



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866
JUL 23 2019

2019 JUL 23 AM 11:40
U.S. Environmental Protection Agency

CERTIFIED MAIL/RETURN RECEIPT
Article Number: 7018 2290 0000 4960 8338

Mr. John M. Scagnelli, Esq.
Scarinci & Hollenbeck LLC
1100 Valley Brook Avenue
Lyndhurst, New Jersey 07071

Re: In the Matter of Bergen County
Docket No. RCRA-02-2019-7103

Dear Mr. Scagnelli:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2.

Please note that payment is due within thirty (30) days of signature of the Final Order by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given in that Order.

If you have any questions, please contact the undersigned at 212-637-3195.

Very truly yours,

Gary H. Nurkin
Assistant Regional Counsel
Waste & Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

-----X
In the Matter of Bergen County :
Respondent. :
Proceeding under Section 3008 of the :
Solid Waste Disposal Act as amended: :
-----X

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-02-2019-7103

RECEIVED
2019 JUL 23 AM 11:10
EPA REGION 2 OFFICE
NEW JERSEY

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as "RCRA" or the "Act") for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 – 273 and 279.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New Jersey has been authorized by EPA to conduct hazardous waste program ("authorized state program").

The State of New Jersey was authorized by EPA to conduct a hazardous waste program on August 2, 1999 (64 Fed. Reg. 41823). At that time, the authorized state program incorporated by reference, with some modifications, the regulations in the federal program at 40 C.F.R. Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. On Dec. 16, 2002 (67 Fed. Reg. 76995), New Jersey was also authorized for the hazardous waste requirements promulgated by EPA between July 2, 1993 and July 31, 1998. These changes became effective February 14, 2003. Thus, as of February 14, 2003, the authorized state program, with some modifications,

essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's regulations that comprised the original state program, and that were authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The regulations authorized in 2002 can be found at 31 N.J.R.166 (Jan. 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998, for which EPA retains primary responsibility.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice

1. EPA has given notice of this action to the State of New Jersey.

Respondent

2. Respondent is Bergen County ("Bergen" or "Respondent").
3. Bergen is a political and administrative division of the State of New Jersey, which provides certain local government services. Bergen contains eight departments including the Department of Public Safety, which encompasses numerous divisions including the Bergen County Law and Public Safety Institute ("LPSI").
4. LPSI encompasses Police, Fire and EMS Academies (jointly "the Academies") where, among other things, public safety personnel are trained and educated. The Police Academy contains a 32-position outdoor firing range. LPSI and its Academies are located at 281 Campgaw Road, Mahwah, New Jersey 07430 (hereinafter "facility").
5. Since at least 1980, Respondent has owned and operated the above-referenced facility.

6. Bergen is, and has been, a “person” as that term is defined in 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Annotated Code (“N.J.A.C.”) 7:26G-4.1(a).
7. Bergen is, and has been, the “owner” and/or “operator” of the facility as those terms are defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
8. Bergen never submitted a Part A or a Part B Permit Application to either EPA or the DEP for its facility and never received interim status or a hazardous waste permit to treat, store or dispose of hazardous waste at its facility

Respondent’s Management of Hazardous Waste

9. In or about February 2016 through May 2016, Bergen performed a cleanup/lead removal of the Police Academy’s firing range, including the range’s sand berm backstop (hereafter “range cleanup”).
10. To perform the range cleanup, Bergen excavated material from the range and berm backstop (hereafter “excavated range material”). The excavated range material contained soil, stone, spent bullets and casings.
11. Using a dump truck, Bergen moved the excavated range material to the Fire Academy section of the facility, away from the Police Academy where the range is located.
12. Bergen separated sand from the excavated range material by placing the material into a sifter. Some of the material that went through the sifter was returned to the firing range.
13. The remaining excavated range material (*i.e.*, material that was not placed back into the firing range) was placed in a pile (hereafter “pile”) in the Fire Academy section of the facility.
14. From approximately June 2016 until approximately May 5, 2017, the above referenced pile did not have a liner or leachate collection system and was not inside or under a structure that provided protection from precipitation.
15. On or about April 3, 2017, Bergen had samples of the remaining excavated material in the pile tested to determine if it constituted hazardous waste.
16. On or about April 21, 2017, EPA collected samples of the remaining excavated material from the pile.
17. Samples collected by both Bergen and EPA indicated that the remaining excavated material in the pile exceeded the RCRA toxic characteristic regulatory level of 5.0 milligrams per liter for lead and constituted a RCRA regulated hazardous waste (“D008”).

