

UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION IX

\*\* FILED \*\*  
 30SEP2019 - 03:22PM  
 U.S.EPA - Region 09

In the matter of:	)	U.S. EPA Docket No.
	)	
	)	
Department of the Navy	)	RCRA 3008-09-2019- <u>0082</u>
	)	
Respondent.	)	
	)	
Naval Air Weapons Station - China Lake 429 East Bowen Avenue China Lake, CA 93555	) ) ) ) ) )	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)

**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. Respondent is the Department of the Navy ("Navy"), the owner/operator of Naval Air Weapons Station – China Lake ("China Lake"), located at 429 East Bowen Avenue, China Lake, California, 93555.
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 Respondent violated state regulations adopted pursuant to the approved California hazardous waste management program.
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 of California ("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 August 1, 1992. 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.
8. A violation of California'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.
9. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes the EPA to 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.

**C. EPA'S GENERAL ALLEGATIONS**

10. Respondent owns and operates the facility located at 429 East Bowen Lake, in China Lake, California (the "Facility"). The Facility is the principle location of the Navy's air warfare and missile weapons systems development operations. Operations at the Facility include: research and development of explosive materials and weapons, aircraft maintenance, facilities maintenance operations (e.g., painting), metal fabrication operations, and hazardous materials and waste storage.
11. Respondent's EPA ID No. is CA2170023152.
12. Respondent operates pursuant to a RCRA Permit Number 01-NC-06 issued by the Department of Toxic Substances Control October 12, 2015 ("RCRA Permit"). The permit allows the facility to operate the following hazardous waste management units: hazardous waste storage and transfer facility (HWSTF); liquid petroleum waste tanks Nos. 1 and 2; open detonation unit; and open burn unit.

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13. Respondent is a large quantity generator of hazardous wastes as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3.
14. On April 10 – 12, 2018, EPA conducted compliance evaluation inspections (“CEI”) at the Facility pursuant to Subtitle C of RCRA. Based upon the findings EPA made during the inspections, and additional information obtained subsequent to the inspections, EPA determined that Respondent violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
15. 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, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
16. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, re-delegated that authority to the Director of the Enforcement Division, Region IX, with delegation R9-120 TN-111, dated January 22, 2016.
17. Respondent is a “federal agency” as defined in Section 1004 of RCRA, 42 U.S.C. § 6903(4).
18. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].<sup>1</sup>
19. Respondent is the “owner” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
20. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
21. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
22. Respondent is or has been engaged in “treatment,” “storage,” or “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].

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<sup>1</sup> 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.

At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include but are not limited to the following hazardous waste codes: D001 through D008, D010 through D043, F001 through F012, F027, "P" wastes and "U" wastes.

**D. EPA'S ALLEGED VIOLATIONS**

**COUNT I**

**Failure to Comply with Permit Conditions**

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. Respondent's RCRA Permit incorporates by reference its March 2015 RCRA Permit Application, which states at Section VI.B.1.C, Control of Hazardous Wastes in General, Proper Waste Placement, Prevention of Waste Dispersal: "All wastes are properly containerized to prevent dispersal. Inadequate containers are replaced or overpacked prior to delivery to the HWSTF. Deteriorating containers are replaced as necessary during storage. All containers remain closed except when waste is added, or for inspection or sampling. The drums are sealed with a gasket lid and sealing ring to prevent accidental discharge."
25. Respondent's RCRA Permit incorporates by reference its March 2015 RCRA Permit Application, which states at Section VI.C, Control Procedures for Specific Wastes: "Each container is inspected at the time of collection. If the container is not adequate the container will either be recontainerized or overpacked. In special cases, recontainerizing may be done at the HWSTF for safety or other reasons."
26. EPA inspectors observed, within the permitted HWSTF, a gray colored plastic bin labeled, Hazardous Waste, Satellite Accumulation Container, PVC Cement, Solid and Toxic, containing eleven 1-pint or 1-quart rusted, corroded containers. At least one of the containers had three corrosion related holes.
27. Two other plastic, gray colored bins were observed within the HWSTF facility that contained approximately seven 1-gallon rusted, corroded and/or damaged containers of what appeared to be discarded paint. The tops of 2 of the containers were marked "Flam Paint."
28. Based on information gathered during the inspection, EPA alleges that Respondent failed to comply with the permit condition that required it to recontainerize hazardous waste accumulation containers in poor condition.

