin Construction lay down area at 4280 Gibson Ave and the Unit Company 2 Mission Training Complex, at the Facility as treatment, storage, or disposal facilities without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

3.80 Because Respondent Air Force and Respondent Aurora failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R. § 262.34, by failing to label containers used for accumulating hazardous waste with accumulation start dates pursuant to 40 C.F.R. § 262.34(a)(2), Respondent Air Force and Respondent Aurora operated the Davis Constructors and Engineers site at building 293 at the Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

**COUNT 9: FAILURE TO COMPLY WITH THE CONDITIONS TO OPERATE WITHOUT A PERMIT OR INTERIM STATUS DURING CALENDAR YEAR 2013**

3.81 The allegations set forth in paragraphs 3.1 through 3.80 are realleged and incorporated by reference herein.

3.82 At the time of the 2013 Inspection, Respondent Air Force indicated to EPA that it was generating, accumulating, and/or storing hazardous waste at buildings 5955, 6538, 5337, 667, and 982 at the Facility.

3.83 The JBER Facility RCRA Permit does not now, nor has it ever, authorized the storage of hazardous waste at buildings 5955, 6538, 5337, 667, and 982 at the Facility, nor were

any of those locations operating under interim status at any time relevant to the allegations contained in this Consent Agreement.

3.84 At the time of the 2013 Inspection, certain employees of Respondent Air Force at buildings 5955, 6538, 5337, 667, and 982 had not taken part in an annual review of their initial training, as required by 40 C.F.R. §§ 262.34(a) and 265.16(c).

3.85 During calendar year 2013, Respondent Air Force failed to inspect certain containers used to accumulate hazardous waste at building 5955, as required by 40 C.F.R. §§ 262.34(a) and 265.174.

3.86 Because Respondent Air Force failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R. § 262.34, by failing to ensure employees received an annual review of hazardous waste training pursuant to 40 C.F.R. § 265.16(c), and to inspect containers used to accumulate hazardous waste pursuant to 40 C.F.R. § 265.174, Respondent Air Force operated buildings 5955, 6538, 5337, 667, and 982 at the Facility as treatment, storage, or disposal facilities without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

**COUNT 10: FAILURE TO COMPLY WITH THE CONDITIONS TO OPERATE WITHOUT A PERMIT OR INTERIM STATUS DURING CALENDAR YEAR 2015**

3.87 The allegations set forth in paragraphs 3.1 through 3.86 are realleged and incorporated by reference herein.

3.88 At the time of the 2015 Inspection, Respondent Air Force indicated to EPA that it was generating, accumulating, and/or storing hazardous waste at buildings 27-011, 45-715, 8549, 15455, 17508, and 9696 at the Facility, and that Respondent AKANG was generating, accumulating, and/or storing hazardous waste at buildings 16456 and 17470 at the Facility.

3.89 The JBER Facility RCRA Permit does not now, nor has it ever, authorized the storage of hazardous waste at buildings 27-011, 17470, 45-715, 8549, 15455, 17508, 9696, and 16456 at the Facility, nor were any of those locations operating under interim status at any time relevant to the allegations contained in this Consent Agreement.

3.90 At the time of the 2015 Inspection, certain employees of Respondent Air Force at building 27-011 and certain employees of Respondent AKANG at building 17470 had not taken part in an annual review of their initial training, as required by 40 C.F.R. §§ 262.34(a) and 265.16(c).

3.91 During calendar year 2015, Respondent Air Force and Respondent AKANG failed to label certain containers used for accumulating hazardous waste with accumulation start dates at buildings 45-715, 8549, 15455, 17470, 17508, 9696, and 16456 at the Facility, as required by 40 C.F.R § 262.34(a)(2).

3.92 During calendar year 2015, Respondent Air Force and Respondent AKANG failed to inspect certain containers used to accumulate hazardous waste at building 16456 at the Facility, as required by 40 C.F.R. §§ 262.34(a) and 265.174.

