

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2022-0192
)	
United States Air Force,)	CONSENT AGREEMENT
)	
Respondent)	
)	
Eareckson Air Station)	
Shemya Island, AK)	
_____)	

I. STATUTORY AUTHORITY

1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.
2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may enforce the federal hazardous waste program in the State of Alaska.
3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the United States Air Force (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.
5. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

6. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

7. Respondent, United States Air Force, is a department, agency, and/or instrumentality of the United States.
8. Respondent is a “person,” as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
9. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is and has been the “owner,” as that term is defined at 40 C.F.R. § 260.10, of Eareckson Air Station, located at Shemya Island, Alaska (the “Facility”).
10. The Facility generates and stores various types of hazardous and universal wastes.
11. Respondent generates and accumulates at the Facility various types of “solid waste,” as that term is defined at 40 C.F.R. § 261.2.
12. Respondent generates and accumulates “hazardous waste” at the Facility, as that term is defined at 40 C.F.R. § 260.10.
13. Respondent is and has been a “generator” of and has engaged in the “storage” in “containers” and a “tank” of, hazardous waste, as those terms are defined at 40 C.F.R. § 260.10, at the Facility.
14. Respondent is a “small quantity handler of universal waste,” as that term is defined in 40 C.F.R. § 273.9.
15. Since at least January 2010, Respondent has reported the Facility as a Small Quantity Generator (“SQG”), as that term is defined at 40 C.F.R. § 260.10, meaning that it generated greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of non-acute hazardous waste in a calendar month. However, during at least the month of July 2019, Respondent was a large quantity generator (“LQG”) of hazardous waste, as that term is defined at 40 C.F.R. § 260.10, meaning that it generated in that month more than 1,000 kg (2,200 pounds) of hazardous waste.
16. At all times relevant to the allegations set forth in this Consent Agreement, the Facility was not a permitted treatment, storage, or disposal facility, and did not have interim status.

COUNT I: Storage of Hazardous Waste Without a Permit or Interim Status

17. Section 3005 of RCRA, 42 U.S.C. § 6925, requires that anyone who treats, stores, or disposes of hazardous waste must have a permit or interim status.
18. 40 C.F.R. § 270.1 states that no person may store, treat, or dispose of hazardous waste without a permit or interim status.
19. Under 40 C.F.R. § 262.16, an SQG may accumulate hazardous waste on site without a permit or interim status, provided that it meets all of the conditions for exemption listed in that section.
20. Under 40 C.F.R. § 262.17, an LQG may accumulate hazardous waste on site without a permit or interim status, provided that it meets all of the conditions for exemption listed in that section.

Failure to Comply with SQG Accumulation Conditions – Length of Time Accumulated On-Site

21. 40 C.F.R. § 262.16(c) provides that an SQG who must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more, for off-site treatment, storage or disposal, may accumulate hazardous waste on site for 270 days or less without a permit or interim status, provided the generator complies with the conditions of Section 262.16(b).
22. Respondent accumulated numerous containers of hazardous waste on site at the Facility for longer than 270 days, including:
 - a. On December 6, 2017, Respondent stored 261 pounds of hazardous waste paint related materials and debris in a 55-gallon drum. This hazardous waste was stored at the Facility until on or around December 5, 2021.
 - b. On December 7, 2017, Respondent stored 327 pounds of hazardous waste paint related residue from punctured aerosol cans in a 55-gallon drum. This hazardous waste was stored at the Facility until on or around December 5, 2021.
 - c. On June 3, 2019, Respondent stored 325 pounds of oxidizing hazardous waste in 65 containers. This hazardous waste was stored at the Facility until on or around December 5, 2021.