18. On or about May 5, 2017, Bergen, using a Uniform Hazardous Waste Manifest, sent the pile (consisting of approximately forty-two cubic yards of material) off-site as hazardous waste ("D008") to a treatment, storage or disposal facility.

Storage of Hazardous Waste in a Pile Without Interim Status or a Permit

19. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c), as incorporated by reference in N.J.A.C. 7:26G-12.1(a), subject to compliance with certain inapplicable exceptions, interim status or a RCRA permit is required for storage of hazardous waste.
20. As of at least June 2016 and continuing to May 5, 2017, Bergen stored, as that term is defined at 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a), characteristic lead hazardous waste ("D008") in a pile situated at the Fire Academy training section of the facility.
21. Bergen did not have a permit or interim status authorizing it to store hazardous waste at its facility.
22. Bergen's storage of hazardous waste in a pile at the Fire Academy training section of the facility without a permit or interim status constitutes a violation of each of the following:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925; and
 - b. 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a).

Failure to Comply with Waste Pile Requirements

23. Pursuant to 40 C.F.R. § 264.1(a), the requirements set forth in Part 264, subject to certain inapplicable specified exceptions, apply to owners and operators that treat, store or dispose of hazardous waste. The regulations set forth in 40 C.F.R. Part 264, Subpart L as incorporated by reference in N.J.A.C. 7:26G-8.1(a) apply to facilities that store or treat hazardous waste in piles.
24. Pursuant to 40 C.F.R. §§ 264.251(a) and (b) as incorporated by reference in N.J.A.C. 7:26G-8.1(a), a hazardous waste pile must have a liner and leachate collection and removal system unless the owner and operator is exempted from those requirements by the Commissioner of the DEP.
25. As of at least June 2016 and continuing to May 5, 2017, Bergen's pile situated at the Fire Academy training section of the facility did not have a liner nor a leachate collection and removal system.
26. The Commissioner of DEP did not grant Bergen an exemption from the liner and leachate

collection and removal system requirements for the pile referenced in paragraph 25.

27. Bergen's failure to have a liner and a leachate collection and removal system for its pile constitutes a violation of 40 C.F.R. § 264.251 as incorporated by reference N.J.A.C. 7:26G-11.1(a).

Settlement and Installation of Bullet Recovery System

28. In April 2019, the parties had an informal settlement conference and agreed to settle the matter as provided therein.
29. During the above referenced settlement conference, Respondent represented to EPA that in January 2018, at a cost of approximately \$2,650,000, it installed a bullet recovery system at the Police Academy Firing Range. The bullet recovery system consists of a bullet trap to prevent bullets from coming into contact with soil and a mechanized auger to collect and place recovered bullets into fifty-five gallons drums for recycling.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order ("CA/FO") shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall hereinafter, at its facility, comply with all applicable RCRA requirements relating to the generation, management, and disposal of hazardous waste.
2. Respondent shall pay a civil penalty to EPA in the amount of **eighty-eight thousand dollars (\$88,000)**. Such payment shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be

made payable to the “**Treasurer, United States of America**” and such payment shall be mailed to the following address:

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

The check shall be identified with a notation thereon listing the following: ***In re Bergen County, Docket Number RCRA 02-2019-7103.***

Alternatively, if Respondent chooses to make the payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment
 - b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
 - c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
 - d. Federal Reserve Bank of New York ABA routing number: **021030004**
 - e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
 - f. Name of Respondent: **Bergen County**
 - g. Case docket number: **RCRA-02-2019-7103**
3. The payment must be received at the above-listed address (or account of EPA) set forth in Paragraph 2, above, on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
4. Payment instructions:
- a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payments by cashier’s check or certified check, such check shall be *received* at the above-listed address set forth in Paragraph 2 on or before the time-period specified in Paragraph 3. If Respondent makes payments by the EFT method set forth in Paragraph 2,

such EFT shall be *received* on or before the time-period specified in Paragraph 3.