3.93 Because Respondent Air Force and Respondent AKANG failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R. § 262.34, by failing to ensure employees received an annual review of hazardous waste training pursuant to 40 C.F.R. § 265.16(c), to label containers used for accumulating hazardous waste with accumulation start dates pursuant to 40 C.F.R. § 262.34(a)(2), and to inspect containers used to accumulate hazardous waste pursuant to 40 C.F.R. § 265.174, Respondent Air Force and Respondent AKANG operated buildings 17470 and

16456 at the Facility as treatment, storage, or disposal facilities without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

3.94 Because Respondent Air Force failed to comply with the conditions for the accumulation of hazardous waste without a permit or interim status specified at 40 C.F.R. § 262.34, by failing to ensure employees received an annual review of hazardous waste training pursuant to 40 C.F.R. § 265.16(c), and to label containers used for accumulating hazardous waste with accumulation start dates pursuant to 40 C.F.R. § 262.34(a)(2), Respondent Air Force operated buildings 27-011, 45-715, 8549, 15455, 17508, and 9696 at the Facility as treatment, storage, or disposal facilities without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1.

**COUNT 11: STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS: STORAGE FOR OVER 90 DAYS AT BUILDING 293**

3.95 The allegations set forth in paragraphs 3.1 through 3.94 are realleged and incorporated by reference herein.

3.96 40 C.F.R. § 262.34(b) provides that a generator of 1,000 kilograms or greater of hazardous waste in a calendar month (a large quantity generator) who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements specified in that section including the obligation to obtain a permit for the storage of hazardous waste, unless an extension has been granted.

3.97 At all times relevant to this Consent Agreement, Respondent Air Force and Respondent Aurora generated more than 1000 kilograms per month of hazardous waste at the Facility.

3.98 The JBER Facility RCRA Permit does not now, nor has it ever, authorized the storage of hazardous waste at the Davis Constructors and Engineers site at Building 293 at the Facility, nor was that location operating under interim status at any time relevant to the allegations contained in this Consent Agreement.

3.99 Beginning on or around April 12, 2012, Respondent Air Force and Respondent Aurora accumulated 100 pounds of hazardous waste aerosol cans in an 85-gallon container at the Davis Constructors and Engineers site at Building 293 at the Facility.

3.100 On or around August 30, 2012, 139 days after they began accumulating them, Respondent Air Force and Respondent Aurora disposed of the hazardous waste aerosol cans stored at the Davis Constructors and Engineers site at Building 293 at the Facility.

3.101 Respondent Air Force and Respondent Aurora violated Section 3005 of RCRA, 42 U.S.C § 6925, and 40 C.F.R. § 270.1 when they stored hazardous waste for more than 90 days without a permit or interim status at the Davis Constructors and Engineers site at Building 293 at the Facility.

**COUNT 12: FAILURE TO PREPARE A MANIFEST FOR 2011 TRANSPORT OF HAZARDOUS WASTE**

3.102 The allegations set forth in paragraphs 3.1 through 3.101 are realleged and incorporated by reference herein.

3.103 On or about October 18, 2011, Respondent Air Force and Respondent Aurora transported approximately 90 pounds of used aerosol can hazardous waste generated at the Facility to the Anchorage Regional Landfill Hazardous Waste Collection Center without a manifest.

3.104 Respondent Air Force and Respondent Aurora failed to prepare a manifest for the transport of the hazardous waste identified in paragraph 3.103, in violation of 40 C.F.R. § 262.20(a)(1).

**COUNT 13: FAILURE TO DESIGNATE A FACILITY PERMITTED TO HANDLE THE WASTE ON A MANIFEST FOR 2011 TRANSPORT OF HAZARDOUS WASTE**

3.105 The allegations set forth in paragraphs 3.1 through 3.104 are realleged and incorporated by reference herein.

3.106 On or about October 18, 2011, Respondent Air Force and Respondent Aurora transported approximately 90 pounds of used aerosol can hazardous waste generated at the Facility to a facility that is not permitted to handle hazardous waste from generators who produce more than 1000 kg of hazardous waste per month.