- d. On February 4, 2020, Respondent stored 250 pounds of hazardous waste paint and paint related materials from aerosol can decanting in a 55-gallon drum. To date, this hazardous waste is still being stored at the Facility.
 - e. On June 4, 2020, Respondent stored 367 pounds of hazardous waste adhesive acryl roofing sealant in seven 4-gallon containers. This hazardous waste was stored at the Facility until on or around December 5, 2021.
 - f. On July 2, 2020, Respondent stored 300 pounds of flammable and corrosive hydrochloric acid hazardous waste in a 55-gallon drum and 16 pounds of methyl ethyl ketone hazardous waste in a 4-gallon container. This hazardous waste was stored at the Facility until on or around December 5, 2021.
 - g. On July 16, 2020, Respondent stored 177 pounds of hazardous waste paint contaminated material in a 55-gallon drum. To date, this hazardous waste is still being stored at the Facility.
23. Since Respondent accumulated the above-stated hazardous waste at the Facility for longer than 270 days, Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.16 for this hazardous waste, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Comply with LQG Accumulation Conditions – Length of Time Accumulated On-Site

24. 40 C.F.R. § 262.17(a) provides that a LQG may accumulate hazardous waste on site without a permit or interim status for no more than 90 days unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption set forth in this section.
25. Respondent has neither received an accumulation time limit extension nor is the hazardous waste an F006 waste subject to the conditions for exemption.
26. On July 17, 2019, Respondent accumulated the following approximately 53,000 pounds of hazardous waste consisting of a mixture of used non-PCB transformer oil and fuel:
- a. Respondent stored approximately 29,957 pounds of the hazardous waste oil and fuel mixture in one 6,000-gallon aboveground storage tank at Building 110. To date, this hazardous waste is still being stored at the Facility.
 - b. Respondent stored approximately 23,044 pounds of the hazardous waste oil and fuel mixture in ten intermediate bulk containers (two at Building 729 and eight at Building 110). To date, this hazardous waste is still being stored at the Facility.

27. Since Respondent accumulated the above-stated hazardous waste at the Facility for longer than 90 days, Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.17 for this hazardous waste, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Label or Mark Containers and Tanks of Hazardous Waste

28. 40 C.F.R. § 262.17(a)(5)(i)(A) requires that a LQG accumulating hazardous waste in containers must mark or label such containers with the words “Hazardous Waste.”

29. 40 C.F.R. § 262.17(a)(5)(ii)(A) requires that a LQG accumulating hazardous waste in tanks must mark or label such tanks with the words “Hazardous Waste.”

30. On or around July 17, 2019, Respondent stored approximately 18,345 pounds of hazardous waste in eight intermediate bulk containers at Building 110. The intermediate bulk containers were not marked or labeled with the words “Hazardous Waste.”

31. On or around July 17, 2019, Respondent stored approximately 29,957 pounds of hazardous waste in one 6,000-gallon aboveground storage tank at Building 110. The aboveground storage tank was not marked or labeled with the words “Hazardous Waste.”

32. Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.17 for this hazardous waste, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Conduct Weekly Inspections

33. 40 C.F.R. §262.16(b)(2)(iv) provides that, at least weekly, the SQG must inspect central accumulation areas, and must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

34. 40 C.F.R. § 262.17(a)(1)(v) provides that, at least weekly, the LQG must inspect central accumulation areas, and must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

35. Beginning on or around December 13, 2017, until January 2019, Respondent failed to conduct any weekly inspections of containers in a central accumulation area (Building 729) at the Facility.

36. Beginning on or around July 2019, Respondent failed to conduct any weekly inspections of containers in a central accumulation area (Building 110) at the Facility.

37. Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.16 and 40 C.F.R. § 262.17, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Conduct Daily Inspections

38. 40 C.F.R. § 262.17(a)(2) provides that if hazardous waste is placed in tanks, the LQG must comply with the applicable requirements in Subpart J of 40 C.F.R. Part 265, with a few exceptions not applicable here.
39. 40 C.F.R. § 265.195(b) provides that the owner or operator of a facility that uses tank systems for storing or treating hazardous waste must inspect at least once each operating day (1) overflow/spill control equipment to ensure that it is in good working order; (2) above ground portions of the tank system to detect corrosion or releases of waste; and (3) the construction materials and the area immediately surrounding the externally accessible portions of the tank system to detect erosion or signs of releases of hazardous waste.
40. Beginning on or around July 17, 2019, Respondent failed to inspect the 6,000-gallon aboveground hazardous waste storage tank at Building 110 at least once each operating day.
41. Respondent failed to meet all of the conditions for exemption listed in 40 C.F.R. § 262.17, and therefore, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

