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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- 9-2010-0008
Reed Skenandore	)	
	)	ORDER ON MOTION FOR DEFAULT
	)	JUDGMENT
<u>Respondent.</u>	)	

**INTRODUCTION**

This proceeding arises under Section 3008 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6928. This proceeding is governed by 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 (Consolidated Rules), 40 C.F.R. §§ 22.1- 22.32.

**PROCEDURAL HISTORY**

On May 14, 2010, the United States Environmental Protection Agency (EPA or Complainant) issued a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (Complaint) against Reed Skenandore (Respondent). The Complaint was filed with the Regional Hearing Clerk on or about June 4, 2010. In sum, Complainant alleged five RCRA violations: (1) Count I – Open Dumping of Solid Waste in violation of Section 4005(a) of RCRA, 42 U.S.C. § 6945(a), and the regulations promulgated at 40 C.F.R. §§ 257.3-8(b) and (d); (2) Count II – Open Burning of Solid Waste in violation of 40 C.F.R. § 257.3-7(a); (3) Count III – Failure to Notify EPA of Waste Activity in violation of Section 3010 of RCRA, 42 U.S.C. § 6930, and 40 C.F.R. § 265.11; (4) Count IV – Failure to Label or Properly Maintain Used Oil Containers in violation of 40 C.F.R. § 279.22(b) and (c)(1); and (5) Count V – Failure to Respond to a Release of Used Oil in violation of 40 C.F.R. § 279.22(d).

40 C.F.R. § 22.15(a) required Respondent to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on or about June 14, 2010. However, Respondent failed to answer the Complaint.

On March 21, 2011, Complainant filed a Motion for Default pursuant to 40 C.F.R. § 22.17, seeking a finding of default in this case and proposing a penalty of \$14,505. Respondent did not oppose Complainant’s Motion for Default.

On April 30, 2012, the Regional Judicial Officer returned Complainant's Motion and requested Complainant to submit a renewed motion for default order with any updates Complainant deems necessary. On June 1, 2012, Complainant submitted a renewed Motion for Default. To date, Respondent has not responded to Complainant's Motion for Default.<sup>1</sup>

### **FINDINGS OF FACT**

Pursuant to 40 CFR § 22.17 and based upon the entire record in this matter, I make the following factual findings:

1. Respondent Reed Skenandore operates or has operated a solid and hazardous waste disposal site (the "Facility") on land located on Pine Nut Allotment 470 at 470 Cedar Flats Road, Gardnerville, NV and adjacent areas that constitute "Indian country" as that term is defined at 18 U.S.C. Section 1151.
2. The Facility at Pine Nut Allotment 470 at 470 Cedar Flats Road, Gardnerville, NV was a "facility" as defined in 40 C.F.R. §§ 257.2 and 260.10 at all times relevant for the purposes of this Order.
3. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. §§ 260.10 and 270.2; and an "owner" or "operator" of a Facility as defined in 40 C.F.R. § 260.10 at all times relevant for the purposes of this Order.
4. Respondent was engaged in the "storage" of solid or hazardous waste as defined in Section 1004(3) of RCRA, 42 U.S.C. § 6903(33) and 40 C.F.R. § 260.10 at all times relevant for the purposes of this Order.
5. Respondent was engaged in the "disposal" of solid or hazardous waste as defined in Section 1004(3) of RCRA, 42 U.S.C. § 6903(3) and 40 C.F.R. § 260.10 at all times relevant for the purposes of this Order.
6. Respondent stored or disposed of "solid waste," as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(33), and 40 C.F.R. §§ 260.10 and 261.2, at all times relevant for the purposes of this Order.

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<sup>1</sup> Complainant served its Renewed Motion for Default Order, via Certified Mail, on June 1, 2012. 40 C.F.R. § 22.7(c) provides that the time allowed for responsive filings is extended by five calendar days where a document is served by First Class or by commercial delivery service.

