

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. RCRA-10-2021-0212
)
GOLDEN VALLEY ELECTRIC) CONSENT AGREEMENT
ASSOCIATION, INC.,)
)
Healy, Alaska,)
)
Respondent.)

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. 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 enforce the federal hazardous waste program in the State of Alaska.

1.3. 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 Golden Valley Electric Association, Inc. (“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 Enforcement and Compliance Assurance Division, 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 Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 40 C.F.R. § 260.10 defines a “person” as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

3.2 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.

3.3 40 CFR § 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 § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.4 40 CFR § 260.10 defines “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.

3.5 Respondent is a cooperative electric company doing business in and organized under the laws of the state of Alaska.

3.6 Respondent is a “person” as that term is defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15).

3.7 At all times relevant to the allegations set forth herein, Respondent has been the “owner” and “operator” of the Healy power plant located in Healy, Alaska (the “Facility”), as those terms are defined at 40 C.F.R. § 260.10.

3.8 The Facility is a coal-fired electric power generating facility whose operations result in the generation of solid and hazardous wastes.

3.9 Respondent’s Facility is a “generator” as defined by 40 C.F.R. § 260.10.

3.10 At all times relevant to the allegations set forth herein, Respondent’s Facility was not a permitted treatment, storage, disposal facility, nor an interim status facility under Section 3005 of RCRA, 42 U.S.C. § 6925.

VIOLETIONS

COUNT 1: Storage of Hazardous Waste without a Permit or Interim Status

3.11 Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste have a permit or interim status.

3.12 40 C.F.R. § 262.16 provides that a small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of 40 C.F.R. parts 124, 264 through 267, and 270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in this section are met.

3.13 Respondent is a small quantity generator of hazardous waste, as determined pursuant to the provisions of 40 C.F.R. § 262.13.

3.14 40 C.F.R. 262.16(b)(2)(iv) requires that, at least weekly, a small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

3.15 Between September 23, 2017, and September 23, 2020, Respondent failed to conduct 112 out of 156 weekly inspections of its hazardous waste central accumulation areas, in violation of the requirements of 40 C.F.R. 262.16(b)(2)(iv).

3.16 40 C.F.R. 262.16(b)(9)(iii) requires that a small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

3.17 At the time of EPA's inspection of the Facility, ten of the personnel who conducted weekly hazardous waste storage inspections and two of the personnel who signed uniform hazardous waste manifests offering the Facility's hazardous waste for transport had not

been adequately trained in proper procedures relevant to their responsibilities, in violation of the requirements of 40 C.F.R. § 262.16(b)(9)(iii).

3.18 40 C.F.R. § 262.15(a) provides that a generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in § 261.31 or § 261.33(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. parts 124, 264 through 267, and 270, provided that all of the conditions for exemption in this section are met.

3.19 40 C.F.R. § 262.15(a)(6) requires a generator who accumulates either acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or non-acute hazardous waste in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must do the following: (i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in §262.16(b) or §262.17(a), or (ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either: (A) A central accumulation area operated in accordance with the applicable regulations in §262.16(b) or §262.17(a); (B) An on-site interim status or permitted treatment, storage, or disposal facility, or (C) An off-site designated facility; and (iii) During the three-consecutive-calendar-day period the generator must continue to comply with paragraphs (a)(1) through (5) of this section. The generator must mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

3.20 On September 14, 2020, Respondent generated 55 gallons of hazardous waste spent aerosol cans in the garage at the Facility's Unit 1. Respondent continued to store the hazardous waste in the same location until at least the date of the EPA inspection on September 23, 2020, and failed to move the hazardous waste to the Facility's central accumulation area or otherwise satisfy the requirements at 40 C.F.R. § 262.15(a)(6). Respondent violated the requirements of 40 C.F.R. § 262.15(a)(6).

3.21 Respondent failed to comply with the conditions for the accumulation of hazardous waste at the Facility without a permit or interim status specified at 40 C.F.R. § 262.16(b)(2)(iv), 40 C.F.R. § 262.16(b)(9)(iii), and 40 C.F.R. § 262.15(a)(6). Respondent operated the Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

COUNT 2: Failure to Prepare a Correct Land Disposal Restriction Notice

3.22 40 C.F.R. 268.7(a)(1) requires a generator of hazardous waste to determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49.

3.23 If a generator determines that a waste does not meet the treatment standards in §§ 268.40, 268.45, or 268.49, then 40 C.F.R. 268.7(a)(2) requires that the generator must send a one-time written notice to each treatment or storage facility receiving the waste with the initial shipment of waste to each treatment or storage facility, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 40 C.F.R. 268.7(a)(4).