29. Therefore, EPA alleges that Respondent failed to comply with the permit conditions by failing to recontainerize hazardous waste containers in poor condition, as required by Section VI.B.1.C and VI.C of the Permit, in violation of 22 C.C.R. § 66270.30(a) [*see also* 40 C.F.R. § 270.30(a)].

**COUNT II**

**Failure to Comply with Container Management Requirements**

30. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
31. Respondent's RCRA Permit incorporates by reference its March 2015 RCRA Permit Application, which specifies at Section VI.B.1.C. that "all containers remain closed except when waste is added, or for inspection or sampling"
32. During the inspection, EPA inspectors observed an approximately 1-gallon, plastic, open container marked "Hazardous Waste, Dispersant." The container opening had a foil seal which had been punctured in 3 places. One inch or more of liquid waste was observed being stored in the container. No screw cap was observed on the opening nor were HWSTF personnel observed adding or removing waste from the container.
33. Therefore, EPA alleges that Respondent failed to comply with the permit requirement to keep containers of hazardous waste closed, in violation of 22 C.C.R. §§ 66270.30(a) [*see also* 40 C.F.R. § 270.30(a)].

**COUNT III**

**Failure to Comply with Universal Waste Management Requirements**

34. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
35. Respondent's RCRA Permit incorporates by reference its March 2015 RCRA Permit Application, which states, at Section I.A.7(1), Identification of Facility, Facility, Description of Activity Requiring a Permit, Container Storage Unit: "Universal Waste is managed according to the requirements in 22 CCR, Division 4.5, Chapter 23. Management of Universal Waste is not distinguished from hazardous waste in this permit application, since both are handled similarly once transferred to the HWSTF."
36. During the inspection the EPA Inspector observed a clear plastic bag of universal waste-lamps within the HWSTF. The universal waste-lamps were not being stored in a manner to prevent breakage. Inspectors observed a broken universal waste-lamp in the bag.

37. During the inspection the EPA Inspector also observed another clear plastic bag of universal waste-lamps. One loose, spent fluorescent bulb was observed in the bag (i.e., not stored in a manner to prevent breakage).
38. NAWSCCL is not managing universal waste-lamps either at the point of generation or at the HWSTF as stated in the facility's permit.
39. Therefore, EPA alleges that Respondent failed to comply with the permit requirement to manage universal waste according to the requirements in 22 CCR, Division 4.5, Chapter 23, in violation of 22 C.C.R. §§ 66270.30(a) [*see also* 40 C.F.R. § 270.30(a)].

**E. CIVIL PENALTY**

40. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay TWENTY-THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$23,700) as the civil penalty for the violations alleged herein.
41. 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**

42. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings or to impose sanctions for violations of this CA/FO.
43. For the purposes of this proceeding, Respondent neither admits nor denies specific factual allegations contained in the complaint, and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations and to appeal the proposed Final Order accompanying this Consent Agreement and made part of this CA/FO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this CA/FO.

**G. PARTIES BOUND**

- 44. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section E has been paid in accordance with Section H. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.
- 45. No change in ownership relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
- 46. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

**H. PAYMENT OF CIVIL PENALTY**

- 47. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$23,700) in full settlement of the federal civil penalty claims set forth in this CA/FO.
- 48. Respondent shall submit payment of TWENTY-THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$23,700) within sixty (60) 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 Respondent's name and address, 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

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St. Louis, MO 63101  
Contact: Craig Steffen (513) 487-2091

Intra Governmental Payment and Collection Application:

Payment may be made using the Intra Governmental Payment and Collection application (IPAC), Agency Location Code 68-01-0727. Please include the Docket Number of this action in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076. Respondent's Treasury Account Symbol is 1791804. Inquiries concerning this payment can be made to Luis Vega. Mr. Vega can be contacted via e-mail at [luis.a.vegas@navy.mil](mailto:luis.a.vegas@navy.mil) or via phone at (619) 532-3406.

