



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 22 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Allen Kroll
Director of Health, Safety and Compliance
American Environmental Services Inc
AES Service Center
2100 Georgetowne Dr. Suite 303
Pittsburgh, Pennsylvania 15143

SUBJ: Consent Agreement and Final Order
American Environmental Services, Inc.
Docket No. RCRA-04-2013-4009(b)

Dear Mr. Kroll:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC and the penalty due date is calculated from that date.

If you have any questions, please feel free to contact Alan Newman, of my staff, at (404) 562-8589 or by email at newman.alan@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "César Zapata".

César Zapata
Chief, RCRA and OPA Enforcement and
Compliance Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
American Environmental Services, Inc.)
d/b/a/ AES Environmental, LLC)
1689 Shar-Cal Road)
Calvert City, Kentucky 42029)
)
EPA ID No.: KYD 985 073 196)
)
Respondent)
_____)

) Docket Number: RCRA-04-2013-4009)
)
) Proceeding under Section 3008(a) of the)
) Resource Conservation and Recovery)
) Act, 42 U.S.C. § 6928(a))
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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Title XVIII of Kentucky Revised Statutes (Ky. Rev. Stat. Ann., or KRS) Chapter 224.46 *et seq.*, [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f] and Title 401 Kentucky Administrative Regulations (Ky. Admin. Reg. or KAR) promulgated pursuant thereto and set forth at 401 Ky. Admin. Reg. Chapters 30-40 [Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) for violations of Ky. Rev. Stat. Ann. subchapters 224.46 *et seq.* [Section 3005 of RCRA, 42 U.S.C. § 6925] and 401 Ky. Admin. Reg. Chapters 30-40 [40 C.F.R. Parts 260 through 270].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent American Environmental Services, Inc., (d/b/a AES Environmental, LLC) is a company incorporated under the laws of the State of Pennsylvania which owns and operates a business located at 1689 Shar-Cal Road in Calvert City, Marshall County, Kentucky (“the Facility”).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (Kentucky or State) has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized Kentucky program are found at KRS § 224.46-012 *et seq.*, and 401 KAR 30:005, *et seq.*
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State’s authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provision alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given written notice of this action to the State before the issuance of this CA/FO.
11. KRS § 224.46-510 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)] requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in 401 KAR Chapter 32 [40 C.F.R. Part 262].
12. KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 401 KAR Chapter 34 (permitted) [40 C.F.R. Part 264] and 401 KAR Chapter 35 (interim status) [40 C.F.R. Part 265].
13. Pursuant to 401 KAR 31:005 Section 1(20) [40 C.F.R. § 261.2], “*solid waste*” means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations, and from community activities, and is not otherwise excluded by regulation. (*See* KRS § 224.01-010(31)(a)).

14. Pursuant to 401 KAR 31:005 Section 1(12) [40 C.F.R. § 261.3], “*hazardous waste*” means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (See KRS § 224.01-010(31)(b)).
15. Pursuant to 401 KAR 31:040 Section 1 [40 C.F.R. § 261.30], a solid waste is a “listed hazardous waste” if it is listed in 401 KAR 31:040 [40 C.F.R. Part 261, Subpart D].
16. Pursuant to 401 KAR 31:030 Section 5 [40 C.F.R. § 261.24], solid wastes that exhibit the characteristics of toxicity identified in 40 KAR 31:030 Section 5 [40 C.F.R. § 261.24(b)] are characteristic hazardous wastes and are provided with the EPA Hazardous Waste Nos. D004 through D043.
17. Pursuant to 401 KAR 31:030 Section 2 [40 C.F.R. § 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
18. Pursuant to 401 KAR 31:030 Section 3 [40 C.F.R. § 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
19. Pursuant to 401 KAR 31:030 Section 4 [40 C.F.R. § 261.23], a solid waste that exhibits the characteristic of reactivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D003.
20. Pursuant to 401 KAR 31:030 Section 5 [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity for mercury is a hazardous waste and is identified with the EPA Hazardous Waste Number D009.
21. Pursuant to 401 KAR 31:030 Section 5 [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity for methyl ethyl ketone is a hazardous waste and is identified with the EPA Hazardous Waste Number D035.
22. Pursuant to 401 KAR 31:040 Section 2 [40 C.F.R. § 261.31], solid wastes generated from non-specific manufacturing sources are listed hazardous wastes and are identified with the EPA Hazardous Waste Nos. F001 through F039.
23. Pursuant to 401 KAR 31:040 Section 2 [40 C.F.R. § 261.31], wastewater treatment sludge from non-specified electroplating operations are listed hazardous wastes and are identified with the EPA Hazardous Waste Number F006.

