



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 25 2012

Via Certified Mail, Return Receipt Requested

Major Marla J. Gillman
Regional Counsel, Eastern Region
AFLOA/JACE-ER
60 Forsyth Street, S.W., Suite 8M80
Atlanta, Georgia 30303

SUBJ: Consent Agreement and Final Order
Tyndall Air Force Base (AFB)
Docket No. RCRA-04-2012-4009(b)

Dear Major Gillman:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC, and the penalty due date is calculated from that date.

If you have any questions, please feel free to contact me at (404) 562-9685. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Colleen E. Michuda".

Colleen E. Michuda
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) **Docket Number: RCRA-04-2012-4009(b)**
)
United States Air Force) **Proceeding under Section 3008(a) of the**
Tyndall Air Force Base (AFB)) **Resource Conservation and Recovery**
119 Alabama Avenue) **Act, 42 U.S.C. § 6928(a)**
Tyndall AFB, Florida 32403-5016)
)
)
EPA ID No.: FL1 570 024 124)
)
Respondent.)
_____)

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. §§ 403.702 et seq. (Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e)). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of Fla. Stat. §§ 403.702 et seq., and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated Rules (Fla. Admin. Code Ann. r.) 62-730 and 62-710 (Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270, 273 and 279), as outlined herein.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is the United States Air Force, which owns and operates Tyndall AFB, Florida.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Florida authorized program are found at Fla. Stat. §§ 403.702 et seq. and Fla. Admin. Code Ann. r. 62-730 and 62-710.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State of Florida has received final authorization for certain portions of HSWA.
8. Although the EPA has granted the State of Florida authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State of Florida.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given written notice of this action to the State of Florida before the issuance of this CA/FO.
10. As the State of Florida's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Florida program; however, for ease of reference, the federal citations will follow in parentheses.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 (Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)), requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found at Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. Part 262).
12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)), sets forth the requirement that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 (40 C.F.R. Parts 124, 264, 265 and 270).

13. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “generator” is defined 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.”

14. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), “disposal” is defined as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

15. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), “treatment” is defined as “any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste . . . or so as to render such waste non-hazardous, or less hazardous . . . or reduced in volume.”

16. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), “storage” is defined as “the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.”

17. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “facility” includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste.

18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “person” includes a Federal Agency.

19. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), an “owner” is the person who owns a facility or part of a facility and an “operator” is the person responsible for the overall operation of a facility.

20. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.2), a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.

21. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.3), a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it meets any of the criteria specified in 40 C.F.R. § 261.3(a)(2).

22. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.20), solid wastes that exhibit any of the characteristics identified in 40 C.F.R. §§ 261.21 through 261.24, are characteristic hazardous wastes, and are provided with the EPA Hazardous Waste Numbers D001 through D043.

23. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.30), a solid waste is a hazardous waste if it is listed in 40 C.F.R. Part 261, Subpart D, and is not otherwise excluded by 40 C.F.R. § 260.22.
24. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.11), a person who generates a solid waste must determine if that waste is a hazardous waste.
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.12(c)), a generator is prohibited from offering its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.
26. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.20(a)(1)), a generator who transports, or offers for transport, a hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)), a generator of greater than 1,000 kilograms of hazardous waste per month may accumulate hazardous waste on-site for 90 days or less, without a permit or interim status, provided that the generator complies with the management requirements of Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(1)-(4)) (hereinafter referred to as the “LQG permit exemption”).
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(3)), a condition of the LQG permit exemption, generators of hazardous waste must label or mark each hazardous waste container with the words “Hazardous Waste.”
29. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), a condition of the LQG permit exemption, generators must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.31), which requires that generators must maintain and operate their facilities so as to minimize the possibility of a fire, explosion, or unplanned sudden or non-sudden release of hazardous waste to air, soil, or surface water, which could threaten human health or the environment.
30. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), a condition of the LQG permit exemption, generators must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.35), which requires that generators maintain aisle space to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operations in an emergency, unless aisle space is not needed for any of these purposes.
31. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), a condition of the LQG permit exemption, generators must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.52(d)), which requires that a generator’s Contingency Plan must list the names, addresses, and phone numbers of all persons qualified to act as emergency coordinator, and that this list must be kept up to date.

32. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), a condition of the LQG permit exemption, generators must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.174), which requires generators to perform weekly inspections of areas where hazardous waste containers are stored.

33. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)), a generator may accumulate as much as 55 gallons of hazardous waste, or one quart of acutely hazardous waste, in containers at or near the point of generation where the wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status, and without complying with Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)), provided that the generator complies with the management requirements of Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(i)-(ii)) (hereinafter referred to as the “SAA permit exemption”).

34. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(i)), a condition of the SAA permit exemption, generators must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.173(a)), which requires that containers holding hazardous waste must always be closed during storage except when it is necessary to add or remove wastes.

35. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.32(c)(1)(ii)), a condition of the SAA permit exemption, generators must mark their containers with the words “Hazardous Waste” or with other words that identify the contents of the containers.

36. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.9), a “Universal Waste Handler” includes a generator of universal waste, and a “Small Quantity Handler of Universal Waste” is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste at any time.

37. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.9), “Universal Waste” includes hazardous waste lamps as described in Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.5).

38. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(1)), a small quantity handler of universal waste is required to contain its universal waste lamps within closed containers.

39. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(2)), a small quantity handler of universal waste must manage universal waste lamps in a way that prevents releases to the environment, including immediately cleaning up and placing in a container any lamp that is broken, or any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment.

40. Pursuant to Fla. Admin. Code Ann. r. 62-710.201(5) and 62-710.210(2) (40 C.F.R. § 279.1), “used oil” means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become contaminated and unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

41. Pursuant to Fla. Admin. Code Ann. r. 62-710.210(2) (40 C.F.R. § 279.1), a “used oil generator” means a person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

42. Pursuant to Fla. Admin. Code Ann. r. 62-710.210(2) (40 C.F.R. § 279.22(c)(1)), generators of used oil are required to mark containers holding used oil with the words “Used Oil.”

IV. EPA ALLEGATIONS AND DETERMINATIONS

43. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10).

44. Respondent is the “owner” and “operator” of a “facility” located at Tyndall AFB, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10).

45. Tyndall AFB, Florida, which is home to the 325th Fighter Wing and multiple tenant units, has a single EPA ID number that covers the treatment, storage, and disposal of hazardous waste on the installation. The base is located on approximately 29,000 acres on the south central portion of the Florida panhandle, east of Panama City.

46. On March 19, 2010, and March 26, 2012, Respondent notified the Florida Department of Environmental Protection (FDEP) of its activities at Tyndall AFB as a Large Quantity Generator (LQG) of hazardous waste, meaning that it generates greater than 1,000 kilograms of hazardous waste, or one kilogram of acute hazardous waste, per month.

47. Respondent is a generator and small quantity handler of universal waste lamps and a generator of used oil.

48. Respondent generates wastes that are “solid wastes” and “hazardous wastes” as defined in Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. §§ 261.2 and 261.3).

49. Respondent’s operations encompass a number of aircraft maintenance and support services and laboratories which generate hazardous waste streams. Respondent generates characteristic hazardous wastes with the waste codes D001-D011, D018, D022, D030, D035, and D039-D040; and listed hazardous wastes with the waste codes F001-F003 and F005.

50. On December 8-9, 2010, a representative of the EPA and representatives of the FDEP performed a RCRA Compliance Evaluation Inspection (CEI) of Respondent’s facility. The findings of the CEI were documented in an October 12, 2011, RCRA Inspection Report.

51. Respondent operates a four-filter silver recovery system in its Building 310 photo laboratory. Respondent uses process knowledge based on previous Toxicity Characteristic Leaching Procedure (TCLP) testing of the wastewater, along with a copper test kit, to ensure that silver levels in its wastewater remain below five (5) parts per million (ppm).

52. Operations at Respondent's facility include the use of a BECCA paint gun cleaner solvent recycler unit in Building 1134. Liquid wastes from the process are accumulated in satellite accumulation areas, but the solids were discarded in the trash. The solvent used in this area, "T81772B," is comprised of greater than 10% toluene and methyl ethyl ketone. When spent, this material would be an F005 hazardous waste.

53. At the time of the CEI, Respondent had not made a hazardous waste determination on dried solids from the BECCA machine in Building 1134.

54. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.11) by failing to make a hazardous waste determination on certain solid waste generated in Building 1134.

55. At the time of the CEI, Respondent was discarding hazardous waste solids (F005 hazardous wastes) from the BECCA machine in Building 1134 in the trash. Respondent did not send this trash to a facility with an EPA identification number or transport it using a hazardous waste manifest.

56. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. §§ 262.12(c) and 262.20(a)(1)) by offering its hazardous waste to a transporter, or to a treatment, storage, or disposal facility, that has not received an EPA identification number, and by failing to prepare a hazardous waste manifest for shipments of trash that contained hazardous waste.