7. Respondent stored or disposed of “hazardous waste” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3, at all times relevant for the purposes of this Order.
8. Respondent stored “used oil” as defined in Section 1004(36) of RCRA, 42 U.S.C. § 6903(36) and 40 C.F.R. §§ 260.10 and 279.1.
9. Complainant issued a Complaint against Respondent on May 14, 2010. The Complaint was tendered to the Regional Hearing Clerk for filing on or about May 14, 2010 and was filed and date-stamped by the Regional Hearing Clerk on or about June 4, 2010.
10. Pursuant to 40 CFR § 22.15(a), Respondent was required to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on June 14, 2010.
11. To date, neither Complainant nor the Regional Judicial Clerk has received Respondent’s answer to the Complaint.
12. On March 22, 2011, Complainant filed a Motion for Default Order, seeking a finding of default in this case and proposing a penalty of \$14,505. The Motion included an analysis of each count and a proposed penalty, applying the 2003 RCRA Civil Penalty Policy to the counts.
13. To date, neither Complainant nor the Regional Judicial Clerk has received a response to the Motion for Default.

### DISCUSSION

40 CFR § 22.17 applies to motions for default, and provides in pertinent part:

(a) Default. A party may be found to be in default; after motion, upon failure to file a timely answer to the complaint;...Default by respondent constitutes, for purposes of the proceeding only, an admission of all facts alleged in the complaint and a waiver of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.

(c) Default Order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless

the record shows good cause why a default order should not be issued.

40 CFR § 22.17 the Presiding Officer to issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondent has made no showing that good cause exists to defeat Complainant's Motion for Default Order.

The Motion included an analysis of each count and a proposed penalty, applying the 2003 RCRA Civil Penalty Policy to the counts.

The Consolidated Rules, at 40 CFR § 22.27(b), apply to the assessment of a civil penalty:

If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. ...If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by the complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to enforce the hazardous waste management program within Indian country. Pursuant to section 4005(c)(2) of RCRA, 42 U.S.C. § 6945(c)(2), the Administrator may use the authorities of Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, to enforce the prohibition on open dumping of solid waste or hazardous waste contained in Section 4005(a) of RCRA, 42 U.S.C. § 6945(a) at the Washoe Tribe of Nevada's Reservation.

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty, requiring compliance immediately or within a specified time for any violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*, and as provided pursuant to Section 4005(c)(2) of RCRA, 42 U.S.C. § 6945(c)(2), for violations of minimum criteria that define the solid waste management practices which constitute open dumping of solid waste or hazardous waste.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collections Improvement Act of 1996, 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) for violations that occur after March 15, 2004 but prior to January 13, 2009, 69 Fed. Reg. 7121 (February 13, 2004), and 73 Fed. Reg. 75340 (December 11, 2008). Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$32,500 per day, as appropriate, for each day during

which a violation cited in the above outlined Counts continued.

The penalty calculations system established through EPA's June 2003 RCRA Civil Penalty Policy ("Penalty Policy") is based upon Section 3008 of RCRA, 42 U.S.C. § 6928. Under this section, the seriousness of the violation and any good faith efforts to comply with applicable requirements are to be considered in assessing a penalty. The Penalty Policy consists of: (1) determining a gravity-based penalty for a particular violation from a penalty assessment matrix, (2) adding a "multi-day" component, as appropriate, to account for a violation's duration, (3) adjusting the sum of the gravity-based and multi-day components, up or down, for case specific circumstances, and (4) adding to this amount the appropriate economic benefit gained through non-compliance. The Environmental Appeals Board has emphasized that the Agency's penalty policies should be applied wherever possible because such policies "assure that statutory factors are taken into account and are designed to assure that penalties are assessed in a fair and consistent manner." *M.A. Bruder & Sons, Inc.*, 10 E.A.D. 598, 613 (EAB 2002).

