

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2019-0004
)	
Ute Indian Tribe and)	ADMINISTRATIVE ORDER
Ute Tribe Public Works,)	ON CONSENT
)	
Respondents.)	

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Ute Indian Tribe and Ute Tribe Public Works (together, Respondents), to carry out the goals of the Solid Waste Disposal Act, as amended by, inter alia, the Resource Conservation and Recovery Act of 1976 (RCRA), in “assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment[.]” 42 U.S.C. § 6902.

II. STATUTORY AUTHORITY

2. This Consent Order is issued under section 3008(a) of RCRA, 42 U.S.C. § 6928(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official.

III. PARTIES BOUND

3. This Consent Order shall apply to and be binding upon the EPA, Respondents, and Respondents’ employees, agents, successors, and assigns. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondents to the terms and conditions of this Consent Order. No change in the ownership or control of Respondents, including without limitation, any change

in ownership or control of the Facility, shall alter the Respondents' responsibilities under this Consent Order unless the EPA, Respondents, and any successor in interest agree in writing to allow a successor to assume such responsibilities prior to the transfer. Additionally, no later than 30 calendar days prior to such transfer, Respondents shall notify the EPA of the transfer at the addresses specified below in Paragraph 39 of this Consent Order.

IV. STATEMENT OF THE PARTIES

4. The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made solely by the EPA. In signing this Consent Order, the Respondents neither admit nor deny the FINDINGS OF FACT AND CONCLUSIONS OF LAW and DESCRIPTION OF ALLEGED VIOLATIONS. As such, and without any admission of liability, the Respondents consent to issuance of this Consent Order and agree to abide by all of the conditions herein. The Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review of this section 3008(a) Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondents further agree not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND CONCLUSIONS OF LAW below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

5. Respondent Ute Indian Tribe is a federally recognized tribe governed by the Uintah and Ouray Business Committee.

6. Respondent Ute Tribe Public Works is an authorized tribal organization organized under the laws of the Ute Indian Tribe of the Uintah and Ouray Reservation and provides, in part, chemical and waste storage services at the Ute Water Systems Building (Facility) for use in various programs for the Ute Indian Tribe.
7. The regulations implementing RCRA on the Uintah and Ouray Reservation (Reservation) are found at 40 C.F.R. Parts 260-279.
8. Respondent Ute Indian Tribe is a "municipality" as defined in 42 U.S.C. § 6903(13), and therefore is a "person" as defined in 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10, for federal enforcement purposes.
9. Respondent Ute Tribe Public Works is a "municipality" as defined in 42 U.S.C. § 6903(13), and therefore is a "person" as defined in 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10, for federal enforcement purposes.
10. The Facility is located in Indian country, as defined by 18 U.S.C. § 1151, on the Reservation at 7223 Small Loop Road Ft. Duchesne, Utah 84026.
11. Respondents own and operate the Facility for treating, storing, or disposing of hazardous waste. Therefore, the Facility is a "facility" as defined at 40 C.F.R. § 260.10.
12. In a calendar month at the Facility, Respondents generate less than 100 kilograms of non-acute hazardous waste; 1 kilogram of acute hazardous waste listed in 40 C.F.R. § 261.31 or § 261.33(e); and 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 C.F.R. § 261.31 or § 261.33(e). Therefore, Respondents each constitute a "very small quantity generator" as defined in 40 C.F.R. § 260.10.

Very Small Quantity Generators

13. Very small quantity generators are required to properly determine whether each waste they generate, including contaminated soil, is a hazardous waste. 40 C.F.R. § 262.11.

14. In order to maintain exemptions from additional requirements related to hazardous waste storage, very small quantity generators cannot accumulate greater than 1,000 kilograms of non-acute hazardous waste without complying with the additional requirements at 40 C.F.R.

§§ 262.14(a)(4) and 262.16(b)(2)-(f), which prohibit holding such non-acute hazardous waste on site for more than 180 days, or 270 days if the generator must transport its waste or offer its waste for transportation over a distance of 200 miles or more.

Used Oil Generators

15. Respondents generate used oil at the Facility, so they are “used oil generators” under 40 C.F.R. § 279.20(a).

16. Containers and aboveground tanks used to store used oil at generator facilities must be: (1) in good condition (no severe rusting, apparent structural defects or deterioration), and (2) not leaking (no visible leaks). 40 C.F.R. § 272.22(b).

17. Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” 40 C.F.R. § 279.22(c).

18. Upon detection of a release of used oil to the environment, a generator must perform the following cleanup steps: (1) stop the release; (2) contain the released used oil; (3) clean up and manage properly the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service. 40 C.F.R. § 279.22(d).

19. To avoid treating non-terne plated used oil filters as hazardous wastes or used oil, used oil generators must gravity hot-drain the used oil filters with an approved method in 40 C.F.R. § 261.4(b)(13). 40 C.F.R. § 279.10(c).

