

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX



In the matter of:)	
)	U.S. EPA Docket No.
NRC Environmental Services, Inc.)	
3500 Sunrise Highway, Suite 200, Bldg 200)	RCRA-09-2023-0042
Great River, New York)	
)	
)	
)	
Oakland Power Company LLC)	CONSENT AGREEMENT
50 Martin Luther King Way)	FINAL ORDER PURSUANT TO
Oakland, California)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
_____ Respondents.)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22 (“Consolidated Rules”).
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondents are NRC Environmental Services, Inc., a Delaware corporation and Oakland Power Company LLC, a Delaware corporation.
4. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondents violated a requirement of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq*, and state regulations adopted pursuant to the State of California’s (“State’s”) authorized hazardous waste management program under RCRA.
5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
7. The State received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on or about August 1, 1992. This authorization was updated on September 26, 2001, (*see* 66 FR 49118, September 26, 2001), on October 7, 2011, (*see* 76 FR 62303, October 7, 2011) and again on January 14, 2020 (*see* 85 FR 2038, as corrected [*see* 86 FR 29207, June 1, 2021]). The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State has been authorized for all the hazardous waste management regulations referenced in this CA/FO.¹
8. A violation of the State's authorized hazardous waste program, found at Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

C. EPA'S GENERAL ALLEGATIONS

9. Respondent NRC Environmental Services, Inc. is an international company that provides environmental and emergency response services. For the purposes of this CA/FO, NRC Environmental Services, Inc. will be referred to as "NRC."
10. Respondent Oakland Power Company LLC ("Oakland Power") operates a power plant located at 50 MLK Jr. Way, in Oakland, California, with an EPA identification number of CAT080011679 (the "Facility"). The Facility is a combustion turbine peaker plant that operates during infrequent periods of peak energy demand. The turbines that generate electricity utilize jet fuel, which is stored in a two-million-gallon tank at the Facility.
11. During 2019 and 2020, Oakland Power hired NRC to perform fuel transfers, tank cleaning, and waste disposal as part of a fuel storage tank re-certification process at the Facility.

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

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12. On April 6th and 7th, 2020, NRC proceeded with the work by removing what Respondents believed to be tank bottom water from the jet fuel tank and filling three trucks, each of which contained approximately 2,800 gallons of liquid.
13. On April 6th and 7th, 2020, NRC transported the three trucks to East Bay Municipal Utility District (“EBMUD”) for disposal as non-hazardous waste. EBMUD operates a trucked waste program for non-hazardous waste at its main wastewater treatment plant, located at 2020 Wake Avenue in Oakland, California.
14. EBMUD sampled the contents of the third truck and determined that it had elevated concentrations of benzene, ethylbenzene, toluene and xylenes, as well as a low flashpoint typical of a petroleum based fuel.
15. Based on information gathered during EPA’s investigation, EPA alleges that all three of the trucks contained jet fuel drawn from the fuel storage tank and that Respondents’ management and delivery of the truckloads to EBMUD violated certain provisions of RCRA.
16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.
17. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, through Delegation 8-9-A, last revised February 4, 2016. The Regional Administrator for EPA Region IX redelegated that authority to the Director of the Enforcement Division for Region IX, with Delegation R9-1200 TN 111, dated January 22, 2016.
18. Respondents are “persons” as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
19. Respondent Oakland Power is the “owner” and “operator” of the Facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
20. Each Respondent is a “generator” of hazardous waste pursuant to 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10] and is jointly and severally liable for the alleged violations pursuant to 45 Fed. Reg. 72026-27 (Oct. 30, 1980) (amending 40 CFR Parts 260-61).
21. Respondents are or have been engaged in “disposal” of “hazardous waste” as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* 40 C.F.R. §§ 260.10 and 261.3].

