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 HEARINGS CLERK  
 1571 SECTION 10

BEFORE THE  
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2019-0022
	)	
RJH INC. DBA STEELFAB,	)	
	)	<b>CONSENT AGREEMENT</b>
Anchorage, Alaska	)	<b>and</b>
	)	<b>FINAL ORDER</b>
Respondent.	)	
	)	

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**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(a).

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 RJH, INC. DBA STEELFAB (“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 Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1 42 U.S.C. § 6925(a) requires each person owning or operating an existing facility for the treatment, storage, or disposal of hazardous waste to have a permit issued under RCRA unless it qualifies for an interim status under 42 U.S.C. § 6925(e).

3.2 “Person” is defined by 42 U.S.C. § 6903(15) to mean corporations, among other things.

3.3 “Generator” is defined by 40 C.F.R. § 260.10 to mean any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

3.4 “Disposal” is defined by 42 U.S.C. § 6903(3) to mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on

any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharges into any waters, including ground waters.

3.5 “Storage” as related to hazardous waste is defined by 42 U.S.C. § 6903(33) to mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

3.6 “Treatment” as related to hazardous waste is defined by 42 U.S.C. § 6903(34) to mean any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

3.7 “Solid waste” is defined by 40 C.F.R. § 261.2(a)(1) to include discarded materials.

3.8 “Discarded materials” is defined by 40 C.F.R. § 261.2(a)(2) to include disposed of materials or materials that are accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

3.9 “Hazardous waste” includes a solid waste that exhibits the characteristic of ignitability, as described in 40 C.F.R. §§ 261.3(a)(2)(i) and 261.21(a).

3.10 Pursuant to 40 C.F.R. § 261.21(a)(1), a solid waste exhibits the characteristic of ignitability if it is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 140 degrees Fahrenheit.

3.11 A generator of hazardous waste must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. 40 C.F.R. § 262.13.

3.12 A "very small quantity generator" of hazardous waste is defined in 40 C.F.R. § 262.13, Table 1, to mean, among other things, persons who generate not more than 100 kilograms of non-acute hazardous waste in a calendar month.

3.13 A "small quantity generator" of hazardous waste is defined in 40 C.F.R. § 262.13, Table 1, to mean, among other things, persons who generate more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month.

3.14 A small quantity generator may accumulate as much as 55 gallons of non-acute hazardous waste 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 provided that, among other conditions, that the satellite accumulation container is marked or labelled with the words "Hazardous Waste" and an indication of the hazards of the contents, as stated in 40 C.F.R. § 262.15(a) and 262.15(a)(5).

3.15 A small quantity generator may accumulate hazardous waste on site without a permit or interim status provided that, among other things, it labels and marks the containers and tanks of hazardous waste with the words "Hazardous Waste," an indication of the hazards of the

contents, and the date upon which each period of accumulation began is clearly visible for inspection on each container, as stated in 40 C.F.R. § 262.16 and 262.16(b)(6)(A)-(C).

3.16 Pursuant to 40 C.F.R. § 262.16(b)(2)(iv), small quantity generators of hazardous waste must inspect central accumulation areas and look for leaking containers and for deterioration of containers caused by corrosion or other factors.

3.17 “Universal Waste” is defined in 40 C.F.R. § 273.9 to include, among other things, lamps as defined in 40 C.F.R. § 273.5.

3.18 “Lamps” are defined in 40 C.F.R. § 273.5 to include lamps known as universal waste lamps that are described in 40 C.F.R. § 273.9 that are hazardous wastes.

3.19 “Universal waste lamp” is defined in 40 C.F.R. § 273.9 to mean the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

3.20 “Universal Waste Handler” is defined in 40 C.F.R. § 273.9 to mean, among other things, a generator of universal waste.

3.21 “Small Quantity Handler of Universal Waste” is defined in 40 C.F.R. § 273.9 means a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

3.22 40 C.F.R. § 273.13(d) and 273.13(d)(1) requires that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or

component of a universal waste to the environment, including among other things, by containing any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with 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 reasonable foreseeable conditions.

3.23 40 C.F.R § 273.14(e) requires that a small quantity handler of universal waste mark or label each lamp or a container or package in which such lamps are contained clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

3.24 Respondent is a steel fabricator that has operated at its current location in Anchorage, Alaska, since 1988.

3.25 At all times relevant to the allegations set forth herein, Respondent is and has been the operator of the Steelfab facility located at 2132 Railroad Avenue, Anchorage, Alaska, (“Facility”).

3.26 At all times relevant to the allegations set forth herein, Respondent did not have a permit to treat, store, or dispose of hazardous waste and did not qualify for interim status under RCRA.

3.27 On or about November 2, 2017, Respondent submitted a site identification form to EPA for a change in classification from a very small quantity generator to a small quantity generator, to facilitate the disposal of spill items, which was received by EPA on or about November 13, 2017. In December 2017, Respondent submitted a revised site identification form

to EPA for a change in classification back to a very small quantity generator, which was received by EPA on or about December 21, 2017.