- b. Whether Respondent makes payments by cashier's checks, certified checks or by the EFT method, Respondent shall, promptly when payment has been made, furnish reasonable proof that the required payment has been made, and such proof shall be furnished to both:

Gary H. Nurkin
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Derval Thomas
Section Chief
RCRA Compliance Branch
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
290 Broadway
New York, New York 10007-1866

- c. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - d. Furthermore, if the required payment is not received on or before the date when such payment is due under the terms of this document, interest therefore shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date any such payment was to have been received, in which payment of the amount(s) remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which such payment was required hereto to have been made.
5. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

6. Respondent hereby certifies that it is in compliance with all applicable requirements of RCRA and its implementing regulations relating to the generation and management of lead-contaminated hazardous waste at the facility.
7. Complainant shall mail to Respondent (or to the representative designated below) a copy of the fully executed consent agreement and accompanying executed final order, and Respondent consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

John M. Scagnelli, Esq.
Scarinci & Hollenbeck LLC
1100 Valley Brook Avenue
Lyndhurst, New Jersey 07071

8. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the entire amount of the civil penalty in accordance with the terms and schedule set forth above.
9. This CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all provisions of RCRA and the regulations promulgated thereto, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.
10. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
11. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims herein set forth in the "EPA Findings of Fact and Conclusions of Law" upon Respondent making full payment of the penalty amount set forth above. Notwithstanding the above, nothing herein shall affect the authority of the EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to Respondent's failure to comply with applicable regulations relating to its generation, storage and/or disposal of hazardous waste.
12. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within this document.
13. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of

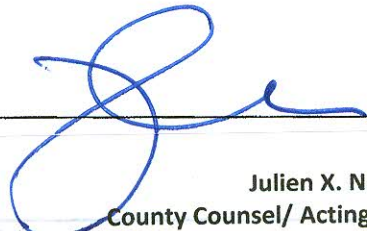
EPA to: (a) enforce this Consent Agreement and Final Order; or b) enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United State to enforce the provisions of this Consent Agreement and Final Order.

14. Respondent waives any right it might possess to seek or obtain judicial review of the Final Order incorporating this Consent Agreement pursuant to Section 10(c) of the Administrative Procedure Act, 5 U.S.C. § 704, and/or under any other applicable law.
15. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
16. Each party shall bear its own costs and fees in connection with this proceeding.
17. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of which he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

In the Matter of Bergen County
Docket Number RCRA-02-2019-7103

RESPONDENT:

BY: _____
(Signature)



NAME: _____
(Please Print) **Julien X. Neals, Esq.,
County Counsel/ Acting County Administrator**

TITLE: _____

DATE: 7/10/19

COMPLAINANT:



Dore LaPosta, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

JUL 19 2019

DATE: _____

In the Matter of Bergen County
Docket Number RCRA-02-2019-7103

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Bergen County*, bearing Docket Number RCRA-02-2019-7103. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3).



Peter D. Lopez
Regional Administrator
United States Environmental Protection Agency –
Region 2

DATE: 7/22/19

In the Matter of Bergen County
Docket Number RCRA-02-2019-7103

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested

John M. Scagnelli, Esq.
Scarinci & Hollenbeck LLC
1100 Valley Brook Avenue
Lyndhurst, New Jersey 07071

Dated: July 23 2019


Yolanda Majette
WTS Branch Secretary