The June 21, 2018 Inspection

20. On June 21, 2018, U.S. EPA RCRA Inspector Annette Maxwell conducted a RCRA compliance evaluation inspection at the Facility.
21. During the June 21, 2018, Facility inspection, Inspector Maxwell observed:

Unknown wastes

- a. Over 150 40- to 55-gallon containers with unknown, unlabeled, or uncharacterized waste contents in the storage yard and each of the three sections of the main building at the Facility.
- b. Soil contaminated by waste from unlabeled containers, which was not characterized to determine whether the soil was a hazardous waste;
- c. The Facility's foreman indicated that waste containers noted above had been stored at the Facility for greater than 270 days;

Used Oil

- d. Oil on the ground surrounding used oil containers, indicating that container integrity may have been compromised;
- e. Nine used oil containers not labeled with the words "used oil";
- f. Discolored soil contaminated by used oil in the area surrounding used oil containers; and
- g. Oil filters disposed in the trash without being gravity hot-drained prior to disposal.

VI. DESCRIPTION OF ALLEGED VIOLATIONS

22. Respondents failed to make a hazardous waste determination for each of the over 150 containers of unknown waste in the storage yard and the three sections of the main building at the Facility, in violation of 40 C.F.R. § 262.11.
23. Respondents failed to make hazardous waste determinations of the soil contaminated by waste from unlabeled containers in the storage yard at the Facility, in violation of 40 C.F.R. § 262.11.
24. Respondents failed to meet the conditions for exemption from treatment, storage, and disposal facility requirements by accumulating more than 1,000 kilograms of non-acute hazardous waste at the Facility and storing it on site for more than 270 days. 40 C.F.R. §§ 262.14(a)(4) and 262.16(b)(2)-(f). Therefore, Respondents violated section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a facility for the treatment, storage, or disposal of hazardous waste without authorization.
25. Respondents failed to ensure containers storing used oil at the Facility were (1) in good condition (no severe rusting, apparent structural defects or deterioration), and (2) not leaking (no visible leaks), in violation of 40 C.F.R. § 272.22(b).
26. Respondents failed to ensure containers used to store used oil at the Facility were labeled or marked clearly with the words "Used Oil," in violation of 40 C.F.R. § 272.22(c).
27. Upon detecting a release of used oil in areas surrounding used oil containers, Respondents failed to: (1) stop the release; (2) contain the released used oil; (3) clean up and manage properly the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service, in violation of

40 C.F.R. § 279.22(d).

28. Respondents failed to ensure that oil filters disposed of in the trash were first properly drained by an approved method in 40 C.F.R. § 261.4(b)(13): (1) puncturing the filter anti-drain back valve or the filter dome end and hot-draining; (2) hot-draining and crushing; (3) dismantling and hot-draining; or (4) any other equivalent hot-draining method that will remove used oil, in violation of 40 C.F.R. § 279.24 and 40 C.F.R. § 262.14(a)(5).

VII. ORDER

Respondents agree to take the following actions, with all days calculated as calendar days:

29. Within 60 days of the effective date of the Consent Order, Respondent shall:

h. For the used oil containers and used oil-contaminated soils:

i) Label used oil containers with the words "Used Oil" and ensure that containers being used to store used oil are in good condition and not leaking;

ii) Provide to the EPA photographs demonstrating the containers being used to store used oil are in good condition and properly labeled with the words "Used Oil";

iii) For used oil disposed following the June 2018 EPA RCRA inspection, provide to the EPA copies of used oil transport or disposal documentation;

iv) Remediate and containerize used oil-contaminated soil observed during the inspection to be in the vicinity of the outdoor used oil storage containers. Containerized used-oil contaminated soil must be absent of free-flowing used oil. Any free-flowing used oil must be combined with and managed as used oil;

v) Provide the EPA a written description of how the areas of soil impacted by used oil

releases have been remediated, including photographs of the areas and photographs of containerized used oil-contaminated soil; and

vi) Provide the EPA a written description of planned disposal of used oil-contaminated soil including identification of a selected authorized disposal facility and any planned sampling to be conducted to meet acceptance requirements at the selected disposal facility.

i. For the used oil filters:

i) Provide the EPA a written description of how used oil filters will be managed, including:

- (1) Whether any of the filters managed at the facility are terne plated (lead and tin alloy), because terne plated filters exhibit the toxicity characteristic for lead and must be managed as hazardous waste; and
- (2) If used oil filters are not terne-plated, whether they will be punctured and hot-drained pursuant to 40 C.F.R. § 261.4(b)(13), will be managed as hazardous waste, or will be recycled.

30. Within 75 days from the effective date of the Consent Order, Respondent shall provide the EPA a copy of any post-removal sample results and disposal records for used oil-contaminated soil, used oil, and used oil filters, as applicable.