24. Pursuant to 401 KAR 31:040 Section 2 [40 C.F.R. § 261.31], plating bath residues from the bottom of plating bathes from electroplating operations where cyanides are used in the process are listed hazardous waste and are identified with the EPA Hazardous Waste Number F008.
25. Pursuant to 401 KAR 31:040 Section 4 [40 C.F.R. § 261.33], discarded commercial chemical products, manufacturing chemical intermediaries, or off-specification commercial chemical products identified as hazardous wastes due to acute toxicity are assigned EPA Hazardous Waste Nos. P001 through P205 [40 C.F.R. § 261.33(e)]; such wastes identified due to toxicity are assigned EPA Hazardous Nos. U001 through U411 [40 C.F.R. § 261.33(f)].
26. Pursuant to 401 KAR 31:040 Section 4 [40 C.F.R. § 261.33(e)], cyanides (soluble cyanide salts), not otherwise specified are listed hazardous waste are identified with the EPA Hazardous Waste Number P030.
27. Pursuant to 401 KAR 31:005 Section 1(10) [40 C.F.R. § 260.10], “*generator*” means any person, by site, whose act or process produces waste. (See KRS § 224.01-010(13)).
28. Pursuant to 401 KAR 30:005 Section 1 [40 C.F.R. § 260.10], “*facility*” means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste.
29. Pursuant to 401 KAR 31:005 Section 1(16) [40 C.F.R. 260.10], “*person*” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth of Kentucky, or any interstate body. (See KRS § 224.01-010(17)).
30. Pursuant to 401 KAR 30:005 Section 1 [40 C.F.R. § 260.10], “*owner*” means the person who owns a facility or part of a facility; and “*operator*” means the person responsible for the overall operation of a facility.
31. Pursuant to 401 KAR 31:005 Section 1(27) [40 C.F.R. § 260.10], “*treatment*” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical of hazardous waste so as to render it nonhazardous. (See KRS § 224.01-010(30)).
32. Pursuant to 401 KAR 31:005 Section 1(24) [40 C.F.R. § 260.10], “*storage*” means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes. (See KRS § 224.01-010(28))
33. Pursuant to 401 KAR 31:005 Section 1(5) [40 C.F.R. § 260.10], “*disposal*” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. (See KRS § 224.01-010(10))

34. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, as required by KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the management requirements listed in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “*LQG Permit Exemption*”).

35. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates 401 KAR 35:180 Section 2 [40 C.F.R. § 265.171] and is a condition of the LQG permit exemption, if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.

36. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates 401 KAR 35:180 Section 4 [(40 C.F.R. § 265.173(a)] and is a condition of the LQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.

37. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates 401 KAR 35:180 Section 4 [40 C.F.R. § 265.173(b)] and is a condition of the LQG Permit Exemption, containers of hazardous must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

38. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(2)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.

39. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(4)], which incorporates 401 KAR 35:030 Section 2 [40 C.F.R. § 265.31] and is a condition of the LQG Permit Exemption, a generator is required to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

40. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste at or near the point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or without having interim status as required by KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area conditions listed in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “*SAA Permit Exemption*”).

