

RECEIVED
17 MAR 16 AM 9:32
HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. RCRA-10-2017-0055
)
United States Department of the)
Air Force)
)
Respondent) **CONSENT AGREEMENT**
)
Eielson Air Force Base, Alaska)
Facility.)
_____)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928.

1.2. Pursuant to Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), EPA may take enforcement action against departments, agencies, and instrumentalities of the Federal government in the same manner and under the same circumstances as against any other person.

1.3. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may directly enforce the federal hazardous waste program in the State of Alaska.

1.4. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the United States Air Force (“Respondent”) agrees to issuance of the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that each Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 At all times relevant to the allegations set forth herein, Respondent is and has been the “owner” and “operator” of Eielson Air Force Base, located at 2310 Central Avenue, Eielson Air Force Base, Alaska 99702 (“Facility”), as those terms are defined at 40 C.F.R. §260.10.

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

3.3 Respondent Air Force is a "person" as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

3.4 40 C.F.R. § 261.2(a)(1) defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34.

3.5 40 C.F.R. § 261.3 defines "hazardous waste" as a "solid waste" (as defined in 40 C.F.R. § 261.2) that has not been excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.6 40 C.F.R. § 260.10 defines a "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.7 40 C.F.R. § 260.10 defines "facility" as all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.8 The Facility is a "facility" as that term is defined in 40 C.F.R. § 260.10.

3.9 The Air Force is a Large-Quantity Generator ("LQG") of hazardous waste that generates hazardous waste at the Facility in an amount greater than 1,000 kilograms per month, and is assigned EPA ID AK1570028646.

3.10 At all times relevant to the allegations set forth herein, the Air Force is a small quantity handler of universal waste as defined in 40 C.F.R. § 273.9.

3.11 On May 11 – 13, 2015, an authorized representative of EPA (“EPA inspector”) conducted an inspection of the Facility to determine compliance with RCRA (“EPA Inspection”).

3.12 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

Count 1: Failure to Comply with the Land Disposal Restriction Notification Requirements

3.13 The allegations in each of the preceding paragraphs of this Consent Agreement are incorporated by reference herein as though fully set forth herein.

3.14 A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed as required by 40 C.F.R. § 268.7(a)(1).

3.15 40 C.F.R. § 268.7(a)(2) requires that a generator of hazardous waste or contaminated soil that does not meet the treatment standards [using the methods as described in 40 C.F.R. § 268], or for which the generator chooses not to make the determination of whether the waste must be treated, the generator must send with the initial shipment of waste a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. This notice must include all the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table at 40 C.F.R. § 268.7(a)(4) or, if the generator chooses not to make a treatment determination, the notice must include EPA Hazardous Waste Numbers and the statement found in 40 C.F.R. § 268.7(a)(2).

3.16 During the EPA Inspection the Inspector inquired whether the Air Force had made a one-time Land Disposal Restriction (LDR) notification when it first shipped its lead acid batteries off site to the treatment or storage facility, and whether the Air Force had a copy of that one time notice in its files.

3.17 During the EPA Inspection, the Air Force could not find the one-time LDR notification in its files, and was unable to provide a copy of the LDR notification.

3.18 Following the EPA Inspection, the Air Force notified the EPA that it had determined that a LDR notification was required with the initial shipment of lead acid batteries that were sent to Chnitzer Alaska (EPA ID AKD983069378, 99705) at 99705 King Street, Anchorage, Alaska 99515, for reclamation and recycling. The Air Force then provided EPA with a copy of the LDR notification dated May 13, 2015, the last day of the EPA Inspection.

3.19 Respondent Air Force violated 40 C.F.R. 268.7(a)(2) by failing to provide the treatment or storage facility with a LDR notification for the initial shipment of lead acid battery waste.

Count 2: Failure to Comply with Used Oil Requirements

3.20 The allegations in each of the preceding paragraphs of this Consent Agreement are incorporated by reference herein as though fully set forth herein.

3.21 40 C.F.R. § 279.22(c)(1) requires that containers used to store used oil must be labeled or marked clearly with the words "Used Oil."

3.22 At the time of the EPA Inspection, the EPA inspector visited three separate areas, the HVAC Shop, the Power Production Shop, and RED FLAG.

3.23 At the time of the EPA Inspection, the EPA inspector observed 4 different used oil storage containers in three different areas of the Facility that were not marked with the words "Used Oil."

3.24 During the EPA Inspection, Respondent Air Force labeled the containers with the words "Used Oil."

3.25 Respondent Air Force violated 40 C.F.R. § 279.22(c)(1) by failing to label containers used to store used oil with the words "Used Oil."

Count 3: Failure to Properly Manage Universal Waste

3.26 The allegations in each of the preceding paragraphs of this Consent Agreement are incorporated by reference herein as though fully set forth herein.

3.27 At the time of the EPA Inspection, Respondent Air Force was a small quantity handler of universal waste as defined in 40 C.F.R. § 273.9.

Prevent Releases of Universal Wastes

3.28 40 C.F.R. § 273.13(d)(1) requires that a small quantity handler of universal waste must manage lamps, as that term is defined in 40 C.F.R. § 273.9, in a way that prevents releases of any universal waste or component of a universal waste to the environment. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

3.29 At the time of the EPA Inspection, Respondent had 1 box of broken universal waste lamps in a box that only had the word "Broken" on it and did not clearly mark the box as containing "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

Labeling of Universal Wastes

3.30 40 C.F.R. § 273.14 requires that a small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste.