3.107 Respondent Air Force and Respondent Aurora failed to designate on a manifest one facility which was permitted to handle the hazardous waste identified in paragraph 3.103, in violation of 40 C.F.R. § 262.20(b).

**COUNT 14: FAILURE TO PREPARE A MANIFEST FOR 2012 TRANSPORT OF HAZARDOUS WASTE**

3.108 The allegations set forth in paragraphs 3.1 through 3.107 are realleged and incorporated by reference herein.

3.109 On or about August 30, 2012, Respondent Air Force and Respondent Aurora transported approximately 100 pounds of used aerosol can and adhesive can hazardous waste generated at the Facility to the Anchorage Regional Landfill Hazardous Waste Collection Center without a manifest.

3.110 Respondent Air Force and Respondent Aurora failed to prepare a manifest for the transport of the hazardous waste identified in paragraph 3.109, in violation of 40 C.F.R. § 262.20(a)(1).

**COUNT 15: FAILURE TO DESIGNATE A FACILITY PERMITTED TO HANDLE THE WASTE ON A MANIFEST FOR 2012 TRANSPORT OF HAZARDOUS WASTE**

3.111 The allegations set forth in paragraphs 3.1 through 3.110 are realleged and incorporated by reference herein.

3.112 On or about August 30, 2012, Respondent Air Force and Respondent Aurora transported approximately 100 pounds of used aerosol can and adhesive can hazardous waste generated at the Facility to a facility that is not permitted to handle hazardous waste from generators who produce more than 1000 kg of hazardous waste per month.

3.113 Respondent Air Force and Respondent Aurora failed to designate on a manifest one facility which was permitted to handle the hazardous waste identified in paragraph 3.109, in violation of 40 C.F.R. § 262.20(b).

**COUNT 16: FAILURE TO PROPERLY LABEL AND CONTAIN UNIVERSAL WASTE**

3.114 The allegations set forth in paragraphs 3.1 through 3.113 are realleged and incorporated by reference herein.

3.115 40 C.F.R. Part 273, Subpart C specifies the requirements applicable to large quantity handlers of universal waste.

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

3.117 40 C.F.R. § 273.33(d)(1) requires that large quantity handlers of universal waste who accumulate universal waste lamps must contain any lamp in containers or packages that are

structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

3.118 At the time of the 2012 inspection, a fiber container in use for accumulation of 4-foot waste fluorescent bulbs at the Weldin Construction laydown area at 4280 Gibson Avenue was not structurally sound due to a large puncture hole in the bottom of the container. Another container in use for accumulation of 2-foot waste fluorescent bulbs at the same location was not closed.

3.119 Respondent Air Force, and its contractor, Weldin Construction, failed to contain universal waste lamps generated at the Facility in closed and/or structurally sound containers or packages, in violation of the requirements of 40 C.F.R. § 273.33(d)(1).

3.120 40 C.F.R. § 273.34(e) requires that large quantity handlers of universal waste who accumulate universal waste lamps in containers or packages must label or mark clearly each lamp or the container or package in which the lamps are contained with any one of the following phrases: "Universal Waste – Lamp(s)," "Waste lamp(s)," or "Used Lamp(s)."

3.121 At the time of the 2012 inspection, at the Weldin Construction laydown area at 4280 Gibson Avenue at the Facility, neither the fiber container in use for accumulation of 4-foot waste fluorescent bulbs, nor the bulbs themselves, were labeled in any way to identify the contents.

3.122 Respondent Air Force, and its contractor, Weldin Construction, failed to clearly label certain containers of universal waste lamps, or the lamps themselves, generated at the Facility, in violation of the requirements of 40 C.F.R. § 273.34(e).

3.123 40 C.F.R. § 273.35(c) requires that large quantity handlers of 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 through one of several specified methods listed at 40 C.F.R. § 273.35(c)(1)-(6).