41. Pursuant to 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

42. Pursuant to 401 KAR 38:010 Section 1(1) [40 C.F.R. § 270.1(c)], RCRA requires an owner and/or an operator to obtain a permit for the treatment, storage, and disposal of any hazardous waste identified or listed in 401 KAR Chapter 31 [40 C.F.R. Part 261].
43. Pursuant to 401 KAR 38:005 Section 1(29), “*permit*” means an authorization, license, or equivalent control document issued by the Energy and Environment Cabinet to implement the requirements of 401 KAR Chapter 38 [40 C.F.R. Part 270]. Permit includes permit by rule, emergency permit, and standardized permit. Permit does not include interim status (401 KAR 38:020) [40 C.F.R. Part 270, Subpart G] or a permit that has not been subject to final agency action, such as a draft permit or a proposed permit.
44. The Kentucky Department of Environmental Protection (KDEP) of the Energy and Environment Cabinet issued Permit Number AI 006083 to Respondent as Permittee for its AES Char-Cal Facility, located at 1689 Shar-Cal Road (hereinafter “*Hazardous Waste Permit*”); the most recent renewal became effective on June 12, 2005, and expires on May 12, 2015. The Hazardous Waste Permit was issued for storage and treatment of hazardous waste in tanks and containers.
45. Under the terms of the Hazardous Waste Permit at AAZZ1 (AI Facility) Standard Requirements Group: Part II – Specific Conditions – General Facility Standards: Condition No. T-14, “The Permittee shall conduct personnel training as required by the regulation(s) specified in this paragraph [...] that is incorporated into this permit. Based on the following regulation(s) [...]: 401 KAR 34:020 Section 7.” [40 C.F.R. § 264.16].
46. Under the terms of the Hazardous Waste Permit at GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers: Condition No. T-1, “The Permittee shall construct, operate, maintain, and inspect the container storage area(s) specified in this permit and as specified under the incorporated Attachment D, ‘Process Information’. KRS 224.46-530(1)(g).”
47. Under the terms of the Hazardous Waste Permit at GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers: Condition No. T-13, “The Permittee shall maintain the storage area(s) and the containment [area(s)] free of cracks and gaps and is [*sic*] sufficiently impervious to contain leaks, spills, and accumulated precipitation. The containment system for the storage areas(s) must have sufficient capacity as addressed in the ‘Process Information’ and ‘Procedures to Prevent Hazards,’ incorporated attachment(s) of this permit. Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area(s) in as timely a manner as necessary to prevent overflow of the collection system. Based on the following regulation(s) [...]: 401 KAR 34:180 Section 6(2)” [40 C.F.R. § 264.175(b)].
48. Under the terms of the Hazardous Waste Permit at GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers: No. T-10, “The Permittee shall comply with all requirements of the specified regulation(s) and the following to ensure that container(s) holding hazardous waste are not opened, handled, or stored in a manner which may rupture the container or cause it to leak. Based on the following regulation(s) [...]: 401 KAR 34:180 Section 4(2)” [40 C.F.R. § 173(b)].

49. Under the terms of the Hazardous Waste Permit at GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers, No. T-9, “The Permittee shall comply with all requirements of the specified regulation(s) and the following to ensure that container(s) holding hazardous waste shall always be closed during storage except when it is necessary to add or remove waste. Roll off bin(s) that store debris must have fixed cover(s). Based on the following regulation(s) [...]: 401 KAR 34:180 Section 4(1)” [40 C.F.R. § 264.173(a)].