3.31 40 C.F.R. § 273.14(a) requires that a small quantity handler of universal waste must label or mark each battery or a container in which the batteries are contained with any one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

3.32 40 C.F.R. § 273.14(d)(2) provides that a universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

3.33 40 C.F.R. § 273.14(e) requires that a small quantity handler of universal waste must label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

3.34 At the time of the EPA Inspection, Respondent Air Force had one container of Ni-Cad batteries and one container of lead-acid batteries in Building 2206 that were not labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

3.35 At the time of the EPA Inspection, Respondent had one container of mercury thermostats in Building 2206 that was not labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

3.36 At the time of the EPA Inspection, Respondent had 16 boxes of universal waste lamps in Building 2206 that were not labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

Accumulation Start Dates of Universal Wastes

3.37 40 C.F.R. § 273.15(c) requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

3.38 At the time of the EPA Inspection, Respondent Air Force had one container of Ni-Cad batteries and one container of lead-acid batteries in Building 2206 that each had no accumulation start date.

3.39 At the time of the EPA Inspection, Respondent had 12 boxes of universal waste lamps that had no accumulation start date or other information to indicate the length of storage in Building 2206.

3.40 Respondent violated 40 C.F.R. § 273.13(d)(1) by failing to manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

3.41 Respondent violated 40 C.F.R. § 273.14 (a), (d), and (e) by failing to properly label or mark the universal waste to identify the type of universal waste.

3.42 Respondent violated 40 C.F.R. § 273.15(c) by failing to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$ 24,900 (the "Assessed Penalty").

4.4. Respondents agree to pay the Assessed Penalty within 180 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.5.1 Payment may be made using the Intra Governmental Payment and Collection application (IPAC), using the Agency's Location Code (ALC) 68-01-0727. Please include the Docket Number of this action (Docket No. RCRA 10-2017-0055) in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.

4.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Cheryl Williams
U.S. Environmental Protection Agency
Region 10,
1200 Sixth Avenue, Suite 900
Mail Stop OCE 101
Seattle, Washington 98101
williams.cheryl@epa.gov

4.7. If either Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty shall become immediately due and owing.

4.8. Respondent Air Force's Treasury Account Symbol is 57. Inquiries concerning this payment can be made to Lieutenant Eli Armstrong, 354 CPTS/FMA, Eielson Air Force Base. Lieutenant Armstrong can be contacted at 907-377-2360.

4.9. Based on the findings contained in this Consent Agreement, Respondent is also ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA,

42 U.S.C. § 6928(a):

4.9.1. Within thirty (30) days after the effective date of this Consent Agreement and Final Order, for every location at the Facility which Respondent has designated as a "Universal Waste Accumulation Area" and where Respondent has determined that 40 C.F.R Part 270 will apply, Respondent shall (1) document and attest that all universal waste at each location is being managed in a way that prevents releases of any universal waste or component of a universal waste to the environment pursuant to 40 C.F.R. § 273.13; (2) document and attest that all containers are properly labelled according to 40 C.F.R. § 273.14; and (3) document and attest that no universal waste is accumulated for more than one year or demonstrate compliance with 40 C.F.R. § 273.15(b) and demonstrate compliance with 40 C.F.R. §273.15(c).

4.9.2. Respondent Air Force shall provide compliance documentation required under paragraph 4.9.1, with a copy by electronic mail, to:

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

4.10. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take actions within the time specified in this Consent Agreement may subject Respondents to additional civil penalties for each day of continued noncompliance.

4.11. The Assessed Penalty, including any additional costs incurred under Paragraph 4.10, represents an administrative civil penalty assessed by EPA.

4.12. Respondent shall seek all existing funds to meet the requirements of this Consent Agreement. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with RCRA, the applicable regulations thereunder, or this Consent Agreement.

4.13. Nothing in this Consent Agreement shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

4.14. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.15. The undersigned representative of the Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.16. Each party shall bear its own costs and attorneys' fees in bringing or defending this action.

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

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

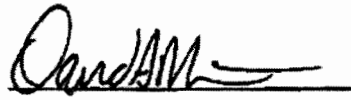
4.19. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.20. The above provisions are STRICTLY LIMITED AND AGREED upon by Respondent and EPA Region 10.

DATED:

1 Mar 2017

FOR RESPONDENT AIR FORCE:

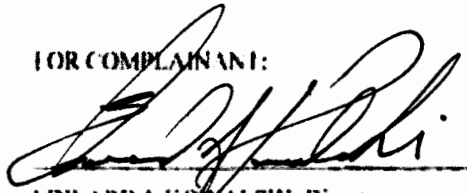


DAVID A. MINEAU, Colonel, USAF
354th Fighter Wing Commander

DATED:

3/6/2017

FOR COMPLAINANT:



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

*Eielson
original
signature*

4.19. The provisions of this Consent Agreement and the Respondent and its agents, servants, employees, successors, and a

4.20. The above provisions are STIPULATED AND AG and EPA Region 10.

DATED:

1 Mar 2017

FOR RESPONDENT AIR FORCE:

David A. Mineau

DAVID A. MINEAU, Colonel, USAF
354th Fighter Wing Commander

DATED:

FOR COMPLAINANT:

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2017-0055
)	
United States Department of the)	
Air Force)	
Respondent)	FINAL ORDER
)	
Eielson Air Force Base, Alaska)	
Facility.)	
_____)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 15th day of March 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: United States Air Force, Docket No.: RCRA-10-2017-0055**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

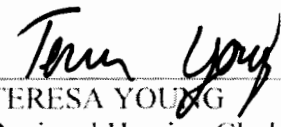
The undersigned certifies that a true and correct copy of the document was delivered to:

Gracie Pendleton
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

David A. Mineau
Colonel, USAF
Eielson Air Force Base
2310 Central Avenue
Eielson Air Force Base, AK 99702

DATED this 16 day of March, Year, 2017



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10