3.124 At the time of the 2012 inspection, two fiber containers in use for accumulation of waste fluorescent lamps at the Weldin Construction laydown area at 4280 Gibson Avenue were not labeled or marked with accumulation start dates.

3.125 Respondent Air Force, and its contractor, Weldin Construction, was unable to demonstrate the length of time that universal waste lamps generated at the Facility had been accumulated at the Weldin Construction laydown area at 4280 Gibson Avenue, in violation of the requirements of 40 C.F.R. § 273.35(c).

**COUNT 17: FAILURE TO PROPERLY MANAGE UNIVERSAL WASTE**

3.126 The allegations set forth in paragraphs 3.1 through 3.125 are realleged and incorporated by reference herein.

3.127 40 C.F.R. § 273.36 requires that large quantity handlers of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

3.128 At the time of the 2013 inspection, an employee working at Building 7301, where Respondent Air Force was generating universal waste, had never taken part in universal waste training, nor had Respondent Air Force otherwise ensured that the employee was thoroughly familiar with proper waste handling and emergency procedures relative to his responsibilities.

3.129 Respondent Air Force's failure to ensure that all of its employees are thoroughly familiar with proper universal waste handling is a violation of 40 C.F.R. § 273.36.

## IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admit nor deny 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 Respondents agree, that an appropriate penalty to settle this action is $81,310 (the "Assessed Penalty").

4.4. Respondent AKANG agrees to pay $43,432 of the Assessed Penalty.

4.5. Respondent Aurora agrees to pay $37,878 of the Assessed Penalty.

4.6. Respondent AKANG and Respondent Aurora agree to pay their portions of the Assessed Penalty within 120 days of the effective date of the Final Order.

4.7. Respondent Air Force agrees to pay any amount of the Assessed Penalty that remains unpaid by Respondent Aurora or Respondent AKANG after 120 days.

4.8. 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

Respondents must note on the checks the title and docket number of this action. Respondent Air Force's Treasury Account Symbol is "57 3400." Inquiries concerning Respondent Air Force's payment can be made to Mr. Gregory Shropshire, 673 CEG/CERF. Mr. Shropshire can be contacted at gregory.shropshire.2@us.af.mil, or 907-552-3139. Respondent AKANG's Treasury Account Symbol is "57 3840." Inquiries concerning Respondent AKANG's payment can be made to Capt. David Victory. Capt. Victory can be contacted at david.victory@us.af.mil or 907-551-0156.

4.9. Concurrently with payment, Respondents must serve photocopies of the checks, or proof of other payment method, described in Paragraph 4.8 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Jennifer Parker
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Parker.Jennifer@epa.gov

4.10. If any portion of the Assessed Penalty as described in Paragraph 4.3 is not paid in full by its due date, the entire unpaid balance of the Assessed Penalty shall become immediately due and owing, payable by Respondent Air Force.

4.11. Respondent Air Force agrees to implement a Supplemental Environmental Project (SEP) consisting of removal of legacy light fixtures and replacement of same with ULTRA LED

light kits at buildings 740, 750, 756, 778, and 784, in accordance with all provisions described in this Consent Agreement and in Attachment A which is incorporated by reference herein.

4.12. Respondent Air Force's deadline to perform the SEP shall be excused or extended only if such performance is prevented or delayed by events which constitute a *Force Majeure* event. A *Force Majeure* event is defined as any event arising from causes beyond the reasonable control of Respondent Air Force, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A *Force Majeure* event does not include, *inter alia*, increased cost of performance, changed economic circumstances, changed labor conditions, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a Site, or failure to obtain federal, state, or local permits.

4.13. Respondent Air Force will complete the SEP within three hundred (300) days of the effective date of the Final Order set forth in Part V, in accordance with all provisions described in this Consent Agreement and Attachment A.

4.14. Respondent Air Force certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that Respondent Air Force, in good faith, estimates that the cost to implement the SEP, exclusive of internal labor costs, is at least $200,000.