50. Under the terms of the Hazardous Waste Permit at AAZZ1 (AI Facility) Standard Requirements Group: Part II – Specific Conditions – General Facility Standards: Condition No. T-13, “The Permittee shall comply with all requirements set forth under the regulations(s) specified in this paragraph and 401 KAR Chapter 34 as applicable. The Permittee shall remedy any deterioration or malfunction discovered by an inspection in accordance with applicable regulation(s), and the attachment, ‘Procedures to Prevent Hazards,’ that is incorporated into this permit. The Permittee shall conduct the inspections in accordance with the Inspection Schedule included in the attachment, ‘Procedures to Prevent Hazards,’ that is incorporated into this permit. Records of inspection shall be kept as required by the regulation(s) specified in this paragraph, and in addition to the above referenced Inspection Schedule, the Permittee shall records all inspection in the inspection log formatted in an attachment(s) of this permit. Based on the following regulation(s): 401 KAR 34:020 Section 6” [40 C.F.R. § 264.15].

IV. EPA ALLEGATIONS AND DETERMINATIONS

51. Respondent is a “person” as defined in 401 KAR 31:005 Section 1(16) [40 C.F.R. 260.10]. (See KRS 224.01-010(17)).

52. Respondent is the "owner" and "operator" of a “facility” located at 1689 Shar-Cal Road, in Calvert City, Marshall County, Kentucky, as those terms are defined in 401 KAR 30:005 Section 1 [40 C.F.R. § 260.10].

53. At the Facility, Respondent receives hazardous waste, universal waste, and solid waste in containers and bulk shipments. The waste typically will either ultimately be shipped from the Facility in the same container that it arrived in, or it will undergo treatment by means of neutralization, stabilization, and/or solidification and then be shipped from the Facility. Respondent ships waste to, inter alia, fuel blending facilities, hazardous waste landfills, solid waste landfills, waste-to-energy facilities, incinerators, lamp recyclers, and battery recyclers.

54. The Facility includes two buildings, with a combined under-roof capacity of approximately 40,000 square feet, which Respondent utilizes for hazardous waste storage and for the treatment of hazardous waste in roll-off containers. Respondent’s permit established an overall maximum container storage capacity of just less than 400,000 gallons.

55. Respondent is a “generator” of both “solid wastes” and “hazardous wastes,” as defined above, due to its on-site activities associated with the storage and treatment of waste received from offsite sources.

56. On March 16, 2011, and again on March 13, 2012, Respondent notified KDEP of the Facility’s status as a Large Quantity Generator (LQG) of hazardous waste because Respondent generates 1,000

kilograms or more of hazardous waste or greater than one kilogram of acute hazardous waste per calendar month at the Facility.

57. On November 5, 2012, representatives of the EPA and the KDEP performed a RCRA Compliance Evaluation Inspection (CEI) of the Facility. The findings of the CEI were documented in the EPA's February 5, 2013, RCRA Inspection Report, a copy of which was provided to the Respondent.

58. During the CEI, the EPA inspector observed that Respondent was operating a 55-gallon satellite-accumulation container for aerosol cans (a D001 hazardous waste) in Building 2 and was operating a second satellite accumulation container of D006 bag house dust underneath the bag house outside of Building 3. Neither of these satellite-accumulation containers was labeled as to its contents or with the words "Hazardous Waste" or with other words that identify the contents of the containers.

59. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status because Respondent failed to achieve a requirement of the SAA permit exemption by not complying with the labeling requirements set forth in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(c)(1)(ii)].

60. During the CEI, the EPA inspector observed in Building 2 that the Respondent had failed to adequately maintain the top coating on the floor of the secondary containment system, thereby rendering it insufficiently impervious.

61. The EPA therefore alleges that Respondent violated Condition No. T-1 and Condition No. T-13 set forth in Respondent's Hazardous Waste Permit under GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers. (See KRS 224.46-530(1)(g) and 401 KAR 34:180 Section 6(2) [40 C.F.R. § 264.175(b)], respectively.)

62. During the CEI, the EPA inspector observed that Respondent was storing containers of D001 hazardous waste in Row 15 of Building 2, which were leaning and were only partially banded together. The inspector also observed that in Row 63 of Building 3, a pallet of four 55-gallon containers had been placed upon another pallet of three 55-gallon containers. These waste containers included D001 and D002 hazardous wastes. The manner in which these containers were being handled and stored failed to ensure that the containers would not rupture or leak.