31. Within 60 days from the effective date of the Consent Order, Respondent shall segregate wastes from product containers and provide to the EPA a written inventory of all waste containers stored indoors and outdoors, specifying container location, description, and whether contents are known, suspected but uncertain, or unknown. All containers with known contents

shall be marked or labeled to specify the contents. For all waste containers, Respondents shall mark or label each container with a unique identifying number that corresponds with the written inventory.

- j. If during the segregation of waste, leaking or compromised containers are found, Respondent shall identify and assign a qualified individual(s) to promptly secure those containers, for example by overpacking. This work shall be performed pursuant to a Health and Safety Plan that specifies the appropriate personal protective equipment requirements and that is developed prior to physical management of the containers.

32. Within 60 days from the effective date of the Consent Order, Respondent shall identify a contractor or qualified individual(s) who can safely perform hazardous waste determinations on all uncertain and unknown wastes and provide notice to the EPA of the identity and qualifications of the contractor or qualified individual(s).

33. Within 75 days from the effective date of the Consent Order, Respondent shall provide to the EPA for approval a hazardous waste determination plan to ensure compliance with the requirement to make accurate hazardous waste determinations pursuant to 40 C.F.R. § 262.11.

k. The hazardous waste determination plan shall:

- i) Include a schedule of activities to be conducted under the plan consistent with Paragraph 35;
- ii) Identify all wastes, including known, uncertain, and unknown wastes as well as soils to be remediated (excluding those remediated under Paragraph 29) and residues and cleanup-related debris associated with any uncertain, unknown, or hazardous wastes; and

iii) Specify procedures to be undertaken for the determination for each waste. For known wastes, the determination may be conducted using generator knowledge, but must be supported by material safety data sheets or other waste-specific documentation.

34. Prior to implementation of sampling of uncertain or unknown wastes, Respondent shall provide to the EPA a Health and Safety Plan that (1) specifies the appropriate personal protective equipment requirements and (2) is to be followed by the contractor or qualified individual(s) that will be performing the sampling associated with hazardous waste determinations.

35. Within 120 days from the effective date of the Consent Order, Respondent shall make accurate hazardous waste determinations pursuant to 40 C.F.R. § 262.11 for all waste generated at the Facility. Respondents will notify the EPA of the results of the hazardous waste determinations within seven days of their completion.

36. Within 30 days of completion of the hazardous waste determinations, Respondent must identify appropriate authorized disposal facilities and transporters for each waste and must provide notice of those facilities and transporters to the EPA. Hazardous waste must be transported by authorized hazardous waste transporters and disposed to RCRA-permitted hazardous waste disposal facilities.

37. Within 60 days of completion of the hazardous waste determination, Respondent must ensure transport of all hazardous waste by the identified authorized hazardous waste transporter to the authorized hazardous waste disposal facility has been implemented and must provide copies of the transporter's hazardous waste manifests to the EPA.

38. Within 30 days of receipt of the hazardous waste manifest signed by the designated

facility, Respondent must provide a copy to the EPA.

39. The EPA's contact for actions implementing this Consent Order is:

Annette Maxwell (8ENF-RO-R)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202
maxwell.annette@epa.gov

40. All information Respondents are required by this Consent Order to submit to the EPA shall include the following certification statement:

I certify under penalty of law that this information and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VIII. OTHER TERMS AND CONDITIONS

41. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondents to penalties as provided under 42 U.S.C. § 6928(c).
42. This Consent Order does not constitute a waiver, suspension or modification of any requirement of RCRA. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.

43. Nothing in this Consent Order shall be construed to prevent the EPA from instituting further action under section 3008 of RCRA for the violations cited in this Consent Order or to relieve the Respondents from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, tribal or local law or regulation.

44. If the EPA finds that any information in this Consent Order provided by Respondents was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights

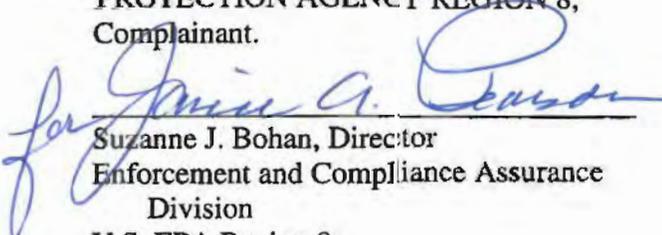
45. This Consent Order shall be effective immediately upon the Respondents' receipt of a fully executed copy.

46. This Consent Order may be amended or modified by written agreement of the EPA and the Respondents.

47. This Consent Order shall terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the Consent Order. The EPA may terminate this Consent Order at its sole discretion depending on the totality of the circumstances at that time. The EPA's agreement to terminate this Consent Order shall not be unreasonably withheld.

Date: 9/27/19

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.



Suzanne J. Bohan, Director
Enforcement and Compliance Assurance
Division

U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Date: 9-25-19

UTE INDIAN TRIBE and
UTE TRIBE PUBLIC WORKS,
Respondents.



Luke Duncan, Chairman
Ute Indian Tribal Business Committee