57. At the time of the CEI, Respondent was transporting wastes from various generation points to other locations for storage, including Building 1117 – Air Force Research Laboratory; Building 280 – Hanger 4; and Building 227 – Hanger 5. Because these storage areas were not at the point of generation of the wastes, Respondent was mistakenly managing these storage areas as satellite accumulation areas. As a result, Respondent failed to properly manage these areas as less-than-90-day storage areas by failing to meet the management requirements of the LQG permit exemption set forth at Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(1)-(4)), including, but not limited to, failing to properly label the containers with accumulation start dates or the words "Hazardous Waste," and by failing to conduct weekly inspections of these areas.

58. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet the requirements of the LQG permit exemption, including, but not limited to, failing to label certain containers with the words "Hazardous Waste," failing to mark accumulation start dates on such containers, and failing to conduct weekly inspections of those areas as required by Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(1)-(3)).

59. At the time of the CEI, the facility was operating an aerosol can puncturing device affixed to a 55-gallon metal satellite accumulation container in Building 6011, the less-than-90-day storage area. Paint drippings and spills covered the outside of this satellite accumulation

container and the inside of metal cabinet that held this satellite accumulation container. The waste accumulated in this container included hazardous paint waste (D001).

60. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the LQG permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), which requires compliance with Fla. Admin. Code r. 62-730.180(2) (40 C.F.R. § 265.31), which requires that generators maintain and operate their facilities so as to minimize the possibility of a fire, explosion, or unplanned sudden or non-sudden release of hazardous waste.

61. At the time of the CEI, Respondent failed to provide adequate aisle space for pallets of expired hazardous waste paint being stored within Building 6011.

62. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the LQG permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), which requires compliance with Fla. Admin. Code r. 62-730.180(2) (40 C.F.R. § 265.35), which requires that generators maintain aisle space to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operations in an emergency.

63. At the time of the CEI, Respondent's Contingency Plan did not have up-to-date information regarding the primary emergency coordinator.

64. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the LQG permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(4)), which requires compliance with Fla. Admin. Code r. 62-730.180(2) (40 C.F.R. § 265.52(d)), which requires that a generator's Contingency Plan must list the names, addresses, and phone numbers of all persons qualified to act as emergency coordinator, and that this list must be kept up to date.

65. At the time of the CEI, the inspectors observed that Respondent failed to keep a container of hazardous waste sludge and filter waste (D006) near the point of its generation in Building 1134 closed when waste was not being added or removed.

66. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the SAA permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(i)), which requires compliance with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.173(a)), which requires that containers holding hazardous waste must always be closed during storage except when it is necessary to add or remove wastes.

67. At the time of the CEI, containers of hazardous waste were found in several locations at or near generation points in the laboratories in Building 1117 without the words “Hazardous Waste” or other words to correctly identify the contents of the containers.

68. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the SAA permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(ii)), which requires that generators must mark their containers with the words “Hazardous Waste” or with other words that identify the contents of the containers.

69. At the time of the CEI, one container of universal waste lamps was open in Building 6011.

70. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(1)), by failing to contain its universal waste lamps within closed containers.

71. At the time of the CEI, if a broken universal waste lamp would not fit into the designated container in Building 6011, Respondent would break such lamp until it fit into the container.

72. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(2)) by failing to manage universal waste lamps in a way that prevents releases to the environment, including immediately cleaning up and placing in a container any lamp that is broken and placing in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

73. At the time of the CEI, Respondent failed to properly label a container of used oil in Building 1134 with the words “Used Oil,” labeling it “Waste Oil.”

74. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-710.210(2) (40 C.F.R. § 279.22(c)(1)) by failing to mark containers holding used oil with the words “Used Oil.”

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations, and Determinations, the parties agree to the following:

75. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

76. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

77. For the purposes of this CA/FO, Respondent waives its right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

78. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.

79. For the purposes of this CA/FO, Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.

80. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.

81. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations and facts stipulated to in this CA/FO.

82. Each party will pay its own costs and attorney's fees.

VI. DEMONSTRATION OF COMPLIANCE

83. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Florida hazardous waste program.

VII. ADDITIONAL TERMS OF AGREEMENT

84. Respondent agrees to sample its silver-bearing wastewater from Building 310 at least once annually prior to changing the silver recovery filters. Such sampling shall be performed using the TCLP, Test Method 1311, for silver to ensure that the wastewater remains below the TCLP regulatory level of 5.0 mg/l for silver. Following three samples that are within compliance limits, Respondent will no longer need to perform such sampling. This system is currently out of service and upon restarting the process, Respondent will sample in accordance with this paragraph.

85. Respondent agrees that when an Air Force unit ceases operations at Tyndall AFB, the waste associated with such unit or operation that is accumulating in satellite accumulation containers will be either transferred to the base's less-than-90-day storage area(s), or properly disposed of.