63. The EPA therefore alleges that Respondent violated Permit Condition No. T-10 set forth in Respondent's Hazardous Waste Permit under GSTO2 (Container Storage Areas) Container storage in Buildings 2 and 3: Part II – Specific Conditions – Management of Hazardous Waste in Containers. (See 401 KAR 34:180 Section 4(2) [40 C.F.R. § 173(b)].)

64. During the CEI, the EPA inspector observed that Respondent was storing the following items that were not closed: One box of D001/D009/D002/D003/P030 hazardous waste on Row 23 of Building 2, and seven 250 gallon round concrete totes of D035 hazardous waste in Rows 60 and 73 of Building 3.

65. The EPA therefore alleges that Respondent violated Condition No. T-9 set forth in Respondent's Hazardous Waste Permit under GSTO2 (Container Storage Areas) Container storage in Buildings 2 and

3: Part II – Specific Conditions – Management of Hazardous Waste in Containers. (See 401 KAR 34:180 Section 4(1) [40 C.F.R. § 264.173(a)].)

66. During the CEI, the EPA inspector observed various amounts of hazardous waste (including D-listed, characteristic hazardous wastes identified in 40 KAR 31:030 Section 5 [40 C.F.R. § 261.24(b)], F-listed hazardous wastes identified in 401 KAR 31:040 Section 2 [40 C.F.R. § 261.31(a)], and discarded commercial chemical products, manufacturing chemical intermediaries, or off-specification commercial chemical products identified as U-listed hazardous wastes in 401 KAR 31:040 Section 4 [40 C.F.R. § 261.33(f)]) on the exterior of roll off boxes RB 08, RB 10, RB 13, RB 14, and RB 22 located behind Building 3, as well as between roll off boxes RB 13 and RB 22 located on the gravel parking lot.

67. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in the 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of 401 KAR 35:030 Section 2 [40 C.F.R. § 265.31].

68. During the CEI, the EPA inspector observed that Respondent was storing hazardous waste (including D-listed, characteristic hazardous wastes identified in 40 KAR 31:030 Section 5 [40 C.F.R. § 261.24(b)], F-listed hazardous wastes identified in 401 KAR 31:040 Section 2 [40 C.F.R. § 261.31(a)], and discarded commercial chemical products, manufacturing chemical intermediaries, or off-specification commercial chemical products identified as U-listed hazardous wastes in 401 KAR 31:040 Section 4 [40 C.F.R. § 261.33(f)]) at the 90-day-or-less storage area behind Building 3 in roll off boxes covered only with ripped tarps and thus was failing to keep containers of hazardous waste closed except when adding or removing waste.

69. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], by not complying with the container management requirements of 401 KAR 35:180 Section 4 [40 C.F.R. § 265.173(a)].

70. During the CEI, the EPA inspector observed roll off box RB 22 storing F006/F008 hazardous waste and leaking while it was in 90-day-or-less hazardous waste container storage area behind Building 3. The EPA inspector was informed that the container was leaking was because the closure devise on one end of the container was not properly closed. In the same area, roll off Box RB 08 was storing D001 hazardous waste and had a large hole on one end that had been inadequately repaired with epoxy material.

71. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], by not complying with the container management requirements of 401 KAR 35:180 Section 4 [40 C.F.R. § 265.173(b)].

72. During the CEI, the EPA inspector observed that roll off box RB 22 was leaking a liquid. A label on the container included the following: “Flam Solid (pesticides)” ; “EPA waste codes F006 and F008,” “10/11/12”.

73. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(1)(i)], by not complying with the requirements of 401 KAR 35:180 Section 2 [40 C.F.R. § 265.171].

74. During the CEI, the EPA inspector observed that roll off box RB 13, containing a D005 listed hazardous waste being then stored in the 90-day or less hazardous waste container storage area behind Building 3, did not have an accumulation start date clearly marked and visible for inspection.

