

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
OCT -1 11:10:33
REGISTRATION
EPA REGION VI

IN THE MATTER OF: §
§
§
UNITED STATES DEPARTMENT OF §
AGRICULTURE, AGRICULTURAL §
RESEARCH SERVICE §
Respondent § Administrative Compliance Order on Consent
§ USEPA Docket No. RCRA-06-2019-0922
§
HARRY K. DUPREE NATIONAL §
AQUACULTURE RESEARCH CENTER §
2955 Highway 130 East §
Stuttgart, Arkansas 72160 §
§
Facility §
§
Proceeding under Section §
3008(a) of the Resource Conservation §
And Recovery Act ("RCRA") §

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent ("ACOC") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and the United States Department of Agriculture, Agricultural Research Service ("USDA-ARS" or "Respondent") and concerns the Harry K. Dupree National Aquaculture Research Center facility located at 2955 Highway 130 East Stuttgart, Arkansas 72160 (the "Facility").
2. Notice of this action has been given to the state of Arkansas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).

UNITED STATES DEPARTMENT OF AGRICULTURE HARRY K. DUPREE NATIONAL
AQUACULTURE RESEARCH CENTER

3. For the purpose of this ACOC, where applicable, citations are made only to the Code of Federal Regulations (C.F.R.) since the relevant Arkansas Administrative Code sections in the Arkansas Pollution Control Ecology Commission's Regulation No. 23 mirror 40 C.F.R, Parts 260, 261, 262, 270.
4. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this ACOC. This ACOC states a claim upon which relief may be granted.
5. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this ACOC, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2), on all issues of fact and law set forth in this ACOC. Respondent waives all defenses which have been raised or could have been raised to the claims set forth in the ACOC.
6. Respondent consents to the issuance of the ACOC hereinafter recited and consents to the specific stated Compliance Order, Section VI, of this ACOC.
7. The provisions of this ACOC shall be binding upon EPA and the Respondent and their successor agencies, departments, or instrumentalities.
8. This ACOC shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or

determination of, any issue related to any federal, state, or local permit; nor does this ACOC constitute a waiver, suspension, or modification of the requirements of RCRA or any regulations promulgated thereunder.

II. JURISDICTION

9. This ACOC is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and is simultaneously commenced and concluded through the issuance of this ACOC under 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).
10. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C or EPA’s regulations promulgated thereunder.
11. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the federal government in the same manner and under the same circumstances as against any other person.
12. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by the EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms or conditions.

III. STATEMENT OF PURPOSE

13. This ACOC identifies injunctive relief necessary for compliance with RCRA as identified during Region 6's investigation of Respondent's Facility. However, Complainant's review of Respondent's Facility was limited and, therefore, other injunctive requirements may exist.
14. In entering into this ACOC, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to ensure that the injunctive relief that Respondent will complete as described in the Section VI, Compliance Order, is protective of human health and/or the environment.

IV. STATUTORY AND REGULATORY BACKGROUND

15. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and the HSWA enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a "cradle-to-grave" program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 et seq.
16. RCRA's Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA's RCRA hazardous waste program.

17. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” They prohibit land disposal of certain hazardous wastes, and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.
18. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded under 40 C.F.R. § 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or military munitions. Materials are solid waste, as defined in 40 C.F.R. § 261.2, if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.
19. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or it is listed in 40 C.F.R. Part 261, Subpart D.
20. Characteristic hazardous wastes are assigned “D” codes in 40 C.F.R. Part 261, Subpart C, depending on the specific hazardous characteristic that the waste exhibits.
21. An ignitable hazardous waste has a flash point of less than 60 degrees centigrade (140 degrees Fahrenheit) and is assigned the D001 hazardous waste code pursuant to 40 C.F.R. § 261.21.

22. A corrosive hazardous waste has a pH of less than or equal to 2.0 or greater than or equal to 12.5 and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22. A reactive hazardous waste is assigned the D003 hazardous waste code pursuant to 40 C.F.R. § 261.23.
23. Listed wastes are assigned with “F”, “K”, “P”, and “U” codes pursuant to 40 C.F.R. Part 261, Subpart D. The code varies depending on the source of the waste.
24. 40 C.F.R. Parts 264 and/or 265 applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.
25. The relevant RCRA statutory and regulatory requirements to this ACOC require that generators of solid waste and hazardous waste must, among other things:
 - A. Determine whether their generated solid wastes are hazardous, pursuant to 40 C.F.R. § 262.11;
 - B. Comply with the statutory notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930;
 - C. Comply with the manifest requirements, pursuant to 40 C.F.R. § 262.20; and
 - D. Determine its generator status by meeting the exemption conditions set forth at 40 C.F.R. § 262.34 or comply with the specific requirements set forth at 40 C.F.R. § 270.10.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. Respondent is an agency of the federal government and operates a facility located at 2955 Highway 130 East Stuttgart, Arkansas 72160.

27. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes “each department, agency, and instrumentality of the United States”; [40 C.F.R. § 260.10].
28. RCRA Section 6001, 42 U.S.C § 6961, expressly waives any immunity otherwise applicable to the United States with respect to any substantive or procedural requirement (including any requirement for permits or reporting or any provisions for injunctive relief), and provides that federal facilities shall be subject to, and comply with, all Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection which include, but are not limited to, all administrative orders and all administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated intermittent or continuing violations.
29. The Facility identified in Paragraph 1 of this ACOC is a “facility” within the meaning of 40 C.F.R. § 260.10.
30. Respondent’s Registered Agent for Service in the state of Arkansas is located at 2955 Highway 130 East Stuttgart, Arkansas 72160.
31. Respondent owns and operates the Facility, which performs aquaculture research on fish located at 2955 Highway 130 East Stuttgart, Arkansas 72160.
32. During the weeks of 7/24/2017 and 11/16/2018, EPA conducted a RCRA inspection and record reviews (“Investigation”) of Respondent’s performance as a generator of hazardous waste.