4.15. Respondent Air Force also certifies that, as of the date of this Consent Agreement, Respondent Air Force is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent Air Force required to perform or develop the SEP by

another agreement, under a grant, or as injunctive relief in any other case. Respondent Air Force further certifies: that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent Air Force was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement; and that Respondent Air Force will not receive any reimbursement for any portion of the SEP from any other person or entity.

4.16. Respondent Air Force hereby certifies that (1) it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 4.11 and (2) it has inquired of any third party SEP implementer whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the SEP implementer that neither is a party to such a transaction. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a federal grant, federal cooperative agreement, federal loan, or federally-guaranteed loan.

4.17. Respondent Air Force shall submit a SEP Completion Report (Report), as described in Attachment A, to EPA within thirty (30) days after completing installation of the SEP.

4.18. Respondent Air Force shall submit a "SEP Update Report," as described in Attachment A, to EPA by January 31, 2019.

4.19. Unless otherwise instructed in writing by EPA, Respondent Air Force shall submit all notices and reports required by this Consent Agreement by first class mail, overnight mail, or hand delivery, with a copy by electronic mail, to:

Jennifer Parker
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Parker.jennifer@epa.gov

4.20. Respondent Air Force agrees that EPA may inspect Respondent Air Force's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with this Consent Agreement and Attachment A.

4.21. Respondent Air Force shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement and Attachment A until the SEP Update Report prepared pursuant to Paragraph 4.18 is delivered to EPA, and Respondent Air Force shall provide the documentation of any such underlying data to EPA within fifteen (15) days of receiving a written request for such information. In all documents or reports submitted to EPA pursuant to this Consent Agreement, including, without limitation, the Report, Respondent Air Force shall, by a Commanding Officer, or his designee for purposes of the SEP Update Report, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

> "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

4.22. Following receipt of the Report described in Paragraph 4.17, EPA will do one of the following: (i) accept the Report and notify Respondent Air Force in writing that the SEP has been satisfactorily completed; (ii) reject the Report, notify Respondent Air Force, in writing, of deficiencies in the Report, and provide Respondent Air Force an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.23. Nothing in this paragraph will affect Respondent Air Force's obligation to submit the SEP Update Report described in Paragraph 4.18.

4.23. In the event that Respondent Air Force fails to satisfactorily comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph 4.11 above and Attachment A, Respondent Air Force shall be liable for stipulated penalties according to the provisions set forth below:

4.23.1. Except as provided in subparagraph 4.23.2 immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement, Respondent Air Force shall pay a stipulated penalty to the United States in the amount of $225,000

4.23.2. For failure to submit the SEP Completion Report required by paragraph 4.17 or the SEP Update Report required by paragraph 4.18, Respondent Air Force shall pay a stipulated penalty in the amount of $250 for each day after the respective due dates in paragraphs 4.17 (for the SEP Completion Report) and 4.18 (for the SEP Update Report) until the reports are submitted.

4.23.3. The determinations of whether the SEP has been satisfactorily completed and whether Respondent Air Force has made a good faith, timely effort to

implement the SEP shall be in the sole discretion of the EPA. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement, including by subtracting funds already spent on the SEP from the amount in paragraph 4.23.1 .

4.23.4. Stipulated penalties under paragraphs 4.23.1 through 4.23.3 above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

4.23.5. Respondent Air Force shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment shall be submitted in accordance with the provisions of Paragraphs 4.8 and 4.9.

4.24. Any public statement, oral or written, in print, film, or other media, made by Respondent Air Force making reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

"This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act."

4.25. This Consent Agreement shall not relieve Respondent Air Force 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 a determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent Air Force in connection with the SEP undertaken pursuant to this Consent Agreement.

4.26. The Assessed Penalty, including any additional costs incurred under Paragraph 4.23, represents an administrative civil penalty assessed by EPA.