D. EPA's ALLEGED VIOLATIONS

COUNT I

(Failure to Make a Hazardous Waste Determination)

22. Paragraphs 1 through 21 above are incorporated herein by reference as if they were set forth here in their entirety.
23. 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11] provides that a person who generates a waste, as defined by 22 C.C.R. § 66261.2, must make a determination as to whether that waste is a hazardous waste.
24. On April 6 and 7, 2020, Respondents removed approximately 8,400 gallons of liquid from the jet fuel storage tank at the Facility. Respondents delivered the tank contents in three truckloads to EBMUD for disposal as non-hazardous waste.
25. Respondents did not determine whether the contents of the three truckloads were hazardous waste prior to transporting them to EBMUD.
26. Based on EBMUD's sample of the third truck and EPA's investigation, EPA alleges that the contents of all three trucks contained D001 and D018 RCRA hazardous waste.
27. Therefore, EPA alleges that Respondents violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNTS II Through IV

(Failure to Manifest Hazardous Waste on Three Occasions)

28. Paragraphs 1 through 21 above are incorporated herein by reference as if they were set forth here in their entirety.
29. 22 C.C.R. § 66262.20 [*see also* 40 C.F.R. § 262.20(a)(1)], requires a generator of hazardous waste who transports, or offers for transportation, hazardous waste for disposal to prepare a manifest.
30. The three truckloads of hazardous waste that Respondents transported on April 6 and 7, 2020, did not have a hazardous waste manifest accompanying the shipments.
31. Therefore, EPA alleges that Respondents violated of 22 C.C.R. § 66262.20 [*see also* 40 C.F.R. § 262.20(a)(1)] on each of these three separate occasions.

COUNT V Through VII

(Offering Hazardous Waste to EBMUD on Three Occasions)

32. Paragraphs 1 through 21 above are incorporated herein by reference as if they were set forth here in their entirety.

33. 22 C.C.R. § 66262.12(c) prohibits a generator of hazardous waste from offering hazardous waste to, or transporting hazardous waste to, a facility that has not received an EPA ID number as a designated treatment, storage, and disposal facility (“TSDF”) [*see also* 40 CFR § 262.10(a)(3)].
34. Respondents transported and offered hazardous waste to EBMUD at 2:00 PM on April 6 and at 8:00 AM and 9:30 AM on April 7, 2020.
35. EBMUD is not a TSDF and therefore not authorized to receive hazardous waste for treatment, storage, or disposal.
36. Therefore, EPA alleges that Respondents violated 22 C.C.R. § 6626.12 [*see also* 40 CFR § 262.10(a)(3)] on each of three separate occasions.

E. CIVIL PENALTY

37. The Complainant proposes that Respondents be assessed, and Respondents agree to pay TWO HUNDRED AND THIRTY THOUSAND DOLLARS (\$230,000), as the civil penalty for the violations alleged herein.
38. The proposed penalty was calculated in accordance with the “June 2003 RCRA Civil Penalty Policy,” and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

39. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondents: (i) admit that EPA has jurisdiction over the subject matter of this CA/FO and over Respondents; (ii) neither admit nor deny the specific factual allegations or conclusions of law contained in the CA/FO; (iii) consent to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waive any right to contest the allegations contained in Section C and D of the CA/FO; and (v) waive the right to appeal the proposed final order contained in this CA/FO.

G. PARTIES BOUND

40. This CA/FO shall apply to and be binding upon Respondents and their agents, successors and assigns, until the civil penalty required under Sections E and I has been paid in accordance with Section I, the compliance task required under Section H is completed in accordance with that section, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
41. No change in ownership or corporate, partnership or legal status relating to the facilities will in any way alter Respondents’ obligations and responsibilities under this CA/FO.

42. Respondents hereby certify that their undersigned representatives are fully authorized by Respondents to enter into this CA/FO, to execute and to legally bind Respondents to it.