3.28 On November 7, 2017, the EPA conducted a RCRA compliance inspection of Respondent's Facility.

**Count 1: Disposal of Hazardous Waste without a Permit or Interim Status**

3.29 On September 27, 2017, personnel from the Alaska Department of Environmental Conservation ("ADEC") noticed fluid leaking from drums onto the ground near the Steelfab Facility. The fluid was later determined to be Durathane II.

3.30 Durathane II, a urethane elastomer roofing product, is a weather-resistant roof coating that has a flash point of 52 degrees Fahrenheit.

3.31 On or about September 27, 2017, Respondent violated 42 U.S.C. § 6925(a) when it disposed of Durathane II, a characteristically ignitable hazardous waste, at its facility by spilling it onto the ground and allowing it to enter the environment.

**Count 2: Storage of a Hazardous Waste without a Permit or Interim Status**

3.32 At the time of the inspection, the Respondent was classified as a small quantity generator of hazardous waste; approximately 5 weeks after the inspection, the Respondent reverted back to its classification of very small quantity generator of hazardous waste. See paragraph 3.27

3.33 On or about November 7, 2017, Respondent violated 42 U.S.C. § 6925(a) when it treated and stored non-acute, characteristically ignitable hazardous wastes, paint and coating products, that had flash points below 140 degrees Fahrenheit, without a permit or interim status and without following the exemptions for permit for small quantity generators under 40 C.F.R.

§ 262.16 because it did not label or mark the hazardous waste containers with the words “Hazardous Waste” and an indication of the hazardous of the contents or inspect central accumulation areas, as stated in 40 C.F.R. § 262.16, 262.16(b)(2)(iv) and 262.16(b)(6)(A)-(C),.

3.34 On or about November 7, 2017, Respondent violated 42 U.S.C. § 6925(a) when it stored characteristically ignitable hazardous wastes, residual aerosol can waste with a flashpoint less than 140 degrees Fahrenheit, without a permit or interim status and without following the exemptions for a permit for small quantity generators accumulating hazardous waste in a satellite accumulation container under 40 C.F.R. § 262.15 because Respondent failed to mark or label the satellite accumulation container with the words “Hazardous Waste” and an indication of the hazardous of the contents, as stated in 40 C.F.R. § 262.15(a) and 262.15(a)(5).

**Count 3: Violation of the Universal Waste Regulations**

3.35 At the time of the inspection, the Respondent was a small quantity handler of universal waste.

3.36 At the time of the inspection, Respondent stored universal waste fluorescent lamps that were characteristically toxic hazardous wastes in an unlabeled and unenclosed trash receptacle where the universal waste lamps were protruding from the receptacle and leaning against a Facility wall.

3.37 On or about November 7, 2017, Respondent violated the universal waste regulations, specifically 40 C.F.R. §§ 273.13 and 273.14, by failing to store universal waste lamps in a closed container adequate to prevent breakage because it stored universal waste lamps in an uncovered trash receptacle that was not adequate to prevent breakage.



3.38 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.

#### **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 and legal conclusions 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 \$42,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

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.

4.6. 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  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Young.Teresa@epa.gov

Kevin Schanilec  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-201  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Schanilec.Kevin@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 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 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. 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 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.

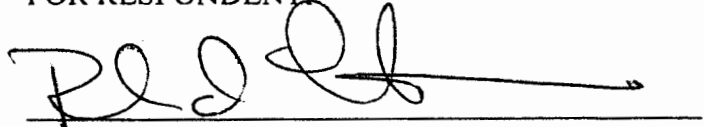
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

25 Oct 2018

FOR RESPONDENT:

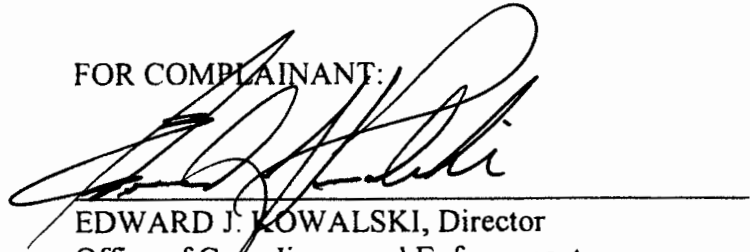


Richard Faulkner, President  
RJH, Inc. DBA Steelfab

DATED:

10/25/2018

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- 10-2019-0022
	)	
RJH INC. DBA STEELFAB,	)	<b>FINAL ORDER</b>
	)	
Anchorage, Alaska	)	
	)	
Respondent.	)	
	)	

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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 29<sup>th</sup> day of October, 2018.



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: RJH INC. DBA STEELFAB, Docket No.: RCRA-10-2019-0022**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

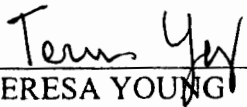
The undersigned certifies that a true and correct copy of the document was delivered to:

Bradley Roberts,  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
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:

Tom Amodio,  
Attorney for Respondent  
Reeves Amodio LLC  
500 L Street, Suite 300  
Anchorage, AK 99501

DATED this 30 day of October, 2018.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10