4.27. Respondent Air Force shall seek all existing funds to meet the requirements of this Consent Agreement. Failure to obtain adequate funds or appropriations from Congress does not release Respondent Air Force from its obligations to comply with RCRA, the applicable regulations thereunder, the Permit, or this Consent Agreement, including Attachment A. Nothing in this Consent Agreement shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

4.28. Respondent AKANG shall seek all existing funds to meet the requirements of this Consent Agreement. Failure to obtain adequate funds or appropriations from Congress does not release Respondent AKANG from its obligations to comply with RCRA, the applicable regulations thereunder, the Permit, or this Consent Agreement. Nothing in this Consent Agreement shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

4.29. The undersigned representatives of Respondent Air Force, Respondent AKANG, and Respondent Aurora certify that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents, respectively, to this document.

4.30. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signatures of this Consent Agreement, Respondents have corrected the violation(s) alleged in Part III.

4.31. Except as described in Paragraph 4.23, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

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

4.33. Respondent Air Force and Respondent AKANG expressly waive any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order and/or to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this Consent Agreement and the Final Order.

4.34. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

4.35. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their respective agents, servants, employees, successors, and assigns.

4.36. Respondents consent to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.37. The above provisions are STIPULATED AND AGREED upon by Respondent Air Force, Respondent AKANG, Respondent Aurora, and EPA Region 10.

DATED: 8 Feb 17

FOR RESPONDENT UNITED STATES DEPARTMENT OF THE AIR FORCE:

GEORGE T.M. DIETRICH III
Colonel, USAF
Commander

DATED: 13 Feb 2017

FOR RESPONDENT 176TH WING OF THE ALASKA AIR NATIONAL GUARD:

STEVEN J. DEMILLIANO, COL, AKANG
Commander, 176th Wing

DATED: 8 FEB 17

FOR RESPONDENT AURORA MILITARY HOUSING III, LLC:

KEITH LAUFER, Project Director
Aurora Military Housing III, LLC

DATED: 2/14/2017

FOR COMPLAINANT:

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

## ATTACHMENT A: SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP")

IN THE MATTER OF: Joint Base Elmendorf-Richardson
Anchorage, Alaska
EPA DOCKET NO.: RCRA-10-2017-0064
Consent Agreement and Final Order

In accordance with Paragraph 4.11 of the above captioned Consent Agreement and Final Order (CAFO) between the United States Department of the Air Force (Respondent Air Force) and the United States Environmental Protection Agency (EPA), Respondent Air Force shall implement a Supplemental Environmental Project (SEP) consisting of replacement of legacy lighting systems with Ultra LED lighting in buildings in buildings 740, 750, 756, 778, and 784 at its facility located at Joint Base Elmendorf-Richardson (the Facility). The installation of the LED lighting shall be referred to as the "Project."

I. Installation

Within 300 days of the effective date of the CAFO, Respondent Air Force shall complete installation of the LED lighting specified herein in each of the buildings identified in this Attachment. The Project shall consist of the following components:

a. Building 740: 296 T-8 ballasts and 592 T-8 lamps
b. Building 750: 212 T-8 ballasts and 666 T-8 lamps
c. Building 756: 156 T-8 ballasts and 468 T-8 lamps
d. Building 778: 166 T-8 ballasts and 498 T-8 lamps
e. Building 784: 140 T-8 ballasts and 420 T-8 lamps

Respondent Air Force estimates in good faith that the Project will replace approximately 490 6-lamp fluorescent light fixtures comprising approximately 2,644 bulbs with ULTRA LED kits.

II. Costs

Respondent Air Force **recognizes that the actual costs may be less than the current estimate and therefore** estimates in good faith that the materials and labor to complete the Project will cost at least $200,000, as estimated in the charts below:

Materials

| Materials Description | Unit | Unit Price | Amount |
|---|---|---|---|
| 2400 Lumen ULTRA LED Retrofit Kit containing QHELEDT8/UNV ISN-SC LED Driver and LED15T8L48FG850SUBG6 LED Lamps | 490 | $242.69 | $118,918.10 |
| 6-mo Man-lift Support | 6 | $1000.00 | $6,000.00 |
| Lift delivery/removal (2x) | 5 | $586 | $2,930.00 |

| | |
|---|---|
| **TOTAL PROJECT INVESTMENT** | **$122,993.25** |

Installation of LED lighting shall be done by contracted labor. The cost of any labor performed in-house shall not be included in the computed value of the Project. Respondent Air Force's good faith estimation of labor costs is as follows:

