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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2012-0017
James Campbell Company LLC)	
)	CONSENT AGREEMENT AND
EPA ID No. HID982516775)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
<u>Respondent</u>)	

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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999).
2. The United States Environmental Protection Agency, Region 9 ("EPA") and the James Campbell Company LLC ("Respondent"), agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO, which contains the elements of a complaint required by 40 C.F.R. sections 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this matter in accordance with 40 C.F.R. sections 22.13 and 22.18.
3. The parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public interest, that it is consistent with the provisions and objectives of RCRA and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.
4. This action is based on EPA's allegation that Respondent failed to submit updated financial assurance information annually, a violation of Hawaii Administrative Rules

(“H.A.R.”) 11-264-145(f) [*see also* 40 C.F.R. §264.145(f)]. This is in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.¹

5. Complainant is the EPA.
6. Respondent is the James Campbell Company LLC.
7. Respondent is the owner of the former Hawaiian Western Steel Wastepile in Ewa Beach, Hawaii (the “Facility”), EPA ID number HID 982516775.
8. The Hawaiian Western Steel waste pile was closed pursuant to RCRA, with closure completed in November 1995.

B. JURISDICTION

9. On November 13, 2001, the State of Hawaii 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. The authorized program is established pursuant to Hawaii Revised Statutes (“HRS”) Chapter 342, and the regulations promulgated thereunder at Hawaii Administrative Rules, Title 11, Chapters 11-260 through 11-279. The State of Hawaii has been authorized for all the regulations referenced in this CA/FO.
9. Respondent is a “person” as defined in H.A.R. 11-260-10 [*see also* 40 C.F.R. § 260.10].
10. Respondent is the “owner” of the former Hawaiian Western Steel Wastepile, a “facility” where “hazardous” waste was “store[d]” or “dispose[d],” as defined in H.A.R. 11-260-10 [*see also* 40 C.F.R. § 260.10].
11. Wastes disposed at the former landfill are solid wastes associated with the operations of a secondary steel mill, including wet scrubber material, mill scall [iron oxide], slag scrap steel electrode remnants, furnace bricks and baghouse dust.
12. Pursuant to Sections 2002 and 3004(a) and (t) of RCRA, 42 USC §§ 6912 and 6924(a) and (t), EPA promulgated rules pertaining to owners and/or operators of

¹ All citations to the “H.A.R.” refer to Title 11 of the current Hawaii Administrative Rules. EPA is enforcing Hawaii hazardous waste management program requirements as approved and authorized by the United States on November 13, 2001 (*see* 66 Fed. Reg. 55115, November 1, 2001). Corresponding Federal citations are provided in brackets.

treatment, storage or disposal ("TSD") facilities for financial responsibility that are set forth in 40 CFR Parts 264 and 265, Subparts H. These regulations are incorporated by reference into the Hawaii's hazardous waste regulations at H.A.R. 11-264 Subchapter H and H.A.R. 11-265 Subchapter H.

13. On May 29, 2007, the State of Hawaii issued a post-closure hazardous waste permit to the James Campbell Company LLC for ongoing inspection and maintenance of the landfill cap at the site.
14. Based on correspondence with the Respondent, EPA determined that Respondent had failed to submit updated financial assurance information, and had violated HRS 342-J [see also RCRA Section 3005, 42 U.S.C. § 6925] and the regulations adopted pursuant thereto, as approved and authorized by the United States.
15. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste 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.
16. A violation of Hawaii's authorized hazardous waste program constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Hawaii'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.
17. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders 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.*
18. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to issuing an order under Section 3008 of RCRA in that state. EPA notified the State of Hawaii as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
19. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATION

Count I

Failure to Maintain Financial Assurance

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. H.A.R. 11-264-145 (*see also* 40 CFR § 264.145) requires that an owner or operator of a hazardous waste management unit must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility.
21. HAR11- 264-145 sets out the available mechanisms for demonstrating financial assurance for post-closure care of a facility. One type of financial mechanism is the “Financial Test and Corporate Guarantee” set out at HAR11- 264-145(f) (*see also* 40 CFR § 265.145(f)).
22. In 1996, pursuant to an EPA order directing the owner to comply with the closure and post-closure requirements of RCRA, the Estate of James Campbell¹ submitted a Post-Closure Plan for the Waste Pile, which stated that the Estate has chosen to meet the financial assurance requirements through the use of the Financial Test and the Corporate Guarantee. The plan included an Appendix documenting that the Estate met the requirements set out at 40 CFR 265.145(e)(1)(i)(A-D).
23. In 2006, the James Campbell Company LLC acquired title to the Facility from the Estate of James Campbell, and applied for a Post-Closure Permit (“Permit”) from the State of Hawaii Department of Health (“HDOH”). HDOH issued the Permit on May 29, 2007.
24. The Permit states that it consists of the conditions contained therein and the applicable regulations contained in State regulations in HAR Title 11, chapters 260 through 270 and 124 as specified in the permit.
25. At Section 2.8, the Permit refers to the financial assurance provisions of HAR § 11-270-14(b)[16] and [18]. The text in Section 2.8 of the permit refers to the 1996 submittals regarding the closure cost estimate.
26. HAR § 11-270-14(b)[16] (*see also* 40 CFR § 270.14(b)(16)) states that all hazardous waste management facilities are required to maintain a copy of the documentation required to demonstrate financial assurance under HAR11- 264-145.
27. Owners or operators using the Financial Test and Corporate Guarantee to meet financial assurance requirements must submit updated financial information to the

¹ In 1996 the Estate of James Campbell was the owner of the land where the Hawaiian Western Steel waste pile was located. Relevant assets and liabilities have since been transferred to the James Campbell Company LLC.

