

FILED

December 5, 2023

5:00 P.M. PST

**U.S. EPA REGION 10
HEARING CLERK**

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:)
)
)
Lowe’s of Fairbanks #1985)
425 Merhar Avenue, Fairbanks, AK 99701)
EPA ID No. AKR000207159)
Respondent)
)
)
)

Docket No. RCRA-10-2023-0127

**EXPEDITED SETTLEMENT
AGREEMENT AND
FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928, and 40 C.F.R. § 22.13(b).
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, the EPA may enforce the federal hazardous waste program in the State of Alaska.
3. Lowe’s of Fairbanks #1985 (“Respondent”) is the owner or operator of the facility at 425 Merhar Avenue, Fairbanks, AK 99701 (“Facility”). The EPA alleges that Respondent violated the following requirements of the RCRA.
 - a. 40 C.F.R. § 273.14(a) requires that a small quantity handler of universal waste must label or mark universal waste batteries (i.e., each battery), or a container in which the batteries are contained must be labeled or marked clearly, with any one of the following phrases: “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies)”. At the time of the inspection, in the Return to Manufacturer (“RTM”) area, one sealed waste lead-acid battery and six waste lithium batteries were not labelled with the words “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies)”.
 - b. 40 C.F.R. § 273.14(e) requires that each lamp or a container or package in which universal waste lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”. At the time of the inspection, in the RTM area, the following universal waste lamps were not labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”:

- i. Four boxes that contained eight-foot universal waste fluorescent lamps.
 - ii. Three boxes that contained four-foot universal waste fluorescent lamps.
 - iii. One plastic tub that contained small universal waste fluorescent lamps.
 - iv. Three boxes that contained universal waste fluorescent lamps that had been returned by a customer.
 - c. 40 C.F.R. § 273.14(d)(1) requires that a small quantity handler of universal waste must contain any lamp in containers or packages, and that such containers and packages must remain closed. At the time of the inspection, one box in the RTM area that contained four-foot universal waste fluorescent lamps was not closed.
 - d. Section 3005 of RCRA [42 U.S.C. § 6925] and 40 C.F.R. § 270.1(c) provide that any person who treats, stores or disposes of hazardous waste must have a permit or interim status. 40 C.F.R. §§262.15(a) provides that certain generators may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste in a container at or near any point of generation where the waste initially accumulates which is under the control of the operator of the process generating the waste (“satellite container”) without a permit or interim status if, among other things; The satellite container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste; or when temporary venting of a container is necessary; or for the proper operation of equipment; or to prevent dangerous situations, such as build-up of extreme pressure; and The generator must mark or label the container with the words “Hazardous Waste”. At the time of the inspection, in the RTM area, a plastic trash receptacle contained waste flammable aerosol cans. This container was being used by Lowe’s as a hazardous waste satellite container. The container was not closed, and further was not marked or labelled with the words “Hazardous Waste”.
 - e. Section 3005 of RCRA [42 U.S.C. § 6925] and 40 C.F.R. § 270.1(c) provide that any person who treats, stores or disposes of hazardous waste must have a permit or interim status. 40 C.F.R. §§262.16(b)(9) provides that small quantity generators may accumulate hazardous waste at a facility without a permit or interim status if, among other things, the small quantity generator posts the following emergency information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste: (A) The name and emergency telephone number of the emergency coordinator; and (B) Location of fire extinguishers and spill control material, and, if present, fire alarm. At the time of the inspection, Lowe’s did not have the following emergency information posted next to a telephone or in the area directly involved in the generation and accumulation of hazardous waste: (A) The name and emergency telephone number of the emergency coordinator; and (B) Location of fire extinguishers and spill control material and fire alarm.
4. 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 \$6,250. The attached Penalty Calculation Worksheet is incorporated by reference.
5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and

Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b); and (7) consents to electronic service of the filed ESA.

6. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$6,250 for the RCRA violations identified in this Agreement. Payments under this Agreement may be made 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 979078
St. Louis, Missouri 63197-9000

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

7. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10
Schanilec.kevin@epa.gov

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and Final Order and to execute and legally bind Respondent to it.
9. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
10. Each party shall bear its own costs and fees, if any.
11. This Agreement and Final Order shall constitute full settlement of the civil claims alleged herein.
12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.
13. This Agreement is binding on the parties signing below and, in accordance with

40 C.F.R. § 22.31(b), is effective upon filing of the Final Order with the Regional Hearing Clerk for the EPA, Region 10.

IT IS SO AGREED,

RESPONDENT:

Name (print): ROB GASS

Title (print): DIRECTOR, HAZMAT & ENVIRONMENTAL COMPLIANCE

Signature:  _____

Date: 11/30/2023

EPA REGION 10:

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10

Date: _____

FINAL ORDER

I hereby ratify the Expedited Settlement Agreement and incorporate it by reference. This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall be effective immediately upon filing with the Regional Hearing Clerk for the EPA, Region 10. Such filing will conclude this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED,

Richard Mednick, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

Date: _____

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Lowe's of Fairbanks #19854, Docket No.: RCRA-10-2023-0127, 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 via electronic mail to:

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10
Schanilec.kevin@epa.gov

Robert Gass, Hazardous Materials & Environmental Compliance
Lowe's Companies, LLC
Robert.A.Gass@lowes.com

DATED this _____ day of _____, 2023.

Regional Hearing Clerk
EPA Region 10