Contracted Project Labor

| Description | Unit Hrs | Unit Price | Amount |
|---|---|---|---|
| Electrician | 640 | $76.17 | $48,748.80 |
| Laborer | 240 | $75.96 | $18,230.40 |
| Vehicle (monthly) | 5 | $850.75 | $4,253.75 |
| Lock Out / Tag Out | 36 | $21.57 | $776.52 |
| Containers for lamps/ballasts | 110 | $22.76 | $2,503.60 |
| **CONTRACTED LABOR COSTS (approximate)** | | | **$74,513.07** |

III. Standard of Performance

*a. LED Lighting*

LED lighting used in the Project shall be free of hazardous materials, such as lead, mercury, and PCBs, that would render used bulbs hazardous waste as that term is defined in 40 C.F.R. § 261.3.

*b. Universal Waste Management*

Respondent Air Force shall ensure that generation of any Universal Waste, including but not limited to lamps, mercury-containing equipment, or batteries, complies with all applicable regulations, including those found at 40 C.F.R. Part 273, Subpart C. For Universal Waste lamps, in particular, to manage lamps in a way that prevents releases of any Universal Waste or component of a Universal Waste to the environment, Respondent Air Force shall: (1) contain waste lamps in structurally sound containers which are adequate to prevent breakage, compatible with the contents of the lamps, and free of any evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and ensure that that all containers remain closed (except when adding or removing waste lamps), as required by 40 C.F.R. § 273.33(d)(1); (2) immediately clean up and place in a container any lamp that is broken or shows signs of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment, as required by 40 C.F.R. § 273.33 (d)(2); (3) ensure that containers, or each individual lamp therein, containing Universal Waste lamps are properly labelled with as required by 40 C.F.R. § 273.34(e); and (4) ensure that waste lamps are handled

by employees with proper training in Universal Waste handling as required by 40 C.F.R. § 273.36.

Respondent Air Force shall comply with the regulations at 40 C.F.R. § 273.35 for accumulation time limits for Universal Waste. At all times after the generation of Universal Waste from the Project, Respondent Air Force must be able to demonstrate the length of time any Universal Waste lamps have been accumulated from the date they become a waste by appropriately labeling or marking the accumulation start date on the containers, or on each waste bulb, or otherwise meeting the requirements of 40 C.F.R. § 273.35(c). Containers may be stored in a designated Universal Waste accumulation area for no longer than one year, as required by 40 C.F.R. § 273.35, unless Respondent Air Force meets the requirements of 40 C.F.R. § 273.35(b).

IV. Operation

Respondent Air Force intends to operate the Ultra LED bulbs for the life of said bulbs.

V. PCB Disposal

Respondent Air Force shall properly dispose of all PCB-contaminated waste, including waste light fixtures, batteries, and/or ballasts, removed during the Project. Respondent Air Force shall notify EPA within 30 days of delivery of such waste to the DLA TSDF at JBER. PCB-contaminated items shall be handled pursuant to the regulations at 40 C.F.R. Part 761. Prior to receiving any PCB-contaminated items, JBER must complete notification required under 40 C.F.R. § 761.205 (EPA Form 7710-53), and submit to EPA. PCB-contaminated items may only be processed for storage, treatment, or disposal at the DLA TSDF permitted facility at JBER.