3.24 On November 27, 2017, Respondent offered hazardous waste for shipment with Uniform Hazardous Waste Manifest 004896406FLE that did not meet the treatment standards in 40 C.F.R. § 268.40, 268.45, or § 268.49. However, Respondent did not send a one-time written notice to the treatment or storage facility receiving the waste with the initial shipment of the waste that provided correct information as required pursuant to 40 C.F.R. § 268.7(a)(2) due to misidentification of the waste.

3.25 Respondent violated the requirements of 40 C.F.R. § 268.7(a)(2).

COUNT 3: Failure to Properly Manage Universal Waste

3.26 40 C.F.R. Part 273, Subpart B specifies the requirements applicable to small quantity handlers of universal waste. “Universal waste” includes, among other things, “lamps” as that term is defined at 40 C.F.R. § 273.9.

3.27 Respondent does not accumulate 5,000 kilograms or more of universal waste at any time and therefore is a “small quantity handler of universal waste,” as that term is defined at 40 C.F.R. § 273.9.

3.28 40 C.F.R. § 273.13(d)(1) requires a small quantity handler of universal waste to 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 40 C.F.R. § 273.14(e) requires a small quantity handler of universal waste to label or mark clearly each lamp or container or package in which such lamps are contained with one of the following phrases: “Universal Waste-Lamps,” or “Waste Lamp(s),” or “Used Lamp(s).”

3.30 On September 23, 2020, EPA conducted an inspection at the Facility's Unit 2 laboratory and identified at least 19 four-foot waste fluorescent lamps that were not in packages or containers inside the facility's laboratory. Some of the lamps were bundled with tape but the others were loose and leaning against them. None of the lamps were labeled with any of the following phrases: "Universal Waste-Lamps," "Waste Lamp(s)," or "Used Lamp(s)."

3.31 On September 23, 2020, EPA conducted an inspection at the Facility's satellite accumulation area in the Facility's Unit 2 and observed one lamp that was not in a container or package and was not labeled with any of the following phrases: "Universal Waste-Lamps," "Waste Lamp(s)," or "Used Lamp(s)." The inspector also observed two boxes containing lamps that were both open.

3.32 Respondent failed to contain universal waste lamps in closed containers or packages, in violation of the requirements of 40 C.F.R. § 273.13(d)(1).

3.33 Respondent failed to label universal waste lamps that were being accumulated at the facility, in violation of the requirements of 40 C.F.R. § 273.14(e).

Count 4. Failure to Label or Mark Containers Used to Store Used Oil

3.34 The requirements of 40 C.F.R. 279, Subpart C apply to all generators of used oil.

3.35 Respondent engages in the generation and storage of used oil.

3.36 40 C.F.R. § 279.22(c)(1) requires that containers used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

3.37 On September 23, 2020, EPA conducted an inspection at the Facility's garage in Unit 1, and observed two 5-gallon containers holding used oil that were not labeled "Used Oil."

3.38 Respondent violated the requirements of 40 C.F.R. § 279.22(c)(1).

3.39 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 \$102,638 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$20,178 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 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 by a means that facilitates receipt confirmation to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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

4.6. Concurrently with payment, Respondent 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
R10_RHC@epa.gov

Jennifer Parker
U.S. Environmental Protection Agency
Parker.jennifer@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

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

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.7 and 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. 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.

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

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

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

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

9/1/2021

FOR RESPONDENT:

Frank Perkins

FRANK PERKINS, Vice President of Power Supply
Golden Valley Electric Association, Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by EDWARD
KOWALSKI
Date: 2021.09.02 09:20:56 -07'00'

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2021-0212
)	
GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.,)	FINAL ORDER
)	
Healy, Alaska,)	
)	
Respondent.)	

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 _____ day of _____, 2021.

RICHARD
MEDNICK

Digitally signed by RICHARD
MEDNICK
Date: 2021.09.02 11:07:51
-0700'

RICHARD MEDNICK
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: Golden Valley Electric Association, Inc., Docket No.: RCRA-10-2021-0212**, 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:

Shirin Gallagher
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Gallagher.shirin@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered by electronic mail to:

Frank Perkins
Vice President of Power Supply
Golden Valley Electric Association, Inc.
758 Illinois Street
Fairbanks, Alaska 99701
FEPerkins@gvea.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by TERESA
YOUNG
Date: 2021.09.02 11:19:25
-0700'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10