COUNT II: Failure to Properly Manage Universal Waste

42. As of April 27, 2021, Respondent was a “small quantity handler of universal waste,” as that term is defined in 40 C.F.R. § 273.9.
43. Pursuant to 40 C.F.R. § 273.15(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated or received from another handler.
44. Pursuant to 40 C.F.R. § 273.15(b), a small quantity handler of universal waste may accumulate universal waste for longer than one year if such accumulation is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
45. Respondent accumulated the following universal waste for longer than one year:

- a. 48 containers of universal waste lamps, including at least 28 containers that had been accumulated for longer than 3 years. This universal waste was accumulated at the Facility until on or around December 5, 2021;
 - b. 8 containers of universal waste batteries, including 3 containers that had been accumulated for longer than 3 years. This universal waste was accumulated at the Facility until on or around December 5, 2021; and
 - c. 4 containers of universal waste aerosol cans. To date, the aerosol cans are still being stored at the Facility.
46. The facility representatives did not provide proof to EPA that such activity was solely for the purpose of accumulation of such quantities of universal waste necessary to facilitate proper recovery, treatment or disposal.
47. As such, Respondent failed to satisfy the exemption from the accumulation time limitation requirement in 40 C.F.R. § 273.15(b) and violated 40 C.F.R. § 273.15(a).
48. Pursuant to 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed.
49. On at least July 13, 2021, at least 12 loose spent fluorescent lamps were placed horizontally across a pallet of other materials in the central accumulation area in Building 729. The waste lamps were not contained or packaged to prevent breakage, in violation of 40 C.F.R. § 273.13(d)(1).
50. Pursuant to 40 C.F.R. § 273.14(e), a small quantity handler of universal waste must label or clearly mark each lamp or a container or package in which such lamps are contained with any one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.
51. On at least July 13, 2021, the loose spent fluorescent lamps identified in Paragraph 48 were not labeled as universal waste, in violation of 40 C.F.R. § 273.14(e).
52. Pursuant to 40 C.F.R. § 273.13(d)(2), a small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment.
53. On at least July 13, 2021, the tips of 2 broken lamps were not immediately placed in a container, in violation of 40 CFR § 273.13(d)(2), but instead were placed on top of a 55-gallon drum in the central accumulation area in Building 729.

IV. TERMS OF SETTLEMENT

54. Respondent admits the jurisdictional allegations of this Consent Agreement.
55. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
56. In determining the amount of penalty to be assessed, EPA has taken into account factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined, and Respondent agrees that an appropriate penalty to settle this action is \$206,811 (the “Assessed Penalty”).
57. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.
58. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered by a means that facilitates receipt confirmation to the following address:
- U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
- Respondent must note on the check the title and docket number of this action. Respondent’s Treasury Account Symbol is 573400. Inquiries concerning this payment can be made to Mr. Ronald Lee, who can be reached at ronald.lee.6@us.af.mil and/or 907-552-1075.
59. Payment by Respondent may also be made using the Intra Governmental Payment and Collection application (IPAC), using the Agency’s Location Code (ALC) 68-01-0727. Please include the Docket Number of this action in the description field of the IPAC. The customer service representative is Peter Hendrickson, 513-487-2086.
60. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraphs 58 and 59 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10,
R10_RHC@epa.gov

Jennifer Parker
U.S. Environmental Protection Agency
Region 10
Parker.Jennifer@epa.gov

61. Respondent shall seek all existing funds to meet the requirements of this Consent Agreement. 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 this Consent Agreement and Final Order. Nothing in this Consent Agreement and Final Order shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
62. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective actions within the time frame specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.
63. Based on the findings contained in this Consent Agreement, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered:
 - a. to certify and provide documentation to EPA within 90 days of the effective date of this Consent Agreement and Final Order that Respondent has implemented standard management practices or operating procedures which are sufficient to ensure that Respondent complies with the conditions for accumulation of hazardous waste without a permit or interim status at the Facility according to 40 C.F.R. § 262.16;
 - b. to certify and provide documentation to EPA within 90 days of the effective date of this Consent Agreement and Final Order that Respondent has implemented standard management practices or operating procedures which are sufficient to ensure that Respondent complies with the requirements for managing universal waste at the Facility according to Part 273 Subpart B;
 - c. to provide to EPA within 30 days of the effective date of this Consent Agreement and Final Order a plan that includes a schedule to transport all hazardous waste and universal waste by June 30, 2022;
 - d. to provide to EPA by the final day of each month following a month in which hazardous waste or universal waste, referenced within the violations alleged in this Consent Agreement and Final Order, was received by an initial transporter for transport from Eareckson Air Station to a designated facility each “Generator Copy” of any uniform hazardous waste manifest(s) that accompanied each transport of hazardous waste and universal waste from Respondent for the purposes of storage, treatment, or disposal. Respondent further agrees to provide to EPA, within 30 days of receipt by Respondent each “Designated Facility to Generator” copy of all uniform hazardous waste manifest(s) received by Respondent that include the designated