The gravity-based component of the Penalty Policy is determined by considering two factors: (1) the potential for harm, and (2) the extent of deviation from the statutory or regulatory requirement. *See* Penalty Policy, p. 12. The potential for harm and the extent of deviation components may be characterized as "major", "moderate", or "minor", according to standards set forth by the Penalty Policy. *Id.* at 15-18. The gravity-based component is selected from a pecuniary range for the appropriate cell. *Id.* at 18. EPA revised the penalty matrices set forth in the 2003 Penalty Policy for violations that occur after March 15, 2004 and after January 12, 2009. The Penalty Policy provides that the selection of the exact penalty amount within the cell is left to the discretion of enforcement personnel, so they may adapt the penalty to the gravity of the violation and its surrounding circumstances. *Id.* at 19.

The Penalty Policy also provides a multi-day calculation for continuing violations. *Id.*, p. 23. After the gravity-based penalty is calculated, including any multi-day component, enforcement personnel may adjust the penalty upward or downward to reflect the particular circumstances surrounding the violation, such as good faith efforts to comply, degree of willfulness or negligence, history of noncompliance, ability to pay, other unique factors, and supplemental environmental projects. *Id.*, p. 3.

The Penalty Policy also mandates the recapture of any significant economic benefit of noncompliance that accrues to a violator. The economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in significant economic benefit to the violator. *Id.*, p. 28. In the interest of simplifying and expediting an enforcement action, enforcement personnel may forego calculating the economic benefit component where it appears that the amount of the component is likely to be less than the amount specified by the Penalty Policy for all violations alleged in the complaint. *Id.*, p. 28. Likewise, it is not necessary to calculate an economic benefit for a violation if the economic benefit is estimated to be below \$2,000. *Id.*

Section 22.17(c) of The Consolidated Rules provides that when a respondent is found to be in default, "The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." When reaching a penalty determination, Section 22.27(b) of the Consolidated Rules states that the Presiding Officer shall consider any evidence in the record and any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail how the assessed penalty corresponds to any penalty criteria set forth in the Act. As stated above, Section 22.27(b) of the Consolidated Rules prohibits the Presiding Officer from assessing a penalty greater than that proposed in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Pursuant to 40 CFR ' 22.17(a), a default by a respondent constitutes an admission of all facts alleged in the Complaint. See also 40 CFR ' 22.15(d) (respondent's failure to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation); *In the Matter of K Industries, Inc.*, Docket No. RCRA-06-2003-0915, 2005 RJO Lexis 109 (March 2, 2005); *In re Matter of Aero Design, Inc.*, Docket No. RCRA-04-2002-4006, 2003 EPA RJO Lexis 12 (April 1, 2003),

### **Count I – Open Dumping of Solid Waste**

On July 15, 2008, EPA inspectors observed large quantities of solid waste on the ground at the Facility, covering an area of approximately eighty (80) acres. The solid waste included household garbage, hazardous household wastes, hazardous waste and green waste. Specific wastes included abandoned automobiles, trailers, tires, batteries, construction waste, used oil, used appliances, televisions and computer monitors, waste paint, and aerosol cans. RCRA Section 4005(a), 42 U.S.C. § 6945(a), prohibits any solid waste or hazardous waste practice or disposal which constitutes the open dumping of solid waste or hazardous waste unless, with respect to solid waste, the disposal is under a timetable or schedule for compliance established under Section 4005.

On July 15, 2008, the EPA inspectors observed solid waste and hazardous waste scattered throughout the facility. The EPA inspectors also observed that the Facility did not provide for daily cover. The EPA inspectors also noted that there was evidence of past open burning events at the Facility, insofar as they observed melted battery casings at the Facility. 40 C.F.R. § 257.3-8(b) provides that a facility or practice shall not pose a hazard to the safety of persons or property from fires. This may be accomplished through complying with the prohibition against open burning and through the periodic application of cover material or other techniques as appropriate. "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed solid waste at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and to impede disease vectors' access to the waste. See 40 C.F.R. § 257.3-8(e)(6).



On June 28 and 29, 2008, an EPA inspector observed that the facility did not control public access as required by 40 C.F.R. § 257.3-8(d), which provides that a facility or practice shall not allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site.

1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a “Minor” potential for harm to the environment and the regulatory program means that the violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent’s open dumping should be characterized as “Minor” under the Penalty Policy because the vast majority of the waste observed was non-hazardous solid waste and presented much less significant risks than most hazardous wastes regulated under the hazardous waste regulations enforced using the Penalty Policy. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as “Minor” on the record before me.

