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EPA--REGION 10

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~~RECEIVED~~ *Sharon Bay*
~~07 APR 31 AM 10:53~~ *Alfonso*
~~HEARINGS CLERK~~ *Hearing*
~~EPA--REGION 10~~ *Clerk*

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
MICHAEL HATCH,)
Mike Hatch Jeep,)
Juneau, Alaska,)
Respondent.)

Docket No. RCRA-10-2007-0137

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

I. Preliminary Statement

1. Complainant, the Director of the Office of Compliance and Enforcement of the United States Environmental Protection Agency, Region 10 ("EPA"), brings this administrative action requiring compliance and seeking a civil penalty under Section 3008 of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The Respondent is Michael Hatch ("Mike Hatch" or "Respondent"). Michael Hatch is the sole proprietor of Mike Hatch Jeep, also known as Mike Hatch Sales, located at 4755 North Douglas Highway, Juneau, Alaska, 99801.

2. The State of Alaska has not been granted final authorization to administer and enforce

34 a hazardous waste program pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b).

35 3. When EPA determines that any person has violated or is in violation of Subtitle C of
36 RCRA, EPA may, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issue an order
37 assessing a civil penalty for any past or current violation of Subtitle C of RCRA, and require
38 compliance immediately or within a specified time period.

39 4. EPA alleges that Respondent violated certain provisions of Subtitle C of RCRA and
40 the regulations promulgated thereunder. The parties have engaged in settlement discussions
41 regarding the alleged violations. The parties have agreed that settlement of this matter is in the
42 public interest, and that entry of this Consent Agreement and Final Order without further
43 litigation is the most appropriate means of resolving this matter. Thus, pursuant to 40 C.F.R.
44 § 22.13, EPA is simultaneously commencing and concluding this proceeding through this
45 Consent Agreement and Final Order ("CAFO") under 40 C.F.R. § 22.18(b)(2).

46 5. This CAFO resolves the alleged violations identified below and found during and as a
47 result of EPA's July 18, 2003 and August 11, 2005 inspections of Respondent's Juneau facility.

48 **II. Findings of Fact and Conclusions of Law**

49 6. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18 (b)(2) and (3), Complainant
50 alleges the following:

51 7. Respondent is the sole proprietor of Mike Hatch Jeep and a "person" within the
52 meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

53 8. Respondent is the owner and operator of a facility, as defined at 40 C.F.R. § 260.10,
54 located at 4755 North Douglas Highway, Juneau, Alaska, 99801 ("Facility").

55 9. Respondent is a used oil generator as defined at 40 C.F.R. § 279.20(a).

56 10. Respondent is a used oil burner as defined at 40 C.F.R. § 279.60(a).

57 11. Respondent generated, stored, disposed or otherwise handled used oil at the Facility,
58 which is a hazardous waste as hazardous waste is defined at Section 1004(5) of RCRA, 42
59 U.S.C. § 6903(5).

60 12. On September 17, 1991, Respondent submitted a "Notification of Hazardous Waste
61 Activity" (EPA Form 8700-12) to EPA, which identified the Facility as a generator of less than
62 100 kilograms/month of hazardous waste and as a burner of off-specification used fuel oil.
63
64

65 13. The violations alleged herein arise from two inspections of the Facility conducted by
66 EPA on July 18, 2003 and August 11, 2005, and from Respondent's January 16, 2006 response
67 to an EPA Request for Information issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6907.

68 14. On July 18, 2003, EPA conducted a RCRA Compliance Evaluation Inspection
69 ("CEI") at the Facility. As a result of this inspection, EPA issued a Notice of Violation ("NOV")
70 to the Facility on September 30, 2003, notifying the Facility of the following violations: failure
71 to label containers with the words "Used Oil"; failure to obtain analyses of used oil received
72 from off-site; and failure to make a waste determination.

73 15. EPA issued a RCRA Section 3007 Request for Information ("Information Request")
74 to the Facility on January 10, 2006 requesting, among other things, all documentation and
75 information on used oil received at the site from off-site since October 1, 2003. In its response to
76 the Information Request, dated January 16, 2006, the Facility stated that it received
77 approximately 150 to 200 gallons of used oil per month from off-site from October 1, 2003 to
78 January 10, 2006. The Facility did not provide any other documentation or information on the
79 used oil received from off-site in its response.