UNITED STATES DEPARTMENT OF AGRICULTURE HARRY K. DUPREE NATIONAL
AQUACULTURE RESEARCH CENTER

33. During the Investigation, EPA discovered that Respondent, at a minimum, generated the following waste:
- A. D001 (Ignitability), D002 (Corrosivity)
34. The waste streams identified above are “solid waste” and “hazardous waste” as defined in [40 C.F.R. §§ 261.2 and 261.24].
35. From the Investigation, EPA determined that during 2017, Respondent generated, at a minimum, the hazardous waste streams identified above and combined the hazardous waste from another facility on its manifest and disposed of those wastes using its own facility’s EPA ID number [40 C.F.R. Part 262].
36. Respondent is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), [40 C.F.R. Parts 260 and 261].
37. Respondent is a Conditionally Exempt Small Quantity Generator (CESQG).
38. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth [40 C.F.R. Parts 262 and/or 270].

Claims i. Failure to Comply with the Manifest Requirements

39. The allegations in Paragraphs 1-38 are realleged and incorporated herein by reference.

40. Pursuant to 40 C.F.R. § 262.20(a)(1), unless it is a CESQG, a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262.
41. EPA reviewed manifests prepared by Respondent from 2014 through July 2017 and determined that Respondent shipped waste on another facility's manifest (007699874FLE). Therefore, Respondent violated 40 C.F.R. § 262.20(a)(1).

Claims ii. Failure to make Adequate Hazardous Waste Determinations

42. The allegations in Paragraphs 1-38 are realleged and incorporated herein by reference.
43. Pursuant to 40 C.F.R. § 262.11 a generator shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations.
44. EPA reviewed Respondent's records for the period from 2014 through July 2017 and determined that Respondent failed to make adequate hazardous waste determinations on all solid waste streams at the Facility.
45. Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 262.11 by failing to make the requisite hazardous waste determination on all solid waste streams generated by Respondent at the Facility during the period from 2014 through 2017.

VI. COMPLIANCE ORDER

46. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of the settlement agreement, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all of its solid waste streams to accurately determine whether each waste stream is hazardous. Additionally, Respondent shall develop and implement Standard Operating Procedures (“SOP”) to ensure that the Facility is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) properly preparing the manifests; and (e) complying with all aspects of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with the RCRA Section 3010 Notification requirement; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

47. In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Facility and shall include the following certification:

“I certify under the penalty of law that this document and all of its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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.”

Copies of all documents required by this ACOC shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (6ECDSR)
ATTN: Angela Hays
Dallas, Texas 75270-2102

VII. TERMS OF SETTLEMENT

i. Modification

48. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

ii. Indemnification

49. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this ACOC, nor shall EPA or the United States Government be held out as a party to any contract entered into by Respondent in carrying out the activities required by this ACOC.

iii. Record Preservation

50. Respondent shall preserve, during the pendency of this ACOC, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors, which in any way relate to this ACOC regardless of any document retention policy to the contrary.

iv. Reservation of Rights

51. Notwithstanding any other provisions of this ACOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
52. EPA reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this ACOC.
53. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States. Further, this ACOC does not resolve Respondent's liability for Federal civil penalties for the violations set forth herein.

v. Termination and Satisfaction

54. When Respondent believes that it has complied with all the requirements of this ACOC, including compliance with the Compliance Order, Section VI, Respondent shall so certify in writing and in accordance with the certification language set forth in Paragraph 47. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.

vi. Anti-Deficiency Act

55. Respondent shall seek all existing funds to meet the requirements of the ACOC. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this ACOC. Nothing in this ACOC shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

vii. Authority to Bind the Parties

56. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this ACOC and to bind the Respondent to it.
57. The undersigned Complainant certifies that he has the delegated authority to enter into the terms and conditions of this ACOC and to EPA to it.

viii. Effective Date of Settlement

58. This ACOC shall become effective upon filing with the Regional Hearing Clerk.


RCRA-06-2019-0922

UNITED STATES DEPARTMENT OF AGRICULTURE HARRY K. DUPREE NATIONAL
AQUACULTURE RESEARCH CENTER

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:**

FOR THE RESPONDENT:

Date: 9/23/19



ADMINISTRATOR
AGRICULTURAL RESEARCH SERVICE
UNITED STATES DEPARTMENT OF
AGRICULTURE

RCRA-06-2019-0922

UNITED STATES DEPARTMENT OF AGRICULTURE HARRY K. DUPREE NATIONAL
AQUACULTURE RESEARCH CENTER

FOR THE COMPLAINANT:

Date: 01/30/19




Cheryl T. Seager, Director
Enforcement and Compliance
Assurance Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing ACOC is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate civil penalties, injunctive or other equitable relief or criminal sanctions for any violations of law, including those violations alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order, Section VI, and the Terms of Settlement, Section VII, as set forth in this ACOC. The undersigned Regional Judicial Officer has the delegated authority to issue this Final Order. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 10/1/19



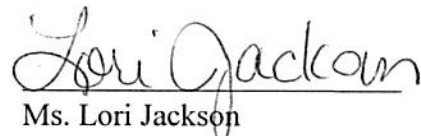
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2019, the original of the foregoing
Administrative Compliance Order on Consent was hand delivered to the Regional Hearing Clerk,
U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy
of the ACOC was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150 0000 2405 4214

Registered Agent for Service
an agency of the federal government
2955 Highway 130 East
Stuttgart, Arkansas 72160


Ms. Lori Jackson
Paralegal