VIII. PAYMENT OF CIVIL PENALTY

86. Respondent consents to the payment of a civil penalty in the amount of **THIRTY FOUR THOUSAND, EIGHT HUNDRED DOLLARS (\$34,800)**, payable within sixty (60) calendar days of the effective date of this CA/FO.

87. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking

Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White
(301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

88. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondent's failure to make timely payments in accordance with Paragraph 86 above, shall be resolved by negotiation between the EPA and Respondent or by referral to the General Accounting Office, now referred to as the Government Accountability Office (PL-108-271).

IX. RESERVATION OF RIGHTS

89. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

90. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CA/FO, to defend itself in any such action.

91. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release or disposal of any hazardous constituents, hazardous substances,

hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

92. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

93. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Compliance Agreement and its accompanying Final Order.

X. OTHER APPLICABLE LAWS

94. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

95. Nothing in this CA/FO shall be interpreted to require obligation or payment of any funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341; the Non-Appropriated Fund Anti-Deficiency Act, 10 U.S.C. § 2783; or other applicable law.

XI. FULL AND FINAL SATISFACTION

96. The settlement set forth in this CA/FO shall constitute full and final satisfaction of Complainant's civil enforcement actions and claims for civil penalties for all allegations and specific violations set forth in the CA/FO.

XII. PARTIES BOUND

97. This CA/FO shall be binding upon the parties and their successors and assigns.

98. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

99. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

XIII. SERVICE OF DOCUMENTS

100. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Colleen E. Michuda
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.

Atlanta, Georgia 30303-8909
michuda.colleen@epa.gov

101. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

United States Air Force
c/o Major Marla J. Gillman
Regional Counsel, Eastern Region
AFLOA/JACE-ER
60 Forsyth Street, S.W., Suite 8M80
Atlanta, Georgia 30303
marla.gillman@us.af.mil

XIV. SEVERABILITY

102. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XV. EFFECTIVE DATE

103. The effective date of this CA/FO shall be the date on which the fully executed CA/FO is filed with the Regional Hearing Clerk.

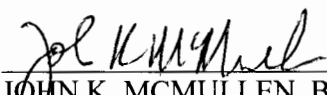
XVI. ENTIRE AGREEMENT

104. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CA/FO.

In the matter of United States Air Force, Tyndall AFB, Docket No. RCRA -04-2012-4009(b):

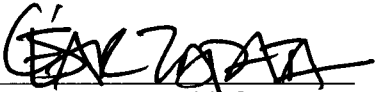
AGREED AND CONSENTED TO:

For the Respondent, United States Air Force

By:  Dated: 17 SEP 12
JOHN K. MCMULLEN, Brig Gen, USAF
Commander, 325th Fighter Wing

In the matter of United States Air Force, Tyndall AFB, Docket No. RCRA -04-2012-4009(b):

For the United States Environmental Protection Agency

By: 
César Zapata, Chief
RCRA and OPA Enforcement
and Compliance Branch
RCRA Division

Dated: 9/18/12

REGION 4

IN THE MATTER OF:) Docket Number: RCRA-04-2012-4009(b)
)
United States Air Force) Proceeding under Section 3008(a) of the
19 Alabama Avenue) Resource Conservation and
Tyndall AFB, Florida 32403-4016) Recovery Act, 42 U.S.C. § 6928(a)
)
)
EPA ID No.: FL1 570 024 124)
)
Respondent.)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 27 day of Sept., 2012.

BY: Susan B. Schub
 Susan B. Schub
 Regional Judicial Officer
 United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of United States Air Force, Tyndall AFB, Docket Number: RCRA-04-2012-4009(b), on SEP 25 2012, 2012, and on SEP 25 2012 2012, served copies on the parties listed below in the manner indicated:

Colleen E. Michuda
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Alan Newman
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

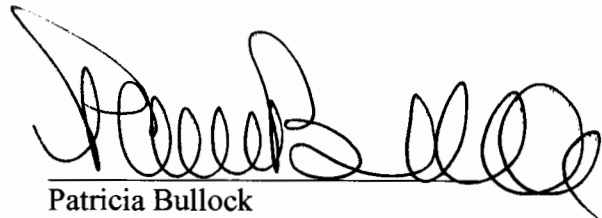
Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

United States Air Force
c/o Major Marla J. Gillman
Regional Counsel, Eastern Region
AFLOA/JACE-ER
60 Forsyth Street, S.W., Suite 8M80
Atlanta, Georgia 30303

(Certified Mail, Return Receipt
Requested)

Date: 9-25-12



Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511