80 16. EPA issued a second NOV on June 1, 2006, based on the information obtained
81 during a CEI conducted on August 11, 2005, and on the Facility's response to the Information
82 Request. The specific violations cited in the NOV were as follows: failure to label containers
83 with the words "Used Oil"; violation of the prohibition on burning off-specification used oil
84 received from off-site suppliers in a non-approved device; failure to maintain records of used oil
85 shipments accepted for burning; and failure to ensure that used oil managed at a used oil burner
86 facility is not a hazardous waste

87
88 **Count I: Failure to label an above-ground tank with the words "Used Oil."**

89 17. The allegations of paragraphs 7 through 16 are incorporated herein by reference.

90 18. The regulation at 40 C.F.R. § 279.22(c)(1) requires that containers and above-ground
91 tanks used to store used oil at generator facilities must be labeled or marked clearly with the
92 words "Used Oil."
93

94 19. At the time of the EPA inspection on August 11, 2005, used oil, including used oil
95 generated on-site, was being stored at the Facility in an above-ground tank connected to the

96 "Black Gold" oil burner. The tank was not-labeled or marked clearly with the words "Used Oil,"
97 in violation of 40 C.F.R. § 279.22(c)(1).

98
99 **Count II: Burning off-specification used oil received from off-site in a non-approved**
100 **device.**

101 20. The allegations of paragraphs 7 through 19 are incorporated herein by reference.

102 21. The regulation at 40 C.F.R. § 279.11 provides that used oil burned for energy
103 recovery is subject to regulation under 40 C.F.R. Part 279 unless it can be shown not to exceed
104 any of the allowable levels of the constituents and properties in the specifications shown in Table
105 1 of the regulation.

106 22. The Facility received 32 used oil shipments totaling 5,475 gallons between
107 December 6, 2003 and April 4, 2006 from other than household "do-it-yourself" generators.

108 23. At the time of the August 11, 2005 inspection and the January 16, 2006 response to
109 the Information Request, Respondent was unable to show that the used oil received from off-site
110 and burned for energy recovery met the specifications of 40 C.F.R. § 279.11.

111 24. The used oil received between December 6, 2003 and April 4, 2006 from off-site was
112 burned in a space heater at the Facility in violation of the 40 C.F.R. § 279.12(c) prohibition on
113 the burning of off-specification used oil in units other than an industrial furnace, boiler or
114 hazardous waste incinerator.

115
116
117 **Count III: Failure to determine the total halogen content of used oil managed at the**
118 **facility.**

119 25. The allegations of paragraphs 7 through 24 are incorporated herein by reference.

120 26. The regulation at 40 C.F.R. § 279.63(a) requires used oil burners to determine if the
121 total halogen content of used oil managed at the facility is above or below 1,000 parts per million
122 ("ppm") to ensure that the used oil is not a hazardous waste under the rebuttable presumption of
123 40 C.F.R. § 279.10(b)(1)(ii).

124 27. Respondent received 32 used oil shipments between December 6, 2003 and April 4,
125 2006 from off-site which Respondent burned in its space heater.

126 28. Respondent failed to determine if the total halogen content of those 32 shipments of
127 used oil was above or below 1,000 ppm, in violation of 40 C.F.R. § 279.63(a).
128

129 **Count IV: Failure to maintain records of used oil shipments accepted for burning.**
130

131 29. The allegations of paragraphs 7 through 28 are incorporated herein by reference.

132 30. The regulation at 40 C.F.R. § 279.65(a) requires used oil burners to keep a record of
133 each used oil shipment accepted for burning.

134 31. Respondent maintained records of shipments received between December 6, 2003
135 and April 4, 2006 in the form of a log, but the records did not include the following required
136 information in violation of 40 C.F.R. § 279.65(a): the name, address and EPA identification
137 number of the transporter who delivered the used oil; and the address and EPA identification
138 number of the generator or processor/re-refiner from whom the used oil was sent for burning.
139

140 **Count V: Failure to provide documentation and records in response to an information**
141 **request.**
142

143 32. The allegations of paragraphs 7 through 31 are incorporated herein by reference.

144 33. Section 3007 of RCRA, 42 U.S.C. § 6927, requires, among other things, that any
145 person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled
146 hazardous wastes shall upon request of any officer, employee or representative of the U.S.
147 Environmental Protection Agency, duly designated by the Administrator, furnish information
148 relating to such wastes and permit such person at all reasonable times to have access to and to
149 copy all records relating to such wastes.