B) **Extent of Deviation**: The Penalty Policy defines a “Major” extent of deviation as a situation where the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 15. In this case, given the large quantities of waste in a disposal area that failed to comply with any of the federal requirements for sanitary landfills, the Complainant argues that the Facility’s noncompliance was substantial and that the quantity of wastes involved was also significant, constituting a “Major” deviation from the requirement. As the Presiding Officer in this action, I agree that the extent of deviation from the requirement from this violation is properly characterized as “Major” on the record before me.

The Penalty Policy provides that after classifying the potential for harm and the extent of deviation, EPA enforcement personnel have the discretion to select the exact amount within a particular cell of the gravity penalty matrix so they may adapt the penalty amount of the gravity of the violation and its surrounding circumstances. *See* Penalty Policy at 19. Enforcement personnel should analyze and rely on case-specific factors in selecting a dollar figure from this range. Such factors include the seriousness of the violation, the environmental sensitivity of the areas potentially threatened by the violation, the size and sophistication of the violator, the number of days of violation, and other relevant matters.

The matrix value in the Penalty Policy for violations occurring after March 2004 but before January of 2009 that are minor/major is \$1,934 to \$3,868. Complainant’s selection of \$2,901, which represents the middle of the Minor Potential/Major Deviation matrix cell, is

consistent with the record of the proceeding and with RCRA.

## 2) **Multi-Day Penalty Calculation**

This violation continued for at least one day, June 29, 2008. However, Complainant is not seeking multi-day penalties. Accordingly, the penalty for this count is \$2,901.

### **Count II – Open Burning of Solid Waste**

On July 15, 2008, the EPA Inspectors observed evidence of past open burning events. This evidence included two melted battery casings and melted lead battery plates.

40 C.F.R. § 257.3-7(a) provides that the facility or practice shall not engage in open burning of residential, commercial, institutional or industrial solid waste. Pursuant to 40 C.F.R. § 257.3-7, “open burning” means the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (3) control of the emission of the combustion products. *See* 40 C.F.R. § 257.3-7(c).

Respondent failed to comply with the prohibition against open burning of solid waste.

#### 1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a “Minor” potential for harm to the environment and the regulatory program means that the violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent’s open burning of waste at the Facility did not appear to be a major activity at the site, which is in a remote location and would tend to pose a relatively low risk of exposure to humans or other environmental receptors. Complainant accurately concluded that this violation posed a “Minor” potential for harm.

B) **Extent of Deviation**: The Penalty Policy defines a “Major” extent of deviation as a situation where the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 15. In this case, no efforts at all appear to have been made to control the combustion of waste at the site. Thus, Complainant accurately concluded that this violation constituted a “Major” extent of deviation from the requirement.



The matrix value in the Penalty Policy for violations occurring after March 2004 but before January of 2009 that are minor/major is \$1,934 to \$3,868. Complainant's selection of \$2,901, which represents the middle of the Minor Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) Multi-Day Penalty Calculation

Complainant has not alleged a continuing violation and is not seeking multi-day penalties. Accordingly, the penalty for this count is \$2,901.

### Count III – Failure to Notify EPA of Waste Activity

At the time of July 15, 2008 inspection, the Respondent was engaged in the treatment, storage or disposal of hazardous waste, including spent lead-acid batteries and cathode ray tubes (CRTs) at the Facility. At that time, the EPA Inspectors observed lead-acid batteries and CRTs disposed of at the Facility. In addition, Respondent failed to ensure that the hazardous waste they produced was recycled or sent to an appropriate off-site disposal facility and was thus ineligible for a conditional exclusion for small quantity generators provided pursuant to 40 C.F.R. § 261.5. Moreover, Respondent had never submitted a Notification of Hazardous Waste Activity to EPA or applied for an EPA identification number.