H. COMPLIANCE TASKS

43. No later than twelve (12) months after the Effective Date of this CA/FO, Respondents shall each complete training within their respective organizations to ensure that all personnel employed at California facilities whose job description includes responsibility for oversight or supervision of tank or other equipment cleaning operations are familiar with the waste determination requirements found at 22 CCR § 66262.11 [40 CFR § 262.11] and that all wastes generated by such operations are properly characterized before being transported off-site for disposal. No later than thirteen (13) months from the Effective Date of this CA/FO, Respondents shall submit a report documenting completion of the training conducted pursuant to this paragraph. Documentation of all such waste characterizations shall be maintained at the facility for a period of three years.

I. PAYMENT OF CIVIL PENALTY

44. Respondents consent to the assessment of and agree to pay a civil penalty of TWO HUNDRED AND THIRTY THOUSAND DOLLARS (\$230,000) in full settlement of the federal civil penalty claims alleged in this CA/FO.
45. Respondents shall submit payment within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the facility, the Respondents' names and addresses, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:
U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

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Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfo1.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

46. At the time payment is made, a copy of the check shall be sent to:

Regional Hearing Clerk

Office of Regional Counsel (ORC-1)

U.S. Environmental Protection Agency - Region 9

75 Hawthorne Street

San Francisco, CA 94105

with an electronic copy to:

Rick Sakow
Sakow.Rick@epa.gov

and

Diane Prend
Prend.Diane@epa.gov

47. Each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondents further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
48. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

49. In the event that Respondents fail to meet any requirement set forth in this CA/FO, Respondents shall pay stipulated penalties up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of delay, and up to THREE THOUSAND DOLLARS (\$3,000.00) per day for each day of delay thereafter. Compliance by Respondents with requirements set forth in this CA/FO shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
50. All penalties and interest owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
51. All penalties and interest shall be remitted in the same manner described in Section I.
52. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
53. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

54. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions that may be available to EPA because of Respondent's failure to comply with any of the requirements of this CA/FO.
55. The payment of stipulated penalties specified in the Section shall not be deducted by Respondents or any other person or entity for federal, state or local taxation purposes.

K. CERTIFICATION OF COMPLIANCE

56. In executing this CA/FO, Respondents certify under penalty of law to EPA that they have fully complied with RCRA and its implementing regulations that formed the basis for the violations alleged in Section D, above.
57. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has required of the person or persons directly responsible for gathering the information.

L. RESERVATION OF RIGHTS

58. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondents perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. § 6928. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, or any other statutory, regulatory or common law enforcement authority of the United States.
59. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state or federal laws and regulations.
60. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondents' liability for federal civil penalties for the alleged violations and facts as set forth in Section D of this CA/FO.
61. Respondents' full compliance with this CA/FO shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in this CA/FO.

M. OTHER CLAIMS

62. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

N. MISCELLANEOUS

63. This CA/FO may be amended or modified only by written agreement executed by both EPA and the Respondents.
64. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
65. Each party to this action shall bear its own costs and attorneys' fees.
66. Respondents consent to entry of this CA/FO without further notice. By signing this CA/FO, Respondents acknowledge that this CA/FO will be available to the public and agree that this CA/FO does not contain any confidential business information or personally identifiable information.

O. EFFECTIVE DATE

67. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

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FOR RESPONDENT Oakland Power Company LLC:

Apr 27, 2023

Date



Stephanie Zapata Moore
Executive Vice President, General Counsel, and
Chief Compliance Officer
Oakland Power Company LLC

FOR RESPONDENT NRC Environmental Services, Inc.:

04/27/2023

Date



John Nickerson
Vice President, Associate General Counsel
NRC Environmental Services, Inc.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

AMY MILLER-
BOWEN



Digitally signed by AMY MILLER-
BOWEN
Date: 2023.05.17 15:50:11 -07'00'

Date

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-2023-0042) be entered and that Respondents pay a civil penalty of TWO HUNDRED AND THIRTY THOUSAND DOLLARS (\$230,000), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order, in accordance with all terms and conditions of this Consent Agreement and Final Order.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

Beatrice Wong Date
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