150 34. An EPA official, duly designated by the Administrator, sent a RCRA Information
151 Request to Mike Hatch Jeep on January 10, 2006, requesting that within 30 days of receipt of
152 EPA's request, Mike Hatch Jeep provide EPA with, among other things, all documentation and
153 information on used oil received at the site from off-site since October 1, 2003.

154 35. Respondent received the Information Request on January 13, 2006, and replied on
155 January 16, 2006, with the following statement: "The approximate amount of used oil I received
156 from off-site was between 150 and 200 gallons per month. This oil was used to heat my
157 building."

158 36. No other documentation was submitted by Respondent in its response to the
159 Information Request concerning used oil received from off-site.

160 37. EPA sent a Notice of Violation (NOV) to Respondent on June 1, 2006, identifying,

161 among other things, a "Failure to Maintain Records of Used Oil Shipments Accepted for
162 Burning."

163 38. In response to the NOV, Respondent replied on June 8, 2006, indicating that the
164 Facility did in fact maintain a log documenting the quantities of used oil shipments received
165 from off-site.

166 39. EPA wrote to Respondent on June 21, 2006, indicating that EPA had specifically
167 requested that Mike Hatch Jeep: "Provide all documentation and information on used oil
168 received at the site from off site since October 1, 2003, including the volume received and
169 amount burned for energy recovery."

170 40. Respondent submitted a log to EPA which identified quantities of used oil shipments
171 received from off-site from December 2003 until April 2006, which was received on July 5,
172 2006.

173 41. Respondent failed to respond to the Information Request in a timely manner, in
174 violation of Section 3007 of RCRA.

175 176 **III. Terms of Settlement**

177 42. Pursuant to Section 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), and
178 based on the allegations above, the seriousness of the violations, and any good faith efforts to
179 comply with applicable requirements, EPA has determined that an appropriate civil penalty to
180 settle this action is in the amount of FORTY-FOUR THOUSAND, SIX HUNDRED DOLLARS
181 (\$ 44,600).

182 43. In settlement of Counts I through V above, Respondent consents to the issuance of
183 this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited
184 in the foregoing paragraph, and to undertake the following actions immediately upon issuance of
185 the Final Order:

186 a. Respondent shall label or mark clearly all containers and above-ground tanks used to
187 store used oil at the Facility with the words "used oil," as required by 40 C.F.R. § 279.22(c)(1).

188 b. As prohibited by 40 C.F.R. § 279.12(c), Respondent shall not burn used oil received
189 from off-site in units other than an industrial furnace, boiler or hazardous waste incinerator
190 unless it can be shown not to exceed any of the specified fuel specifications in accordance with
191

192 40 C.F.R. § 279.11, or is from household "do-it-yourself" used oil generators.

193 c. Respondent shall determine if the total halogen content of used oil managed at
194 Respondent's used oil burner facility is above or below 1,000 parts per million to ensure that the
195 used oil is not a hazardous waste under the rebuttable presumption of 40 C.F.R.
196 § 279.10(b)(1)(ii), as required by 40 C.F.R. § 279.63(a).

197 d. Respondent shall keep a record of each used oil shipment accepted for burning, as
198 required by 40 C.F.R. § 279.65(a), including: the name, address and EPA identification number
199 of the transporter who delivered the used oil; the name, address and EPA identification number
200 (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for
201 burning; and the quantity of used oil accepted and the date of acceptance.

202 e. Respondent shall provide EPA with any and all records and information requested in
203 the EPA Information Request, dated January 10, 2006, that have not already been provided to
204 EPA.

205 f. All work to be performed pursuant to this CAFO shall be under the direction and
206 supervision of qualified personnel. Respondent shall provide a copy of this CAFO to all
207 contractors, subcontractors, laboratories and consultants retained to conduct or monitor any
208 portion of the work performed pursuant to this CAFO.

209 44. Attached to this CAFO is a Certificate of Completion for Respondent, which must be
210 executed by Respondent and returned to EPA at the address set forth in paragraph 49 below
211 within fourteen (14) days after full compliance with all of the provisions of paragraph 43.