- facility's certification of receipt of the hazardous waste and universal waste relevant to this Consent Agreement and Final Order. If Respondent utilizes shipping papers other than uniform hazardous waste manifests for shipments of universal wastes, provide the shipping papers according to the same schedule set for the manifests;
- e. Within 90 days of the effective date of the Consent Agreement and Final Order Respondent must submit to EPA a closure plan in accordance with 40 C.F.R. Part 265, Subpart G for the areas subject to closure as a result of the violations alleged in this Consent Agreement and Final Order. Upon approval by EPA of the closure plan, Respondent shall implement the closure plan as approved. In the event that Respondent or EPA determines that the hazardous waste management area addressed by this closure plan must be closed as a landfill, subject to the requirements of 40 C.F.R. §§ 265.117 through 265.120, then within 90 days of such determination, Respondent must: i. Submit to EPA a post-closure plan in accordance with 40 C.F.R. § 265.118, and upon approval, the closure plan must be implemented in accordance with its terms; ii. Comply with the other post-closure requirements for landfills in accordance with 40 C.F.R. §§265.117 through 265.120; and iii. Establish and maintain financial assurance for post-closure in accordance with 40 C.F.R. Part 265, Subpart H.
 - f. Within 60 days of completion of the closure activities in the areas addressed in the closure plan, Respondent must submit to EPA certification of closure as required by the appropriate state and federal regulations.
 - g. EPA and its authorized representatives shall have access to Respondent's facility in accordance with 42 U.S.C. § 6927(a) to monitor Respondent's implementation of and compliance with the terms of this Consent Agreement and Final Order.

64. In all instances in which this Consent Agreement requires written submissions to EPA, each submission must be accompanied by the following certification signed by a responsible officer of Respondent:

“I certify under penalty of law that, based on information and belief formed after a reasonable inquiry, the statements and information contained in this document accurately reflect the compliance status of this facility and are true, accurate, and complete.”

By: Date / Signature / Title /Printed Name of Responsible Official

65. Respondent shall provide compliance documentation required to the following address:

U.S. Environmental Protection Agency
Region 10
[Parker, Jennifer@epa.gov](mailto:Parker.Jennifer@epa.gov)

66. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.
67. The parties shall bear their own costs and attorneys' fees in bringing or defending this action.
68. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order and/or to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this Consent Agreement and Final Order.
69. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.
70. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.
71. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

PAUL S. CORNWELL, Colonel, USAF
Commander, PACAF Regional Support Center

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2022-0192
)	
United States Air Force,)	FINAL ORDER
)	
Respondent)	
)	
Eareckson Air Station)	
Shemya Island, AK)	
_____)	

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: United States Air Force, Docket No.: RCRA-10-2022-0192**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered by electronic mail to:

Kathleen Doster
U.S. Environmental Protection Agency
Federal Facilities Enforcement Office
1200 Pennsylvania Ave. NW, MC 2261A
Washington, D.C. 20460
Doster.Kathleen@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered by electronic mail to:

Major John Knox
United States Air Force
11th Air Force
10471 20th Street, Ste. 262
Joint Base Elmendorf-Richardson, AK 99506
John.knox.8@us.af.mil

Major Matthew Pellegrine
United States Air Force
Office of the Regional Counsel
510 Hickam Ave., Bldg 250, Bay A
Travis Air Force Base, CA 94535
Matthew.pellegrine.1@us.af.mil

DATED this _____ day of _____, 2022.

Regional Hearing Clerk
EPA Region 10