VI. Notifications

Respondent Air Force shall notify EPA according to the following table:

| **Event** | **Notification Description and Deadline** |
|---|---|
| Installation of LED Bulbs (by building) | Within **7 days** after installation of LED lightbulbs in a building, send notification. |
| Disposal of all PCB-contaminated waste associated with LED Bulb installation | Within **7 days** after delivery of any PCB wastes to Defense Logistics Agency Treatment, Storage, and Disposal Facility at JBER for disposal or treatment. Notification shall include copies of any receipts or other documentation confirming delivery, such as any forms submitted to EPA under 40 C.F.R. Part 761. |
| Project Completion | Within **30 days** of Project Completion send SEP Completion Report, as described in Part VII of Attachment A to the Consent Agreement |

Notifications shall be via electronic mail to Jennifer Parker at parker.jennifer@epa.gov.

VII. SEP Completion Report

Upon completion of the Project, as described in the Consent Agreement and this Attachment, Respondent Air Force shall prepare and transmit a "SEP Completion Report" to EPA within thirty (30) days, in accordance with Paragraph 4.17 of the CAFO, and which contains, at a minimum, the following information:

(1) A description of the SEP as implemented;
(2) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement, including this attachment;
(3) Documentation providing evidence of completion of the SEP, including but not limited to photos, invoices, receipts, and correspondence;
(4) Documentation of all SEP expenditures;
(5) A description of any problems encountered and the solutions thereto;
(6) Documentation of delivery, such as receipts, of any and all PCB-contaminated materials produced as a result of SEP implementation to the DLA TSDF at JBER and copies of the DLA TSDF contract for disposal of PCBs;
(7) Documentation of any disposal of PCB-contaminated materials generated by the Project by DLA TSDF, pursuant to their contract for PCB disposal;
(8) Certification that Universal Waste generated by the Project is being, and has been, properly managed and accumulated pursuant to 40 C.F.R. Part 273;
(9) A description of the environmental and public health benefits resulting from implementation of the SEP, to date; and
(10) Documentation of contract for external labor to implement SEP, or any deviation from the stated intent to use external labor.

VIII. SEP Update Report

By January 31, 2019, in accordance with Paragraph 4.18 of the CAFO, Respondent Air Force shall submit a SEP Update Report to EPA which contains, at a minimum, the following information:

(1) Documentation of energy and cost savings from SEP Project implementation, broken down by building and by any other categories Respondent Air Force may choose;
(2) A description of any problems encountered and the solutions thereto, including any lessons learned which EPA or Respondent Air Force may apply to future projects involving LED lighting systems.

IX. Submissions

Unless otherwise instructed in writing by EPA, Respondent Air Force shall submit all reports required by this Consent Agreement and Attachment A by first class mail, overnight mail, hand delivery, with a copy by electronic mail to:

Jennifer Parker
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Parker.jennifer@epa.gov

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|---|---|---|
| In the Matter of: | ) | DOCKET NO. RCRA-10-2017-0064 |
| The United States Department of the Air Force | ) | |
| and | ) | |
| The 176th Wing of the Alaska Air National Guard | ) | **FINAL ORDER** |
| and | ) | |
| Aurora Military Housing III, LLC | ) | |
| Respondents. | ) | |
| Joint Base Elmendorf Richardson, | ) | |
| Anchorage, 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 redelegated 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. Respondents are 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



**U.S. Environmental Protection Agency**
**1200 Sixth Avenue, Suite 900, ORC-113**
**Seattle, Washington 98101**
**(206) 553-1037**

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 Respondents' 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 22nd day of February, 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: Joint Base Elmendorf Richardson, Docket No.: RCRA-10-2017-0064**, 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:

Nicholas Vidargas
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:

Col. George T.M. Dietrich III
Commander, 673d Air Base Wing and Joint Base Elmendorf-Richardson
10471 20th Street, STE 139
JBER, Alaska 99506

Col. Steven J. Demilliano, AKANG
Commander, 176th Wing
Alaska Air National Guard
17441 Airlifter Drive
JBER, Alaska 99506

Aurora Military Housing III, LLC
813 D Street, Suite 200
Anchorage, Alaska 99501
Attn: Keith Laufer, Project Director

DATED this 22 day of February, 2017.

Teresa Young
TERESA YOUNG
Regional Hearing Clerk
EPA Region 10

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