212 45. Respondent shall pay \$11,150 of the assessed penalty no later than thirty (30) days
213 after the date a copy of this CAFO signed by the Regional Hearing Officer is mailed to
214 Respondent, and then make a payment every quarter in accordance with the attached penalty
215 payment schedule (Attachment A) until the full amount of the penalty and any accrued interest is
216 paid. If any quarterly installment payment is received more than 10 days after it is due, the entire
217 amount of this debt will become immediately due and payable, with interest thereon from the
218 effective date of the CAFO, at the option and sole discretion of EPA. If the business of Mike
219 Hatch Jeep, otherwise know as Mike Hatch Sales, is sold or ownership interests are transferred
220 during the period of the above-described installment payment schedule, the remaining principal
221 and accrued interest shall be due and payable as of the effective date of the sale or transfer.

223 Respondent may pay the balance of the penalty due at any time as specified in the attached
224 penalty payment schedule (Attachment A).

225 46. Respondent shall make its penalty payments by mailing a cashier's or certified check
226 payable to "Treasurer, United States of America" to:

227 U.S. Environmental Protection Agency, Region 10
228 Mellon Bank
229 P.O. Box 371099M
230 Pittsburgh, Pennsylvania 15251
231

232 A transmittal letter giving Respondent's name, complete address and this case docket number
233 must accompany each payment. A copy of the checks and of the accompanying transmittal
234 letters shall be delivered or mailed to Peter Magolske at the address set forth in paragraph 49
235 below and to the Regional Hearing Clerk at the following address:

236 U.S. Environmental Protection Agency, Region 10
237 1200 Sixth Avenue
238 Seattle, Washington 98101.
239

240 47. Failure to make timely payments of the assessed penalty may subject Respondent to
241 a civil action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to collect any unpaid portion
242 of the assessed penalty, together with interest, handling charges and nonpayment penalties as set
243 forth in paragraph 51 below.

244 48. In accordance with Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and the
245 regulations governing the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19,
246 promulgated pursuant to the Debt Collection Improvement Act of 1996, violation of any portion
247 of this CAFO shall subject Respondent to a civil penalty of up to \$32,500 per day, per violation.

248 49. Unless otherwise specified, any communications with EPA regarding this CAFO
249 shall be in writing and directed to Peter Magolske, Office of Compliance and Enforcement, at the
250 following address:

251 U.S. Environmental Protection Agency, Region 10
252 (Mail Stop OCE-127)
253 1200 Sixth Avenue
254 Seattle, Washington 98101.
255

256 50. All actions required pursuant to this CAFO shall be undertaken in accordance with
257 all applicable local, state, and federal laws and regulations.

258 51. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on
259 debts owed to the United States and a charge to cover the cost of processing and handling a
260 delinquent claim. Respondent shall pay the following amounts:

261 a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate
262 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the date a
263 conformed copy of this CAFO is mailed to Respondent; provided, however, that no interest shall
264 be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a
265 conformed copy of this CAFO is mailed to Respondent.

266 b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of
267 \$15 shall be paid if any portion of the assessed penalty is more than thirty (30) days past due.

268 c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of
269 6% per annum shall be paid on any portion of the assessed penalty that is more than ninety (90)
270 days past due, which nonpayment penalty shall be calculated from the date that a conformed
271 copy of this CAFO is mailed to Respondent.

272 273 **IV. General Provisions & Stipulations**

274 52. Respondent admits EPA's jurisdictional allegations.

275 53. Respondent neither admits nor denies the specific factual allegations contained in
276 this Consent Agreement.

277 54. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of
278 this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the
279 CAFO.

280 55. Respondent waives any right to contest the allegations and to an adjudicatory hearing
281 on any issue of law or fact set forth in and resolved by this Consent Agreement and waives its
282 right to appeal the accompanying Final Order.

283 56. Respondent agrees to the issuance of this CAFO and agrees to comply with its terms.

284 57. Respondent agrees not to claim or attempt to claim a tax deduction or credit covering
285 all or any part of the civil penalty paid to the United States Treasurer.

286 58. Respondent and Complainant shall each bear their own costs and attorney fees.

287 59. Respondent consents to the assessment of the civil penalty and to the issuance of the
288 Compliance Order and Final Order.

289 60. Respondent understands that failure to pay any portion of the civil penalty assessed
290 herein in accordance with the provisions of the CAFO may result in commencement of a civil
291 action in federal district court to recover the total penalty, together with interest thereon at the
292 applicable statutory rate.

293 61. The provisions of this CAFO shall be binding on Respondent, its officers, directors,
294 agents, servants, authorized representatives, successors and assigns.

