

U.S. ENVIRONMENTAL PROTECTION AGENCY 2012 JAN -6 AM 10: 21  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINSTRATOR

In the Matter of:

Duke Aerial, Inc.  
EPA ID. No. IAR000512707  
Respondent

)  
) Docket No. RCRA-07-2011-0031  
)  
) EXPEDITED SETTLEMENT  
) AGREEMENT AND  
) FINAL ORDER  
)

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency ("EPA") alleges that Duke Aerial, Inc. ("Respondent"), owner or operator of the facility at 65037 Boston Road, Atlantic, Iowa (the "Facility"), failed to comply with hazardous waste generator requirements and used oil generator requirements under the Resource Conservation and Recovery Act ("RCRA").

2. Under RCRA a generator of hazardous waste is required to comply with RCRA and its implementing regulations. During an inspection of the Facility on December 28, 2010, and through subsequent correspondence, it was revealed that Respondent failed to comply with the following requirements:

- a. Close a hazardous waste satellite accumulation container, except when waste is being added or removed. 40 C.F.R. § 262.34(c)(1)(i), referencing 40 C.F.R. § 265.173(a).
- b. Correctly label or mark a hazardous waste storage container with the words "Hazardous Waste." 40 C.F.R. § 262.34(a)(3).
- c. Clearly mark the date upon which each period of accumulation begins and is visible for inspection. 40 C.F.R. § 262.34(a)(2).
- d. Designate an emergency coordinator with the responsibility for coordinating all emergency response measures. 40 C.F.R. § 262.34(d)(5)(i).
- e. Post the emergency notification information next to the telephone. 40 C.F.R. § 262.34(d)(5)(ii).
- f. Utilize a manifest for a shipment of hazardous waste to a treatment, storage, or disposal facility. 40 C.F.R. § 262.20(a)(1).
- g. Notify EPA that the facility did not receive signed copies of the hazardous waste manifest from the receiving treatment, storage and/or disposal facility. 40 CFR §262.42(b).
- h. Have immediate access to an internal alarm or emergency communication device in the hazardous waste storage area when hazardous waste is being poured, mixed, spread, or otherwise handled. 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.34(a).
- i. Notify EPA of used oil transporter status. 40 C.F.R. § 279.42(a).
- j. Maintenance of records documenting each used oil shipment accepted for transport. 40 C.F.R. § 279.46(a).

k. Establish agreements with State emergency response teams, emergency response contractors, and equipment suppliers, and to make arrangements with local hospitals. 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. §§ 265.37(a)(3) and 265.37(a)(4).

3. The EPA and Respondent agree that settlement of this matter for a penalty of Five Thousand Six Hundred Dollars (\$ 5,600) is in the public interest.

4. The EPA is authorized to enter into this Expedited Settlement Agreement ("Agreement") pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.13(b).

5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA; (2) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; and (5) waives any right to contest the allegations contained herein.

6. By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violations have been corrected as documented on the Return to Compliance Worksheet; (2) Respondent is submitting proof of payment of the civil penalty with this Agreement; and (3) Respondent is a small business, in accordance with the SBA size standards (13 C.F.R. Part 121).

7. Proof of payment of the civil penalty and submission of the completed Return to Compliance Worksheet shall be provided to Deanna Smith at the address below within 30 days of Respondent's receipt of the letter invitation setting forth the opportunity for expedited settlement.

8. The civil penalty of Five Thousand Six Hundred Dollars (\$5,600) should be paid in accordance with the Penalty Collection Procedures provided to the Respondent.

9. Upon the effective date of this Agreement, payment of the civil penalty and submission of the completed Return to Compliance Worksheet shall constitute full settlement of the civil claim alleged herein.

10. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.

11. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 3008(b) of RCRA.

12. Each party shall bear its own costs and fees, if any.

13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Thousand Six Hundred Dollars (\$5,600) within 30 days of its receipt of the letter invitation setting forth the opportunity for expedited settlement. Such payment shall identify Respondent by name and docket number and be paid in accordance with the Penalty Collection Procedures provided to Respondent.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Deanna Smith  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This Agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

IT IS SO AGREED,

Duke Aerial, Inc.


Signature: 

Date DEC 1/2011


Printed Name: KEN. TOLTON

Printed Title: V.P. DUKE AERIAL INC

APPROVED BY EPA:


  
Donald Toensing, Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

Date 1-3-12

  
Kelley Catlin, Attorney  
Office of Regional Counsel

Date 12/7/11

IT IS SO ORDERED:

  
Robert Patrick  
Regional Judicial Officer

Date January 3, 2012

U.S. Environmental Protection Agency, Region 7  
Return to Compliance Worksheet  
Duke Aerial, Inc.  
Atlantic, Iowa  
IAR000512707

Instructions: For each violation listed below, you must describe what actions you took to correct the violation, and provide documentation (such as a photograph or copies of appropriate documentation) to show that each violation has been corrected. **You must sign and return this sheet with your signed Expedited Settlement Agreement.**

1. Post the emergency notification information next to the telephone. 40 C.F.R. § 262.34(d)(ii). Specifically, the map needs to be revised to show the location of spill control equipment.

How was this violation addressed: All Emergency #5 & Contact Spills byproducts are located by the phone in our cylinder storage plus they're located at each Soreman's office

2. Maintenance of records documenting each used oil shipment accepted for transport. 40 C.F.R. § 279.46(a). Specifically, update the used oil shipment records to show the date that each quantity of used oil was accepted at the Duke Aerial facility.

How was this violation addressed: A spread sheet has been created the amount of gallons, are recorded & date when we receive waste oil at our location, also the waste oil containers have decals installed on them.

Signature: [Signature]

Date 11-08-11

Printed Name: Troy Hepler

Printed Title: Rebuild Manager

[Signature]  
KEN TOLTON  
U.P. DUKE AERIAL INC  
DEC 1 / 2011

IN THE MATTER OF Duke Aerial, Inc.  
Docket No. RCRA-07-2011-0031

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Kelley Catlin  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ken Tolton  
Vice President  
Duke Aerial, Inc.  
65037 Boston Road  
Atlantic, Iowa 50022

Dated: 1/6/12

  
Kathy Robinson  
Hearing Clerk, Region 7 