75. The EPA therefore alleges that Respondent violated KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet the condition of the LQG Permit Exemption by not complying with the dating requirements of 401 KAR 32:030 Section 5(1) [40 C.F.R. § 262.34(a)(2)] .

76. During the CEI, the EPA inspector observed that Respondent’s records failed to reflect that the person designated to conduct the hazardous waste personnel training for Respondent had adequate training.

77. The EPA therefore alleges that Respondent violated Permit Condition No. T-14 set forth in Respondent’s Hazardous Waste Permit under AAZZI (AI Facility) Standard Requirements Group: Part II – Specific Conditions – General Facility Standards.(See 401 KAR 34:020 Section 7 [40 C.F.R. § 264.16] .

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations, and Determinations, the parties agree to the following:

78. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

79. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

80. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

81. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

82. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
83. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706.
84. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
85. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
86. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
87. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

88. Respondent consents to the payment of a civil penalty in the amount of **SIXTY FIVE THOUSAND DOLLARS (\$65,000)**, which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
89. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

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, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

90. Respondent shall submit a copy of the payment to the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Alan Newman, Environmental Engineer
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division, US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

91. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days

after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c)
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

92. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

93. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

94. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

95. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

96. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.

97. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

98. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

IX. OTHER APPLICABLE LAWS

99. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

100. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Gregory D. Luetscher
Associate Regional Counsel
Office of RCRA, OPA, and UST Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9677
luetscher.greg@epa.gov

101. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Mr. Allen Kroll
Director of Health, Safety and Compliance
American Environmental Services, Inc
AES Service Center
2100 Georgetowne Dr. Suite 303
Pittsburgh, Pennsylvania 15143
(724) 933-4100 Ext. 246
allen.kroll@americanenviro.com

XI. SEVERABILITY

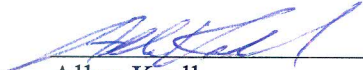
102. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

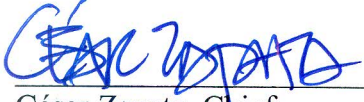
103. The effective date of this CA/FO shall be the date on which the fully executed CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

**For the Respondent, American Environmental Services, Inc.
d/b/a AES Environmental, LLC**

By:  Dated: 9/12/13
Allen Kroll
Director of Health, Safety and Compliance
AES Environmental, LLC

For the United States Environmental Protection Agency

By:  Dated: 9/16/13
César Zapata, Chief
RCRA and OPA Enforcement
and Compliance Branch
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket Number: RCRA-04-2013-4009(b)
)
American Environmental Services, Inc.)
d/b/a/ AES Environmental, LLC) Proceeding under Section 3008(a) of the
1689 Shar-Cal Road) Resource Conservation and Recovery
Calverty City, Kentucky 42029) Act, 42 U.S.C. § 6928(a)
)
EPA ID No.: KYD 985 073 196)
)
Respondent)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 22 day of OCT., 2013.

BY: Susan B. Schub
Susán B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of American Environmental Services, Inc. d/b/a AES Environmental, LLC, Calvert City, Kentucky Docket Number: RCRA-04-2013-4009(b), and have served copies on the parties listed below in the manner indicated:

Gregory D. Luetscher
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Alan Newman
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

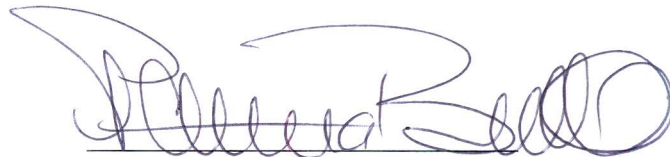
Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. Allen Kroll
Director of Health, Safety and Compliance
AES Environmental, LLC
American Environmental Services, Inc
AES Service Center
2100 Georgetowne Dr. Suite 303
Pittsburgh, Pennsylvania 15143

(Certified Mail, Return Receipt Requested)

Date: 10-22-13



Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511