295 62. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant
296 to RCRA for the violations alleged in this CAFO. Nothing in this CAFO is intended to nor shall
297 be construed to operate in any way to resolve any criminal liability of Respondent. Compliance
298 with this CAFO shall not be a defense to any actions subsequently commenced pursuant to
299 federal laws and regulations administered by EPA, and it is the responsibility of Respondent to
300 comply with such laws and regulations.

301 63. This CAFO shall not relieve Respondent of its obligation to comply with all
302 applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or
303 determination of, any issue related to any federal, state or local permit.

304
305 FOR RESPONDENT MICHAEL HATCH:

306
307 Date: 5-1-07



Signature

MICHAEL HATCH


Name (Print)

owner

Title

312
313
314
315
316 FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:

317
318 Date: MAY 3, 2007



Andrew Boyd
Associate Regional Counsel


321
322
Docket No. RCRA-10-2007-0137
Consent Agreement and Final Order
Michael Hatch

323 **FINAL ORDER**

324
325 64. Pursuant to the provisions of RCRA, 42 U.S.C. § 6901 *et seq.*, and EPA Region 10
326 and Michael Hatch having entered into the foregoing Consent Agreement, IT IS HEREBY
327 ORDERED that this Consent Agreement and Final Order (Docket No. RCRA-10-2007-0137) be
328 entered, and Respondent shall comply with the terms of the foregoing Consent Agreement.

329 65. This Consent Agreement and Final Order shall become effective upon filing with the
330 Regional Hearing Clerk.

331
332 DATED this 4th day of May, 2007.

333
334 
335 _____
336 Richard G. McAllister
337 Regional Judicial Officer
338

ATTACHMENT A
Penalty Payment Schedule

Payment Date	Principal	Interest at 5.25%	Total Payment Due	To pay in full:
Initial Payment Due w/in 30 days	11,150.00	0.00	11,150.00	44,600.00
2nd Payment by 7/31/2007	3,040.91	159.65	3,200.56	33,609.65
3rd Payment by 10/31/2007	3,040.91	159.65	3,200.56	30,568.74
4th Payment by 1/31/2008	3,040.91	159.65	3,200.56	27,527.83
5th Payment by 4/30/2008	3,040.91	159.65	3,200.56	24,486.92
6th Payment by 7/31/2008	3,040.91	159.65	3,200.56	21,446.01
7th Payment by 10/31/2008	3,040.91	159.65	3,200.56	18,405.10
8th Payment by 1/31/2009	3,040.91	159.65	3,200.56	15,364.19
9th Payment by 4/30/2009	3,040.91	159.65	3,200.56	12,323.28
10th Payment by 7/31/2009	3,040.91	159.65	3,200.56	9,282.37
11th Payment by 10/31/2009	3,040.91	159.65	3,200.56	6,241.46
12th Payment by 1/31/2010	3,040.90	159.65	3,200.55	3,200.55
Totals	44,600.00	1,756.13	46,356.12	

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BEFORE THE

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Dr
5/4/07
Shawn Eng,
alternate
hearing
clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)

) Docket No. RCRA-10-2007-0137

MICHAEL HATCH,)

Mike Hatch Jeep,)
Juneau, Alaska,)

) Respondent.)

) CERTIFICATION

Michael Hatch certifies under penalty of perjury that the following statements are true, accurate and correct:

1. I am the sole proprietor of Mike Hatch Jeep.
2. The requirements contained in paragraph 43 in the Consent Agreement and Final Order issued on _____ to Michael Hatch have been fully and timely complied with.

EXECUTED this 1 day of MAY, 2007.



Signature

MIKE HATCH

Name (Print)

owner

Title

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Michael Hatch, Mike Hatch Jeep, Juneau, Alaska, DOCKET NO.: RCRA-10-2007-0137**, was filed with the Regional Hearing Clerk on May 8, 2007.

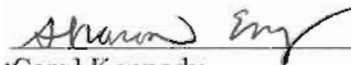
On May 8, 2007, the undersigned certifies that a true and correct copy of the document was delivered to:

Andrew Boyd
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 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 on May 8, 2007, to:

Mike Hatch
4755 North Douglas Highway
Juneau, AK 99801

DATED this 8 day of May 2007



for Carol Kennedy
Regional Hearing Clerk
EPA Region 10