Director of HDOH within ninety (90) days after the close of each succeeding fiscal year. HAR 11-264-143(f)(5) (*see also* 40 CFR § 264.145(f)(5)).

28. Respondent failed to submit the required financial information annually.
29. Therefore, EPA alleges that Respondent has violated HAR 11-264-145 (*see also* 40 CFR § 264.145).

D. CIVIL PENALTY

30. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to \$37,500 per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the June 2003 RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, as well as such other matters as justice may require, EPA proposes that Respondent be assessed a total of THIRTY-THREE THOUSAND FOUR HUNDRED DOLLARS (\$33,400.00) as the civil penalty for the violations alleged herein. Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

31. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO, 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, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
32. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant

to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

33. This CA/FO shall apply to and be binding upon Respondent and its successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. Conclusion of those matters shall constitute full settlement of the violations alleged herein.
34. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
35. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of operation of the Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.
36. 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.

G. PAYMENT OF CIVIL PENALTY

37. Respondent consents to the assessment of and agrees to pay a civil penalty of thirty-three thousand four hundred dollars (\$33,400.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
38. Respondent shall submit payment of the thirty-three thousand four hundred dollars (\$33,400.00) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. 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, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson (314-418-4087)

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White (301-887-6548)

ABA = 051036706

Transaction Code 22 – checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Bryan K. Goodwin
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Estrella Armijo (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105.

39. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

40. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: for failure to submit a payment to EPA by the time required in this CA/FO, FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and FIFTEEN HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
41. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

42. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
43. All penalties shall be made payable by certified or cashier's check to the U.S. Environmental Protection Agency shall be remitted as described in Paragraph 38.
44. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
45. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

1. RESERVATION OF RIGHTS

46. 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(c) of RCRA, 42 U.S.C. § 6928(c). 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, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other statutory, regulatory or common law enforcement authority of the United States.
47. 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.
48. 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 specific alleged violations and facts as set forth in Section C of this CA/FO.
49. 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 local, State or federal permits.

J. OTHER CLAIMS

50. 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.

K. MISCELLANEOUS

51. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
52. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
53. 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.

IT IS SO AGREED.

Date

Landon H.W. Chun
Executive Vice President/ Chief Financial Officer
James Campbell Company LLC

Date

Jeff Scott
Director, Waste Management Division
United States Environmental Protection Agency,
Region IX

J. OTHER CLAIMS

50. 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.

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IT IS SO AGREED.

8/27/2012
Date

Landon H.W. Chun
Landon H.W. Chun
Executive Vice President/ Chief Financial Officer
James Campbell Company LLC

9/20/12
Date

Jeff Scott
Jeff Scott
Director, Waste Management Division
United States Environmental Protection Agency,
Region IX

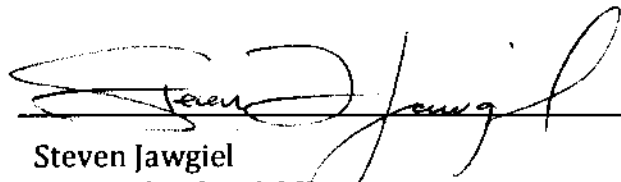
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO") (U.S. EPA Docket No. RCRA-9-2012-00 17) be entered and that the James Campbell Company LLC pay a civil penalty of THIRTY THREE THOUSAND FOUR HUNDRED DOLLARS (\$33,400.00) within thirty (30) days after the Effective Date of this CA/FO. Evidence of payment shall be sent to the EPA Region 9 addresses specified in Paragraph 38 of this Consent Agreement and Final Order within such 30-day period.

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

09/25/12

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **James Campbell Company LLC (Docket #: RCRA-09-2012-0017)** 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:

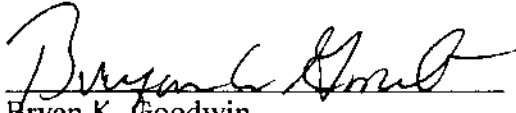
A copy was mailed via CERTIFIED MAIL to:

Landon H.W. Chun
Executive vice President/ Chief Financial Officer
James Campbell Company LLC
1001 Kamokila Blvd., Suite 200
Kapolei, Hawaii 96707

CERTIFIED MAIL NUMBER: 7005 2570 0001 6436 5245

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


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/26/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

Phone: (415) 972-3000

<http://www.epa.gov/region9>

CERTIFIED MAIL NO. 7005 2570 0001 6436 5245
RETURN RECEIPT REQUESTED

SEP 26 2012

Chuck Hill
Vice President, Sales and Leasing
Kapolei Property Development
1001 Kamokila Boulevard, Suite 250
Kapolei, Hawaii 96707

Re: In the matter of James Campbell Company LLC - U.S. EPA Docket No. RCRA-09-2012-

Dear Mr. Hill,

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Rebecca Sugerman at (415) 972-3893 or sugerman.rebecca@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JM Scott", written over a horizontal line.

Jeff Scott, Director
Waste Management Division

Enclosures

cc: Grace Simmons, HDOH (gracelda.simmons@doh.hawaii.gov)
Paul Kalaiwaa, HDOH (paul.kalaiwaa@doh.hawaii.gov)