Section 3010 of RCRA, 42 U.S.C. § 6930, requires that any person generating hazardous waste or owning or operating a facility for treatment, storage, or disposal of hazardous waste file a notification with EPA. 40 C.F.R. § 265.11 requires that every owner or operator of a hazardous waste facility that treats, stores or disposes of hazardous waste apply to EPA for an EPA identification number.

## 1) Gravity-Based Penalty

A) **Potential for Harm**: Pursuant to the Penalty Policy, a minor potential for harm to the environment and the regulatory program means that the violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent's failure to submit a notification of hazardous waste activity to or obtain an EPA ID number from EPA should be characterized as "Minor" under the Penalty Policy because the hazardous waste generated at the Facility was used oil and batteries, which pose less of a threat to human health or the environment than other hazardous wastes. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as "Minor" on the record before me.

B) **Extent of Deviation**: The Penalty Policy defines a “Major” extent of deviation as a situation where the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 15. In this case, no EPA identification number was obtained and there was no evidence that any effort at all had been made on the part of the Facility to obtain one and, therefore, Complainant accurately concluded that this violation constituted a “Major” extent of deviation from the requirement.

The matrix value in the Penalty Policy for violations occurring after March 2004 but before January of 2009 that are minor/major is \$1,934 to \$3,868. Complainant’s selection of \$2,901, which represents the middle of the Minor Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) **Multi-Day Penalty Calculation**

Complainant has not alleged a continuing violation and is not seeking multi-day penalties. Accordingly, the penalty for this count is \$2,901.

### **Count IV – Failure to Label or Properly Maintain Used Oil Containers**

During the July 15, 2008 inspection, the EPA inspectors observed that the containers of used oil at the Facility were in bad condition, with obvious leaks and large stains on the ground adjacent to the large accumulation of used oil which was contained in 5-gallon buckets. They also observed that none of the various sized containers of used oil at the Facility were marked with the words “Used Oil.”

40 C.F.R. § 279.22(b) requires that containers used to store used oil be in good condition and not leaking. Pursuant to this requirement, “good condition” means that there is no severe rusting of the container, and any apparent structural defects or deterioration. The prohibition against leaking containers in this requirement means that there should be no “visible leaks.” In addition, 40 C.F.R. § 279.22(c)(1) requires that containers used to store used oil must be labelled or marked clearly with the words “Used Oil.”

## 1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a minor potential for harm to the environment and the regulatory program means that the violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty

Policy at 15. In the instant case, the hazardous waste generated at the Facility was used oil, which poses less of a threat to human health or the environment than other hazardous wastes. Thus, Complainant accurately concluded that this violation posed a “Minor” potential for harm.

B) **Extent of Deviation**: The Penalty Policy defines a “Major” extent of deviation as a situation where the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 15. The fact that none of the containers of used oil at the facility were properly labeled and the majority of the containers were leaking or otherwise in questionable condition means that the violation constituted a “Major” extent of deviation from the requirement.

Complainant’s selection of \$2,901, which represents the middle of the Minor Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) **Multi-Day Penalty Calculation**

Complainant has not alleged a continuing violation and is not seeking multi-day penalties. Accordingly, the penalty for this count is \$2,901.

### **Count V – Failure to Respond to a Release of Used Oil**

On July 15, 2008, the EPA inspectors observed that there were at least seven (7) areas at the Facility where used oil had been released to the environment. The inspectors observed that the Facility had failed to contain the releases of used oil, failed to clean up and properly manage the released used oil and contaminated soil, and had failed to repair or replace the leaking used oil storage containers.

40 C.F.R. § 279.22(d) requires that clean-up steps be taken upon detection of a release of used oil to the environment. Specifically, these steps include: (1) stopping the release; (2) containing the released used oil; (3) cleaning up and managing the released used oil and other materials properly; and (4) if necessary, repairing or replacing any leaking used oil storage containers or tanks prior to returning them to service.