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](http://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.**

49. At the time payment is made, a copy of the check or payment receipt 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:

John Schofield (ENF-2-2)  
Enforcement Division  
U.S. Environmental Protection Agency - Region 9  
Schofield.John@epa.gov

**I. ANTI-DEFICIENCY ACT**

50. Respondent shall seek all existing funds to meet the requirements of the CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the CAFO. Nothing in this CAFO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

**J. CERTIFICATION OF COMPLIANCE**

51. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has fully complied with Section 3008 of RCRA, 42 U.S.C. § 6928, and its implementing regulations that formed the basis for the violations alleged in Section D, above.
52. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

**K. RESERVATION OF RIGHTS**

53. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent 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 Respondent's 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. 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.

54. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
55. The entry of this CA/FO and Respondent's 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 Respondent's liability for federal civil penalties for the alleged violations and facts as set forth in Section D of this CA/FO.
56. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any required local, State or federal permits.

**L. OTHER CLAIMS**

57. 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.

**M. MISCELLANEOUS**

58. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
59. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
60. Each party to this action shall bear its own costs and attorneys' fees.
61. EPA and Respondent consent to entry of this CA/FO without further notice.

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N. EFFECTIVE DATE

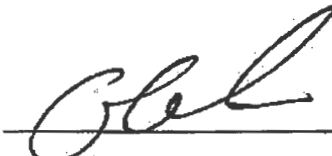
62. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

FOR RESPONDENT NAVAL AIR WEAPONS STATION – CHINA LAKE:

30 SEP 2019

Date

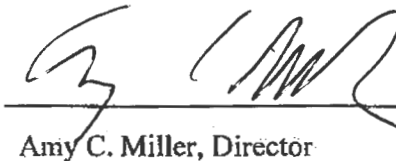


B. Bolivar  
Rear Admiral, U.S. Navy

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

9/30/2019

Date



Amy C. Miller, Director  
Enforcement and Compliance Assurance Division

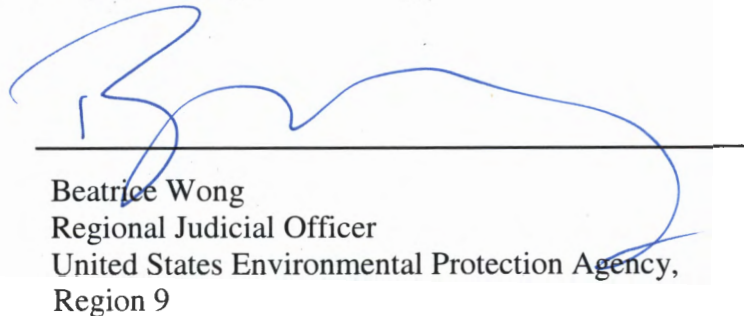
FINAL ORDER

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 3008-09-2019-00 82) be entered and that Respondent pay a civil penalty of TWENTY-THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$23,700), due within sixty (60) days from the Effective Date of this Consent Agreement and Final Order, in accordance with all terms and conditions of this CA/FO.

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

Sept 30 2019

Date

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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Department of the Navy, Naval Air Weapons Station - China Lake (Docket #: RCRA-09-2019-00 82)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

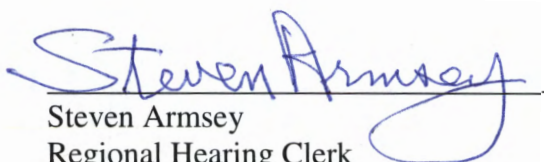
A copy was mailed via CERTIFIED MAIL to:

B. Bolivar, Rear Admiral, USN  
Commander, Navy Region Southwest  
937 North Harbor Drive  
San Diego, CA 92132

**CERTIFIED MAIL NUMBER:** 7010 0290 0000 7117 0715

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugerman, Esq.  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region IX

2019-09-30  
Date