#### 1) **Gravity-Based Penalty**

A) **Potential for Harm**: Pursuant to the Penalty Policy, a minor potential for harm to the environment and the regulatory program means that the violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or

constituents; and/or the actions may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. *See* Penalty Policy at 15. In the instant case, Complainant claims that Respondent's failure to respond to releases of used oil should be characterized as "Minor" under the Penalty Policy because the oil releases were localized and the oil contamination was not migrating toward or threatening any surface or underground water supplies. As the Presiding Officer in this action, I agree that the potential harm resulting from this violation is properly characterized as "Minor" on the record before me.

B) **Extent of Deviation**: The Penalty Policy defines a "Major" extent of deviation as a situation where the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance. *See* Penalty Policy at 15. Here, the Respondent's failure make any apparent effort to contain, control or clean up any of the releases observed during the inspection constituted a "Major" deviation from the requirement.

Complainant's selection of \$2,901, which represents the middle of the Minor Potential/Major Deviation matrix cell, is consistent with the record of the proceeding and with RCRA.

## 2) **Multi-Day Penalty Calculation**

Complainant has not alleged a continuing violation and is not seeking multi-day penalties. Accordingly, the penalty for this count is \$2,901.

## **PENALTY MODIFICATION**

The Penalty Policy provides for downward adjustments to the proposed penalty for a violator's good faith efforts to comply, limited ability to pay, performance of environmental projects, or other unique factors. *See* Penalty Policy at 34-41. Complainant did not propose any adjustments to the proposed penalty because none were supported by the circumstances of the violations. Respondent failed to submit any evidence that would support any downward adjustment. Therefore, Complainant's position is consistent with the record and RCRA.

## **CONCLUSION**

After considering the record and the Penalty Policy, I assess a penalty in the amount of \$14,505.00.

**ORDER**

RESPONDENT IS HEREBY ORDERED to pay a civil penalty in the amount of FOURTEEN THOUSAND FIVE HUNDRED AND FIVE DOLLARS (\$14,505.00). This penalty shall become due and payable, without further proceedings, thirty (30) days after this order becomes final. This Order shall become final within forty-five (45) days after its service upon the parties and without further proceedings, unless (1) a party appeals the Initial Decision to the Environmental Appeals Board, (2) a party moves to set aside the order, or (3) the Environmental Appeals Board elects to review this Initial Decision on its own initiative. *See* 40 C.F.R. § 22.27(c). Procedures for appealing this Initial Decision are listed in the Consolidated Rules at 40 C.F.R. § 22.30.

Payment shall be made by forwarding a money order, cashier's check, or certified check, in the amount of \$14,505.00 payable to Treasurer of the United States of America to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

All payments shall indicate the name of the facility, any EPA identification number of the facility, Respondent's name and address, and the EPA docket number for this action. At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region IX, ORC  
75 Hawthorne Street  
San Francisco, CA 94105

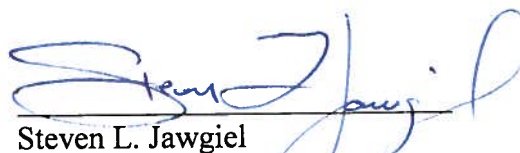
If the civil penalty is not paid within the prescribed time period, interest will be assessed pursuant to Section 11 of the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3717, based on the present value of funds owed to the United States Treasury at the time the Initial Order becomes final, and such rate will remain in effect until full payment is received. A six



percent (6%) per annum late payment penalty will also be applied on any principle amount not paid within ninety (90) days of the due date.

IT IS SO ORDERED

Date: July 3, 2012



Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Order on Motion for Default Judgment in the matter of REED SKENANDORE (**Docket #: RCRA-09-2012-0011**) 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:

Reed Skenandore, Sr.  
54 Conner Way  
Gardnerville, NV 89410-5557  
**CERTIFIED MAIL NUMBER:** 7010 2780 0000 8388 7283

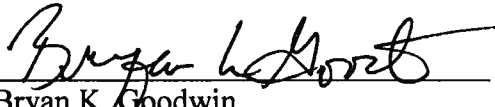
Reed Skenandore, Sr.  
2220 Mono Way  
Gardnerville, NV 89410  
**CERTIFIED MAIL NUMBER:** 7010 2780 0000 8388 7290

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