

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4003(b)
U.S. Customs and Border Protection)	
U.S. Department of Homeland Security)	Proceeding under Section 3008(a)
13510 Aerospace Way, Building 14)	of the Resource Conservation and
Jacksonville, FL 32221)	Recovery Act, 42 U.S.C. § 6928(a)
EPA ID No.: FLR 000 127 738)	
)	
Respondent.)	
)	

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq., and the Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403.702 et seq. This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270, and Fla. Stat. § 403.702 et seq. and regulations promulgated pursuant thereto and set forth in the Florida Administrative Code Annotated (Fla. Admin. Code Ann. R.), Chapter 62-730.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 CFR 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 CFR §§ 22.13(b) & 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 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 & OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is U.S. Customs and Border Protection (CBP), an executive agency within the U.S. Department of Homeland Security. CBP's facility is located at Building 14, 13510 Aerospace Way, Jacksonville, Florida 32221.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926(g), on February 12, 1985, the State of Florida ("the State") received final authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in Fla. Stat. § 403.702 et seq. and F.A.C. Chapter 62-730.
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 upon their federal effective date regardless of the State's authorization status. On November 17, 2000, the State of Florida received authorization under HSWA.
8. Although EPA has granted the State of Florida authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Florida before issuance of this CA/FO.
10. On October 6, 1992, the Federal Facility Compliance Act (FFCA) amended Section 6001 of RCRA by providing a specific waiver of sovereign immunity under RCRA.
11. 42 U.S.C. § 6961(a), provides, in part, that "The Federal, State, interstate and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and 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. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge)."

12. 42 U.S.C. § 6961(b)(1), provides that "The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person."
13. Section 102(c)(1) of the FFCA, 42 U.S.C. § 6961, note 4, provides that the waiver of sovereign immunity contained in Section 6001 of RCRA, 42 U.S.C. § 6961 (as added by the amendments made by Section 102(a) of the FFCA) shall take effect on the date of the enactment of the Act, October 6, 1992.
14. Respondent is U.S. Customs and Border Protection, a Federal Agency conducting operations in the State of Florida.
15. Respondent is a "person" as defined in F.A.C. Chapter 62-730.020 (40 CFR § 260.10).
16. Respondent is the "owner" and "operator" of a "facility" located at Building 14, 13510 Aerospace Way, Jacksonville, Florida 32221, as those terms are defined in F.A.C. Chapter 62-730.030 (40 CFR § 260.10). The Facility supports air surveillance for interdiction of illegal entry into the United States.
17. On December 5, 2006, representatives of EPA and the Florida Department of Environmental Protection (FDEP) performed a RCRA compliance evaluation inspection (CEI) of the Facility.
18. Respondent's operations require aircraft maintenance and modification activities. These activities include corrosion work (spot painting and sanding), engine washing, engine maintenance/change-out, oxygen system maintenance, and radar maintenance (removal of radar dome on plane for maintenance beneath dome/reassembly). No stripping (paint) activities occur onsite. Maintenance is also conducted on ground support equipment such as tow tractors, forklifts and golf carts.
19. L-3 Communications Vertex Aerospace (L-3) provides aviation and aerospace technical services, primarily for U.S. Government customers. L-3, a support contractor for the Respondent, conducts the aircraft maintenance and modification activities at the Facility under contract with Respondent.
20. Respondent and its contractor, L-3, are in operation seven days per week. Two shifts operate during the weekdays, the first from 7 AM to 3:30 PM and the second from 3:30 PM to 11:30 PM. One shift operates on Saturdays and Sundays.

IV. EPA ALLEGATIONS AND DETERMINATIONS

21. Respondent entered into a lease agreement for the facility, located at Building 14, 13510 Aerospace Way, Jacksonville, Florida 32221, on October 16, 2003, and began operations on October 23, 2003.
22. Respondent, as a result of the aircraft maintenance activities conducted by L-3, generates the wastes listed in paragraphs 23 and 24 below that are “solid wastes” and “hazardous wastes” as defined in F.A.C. Chapter 62-730.030 (40 CFR §§ 261.2 & 261.3).
23. Hazardous waste generated at the Respondent’s facility as a result of aircraft maintenance and modification activities conducted by L-3, include: engine wash water (D006), alodine (D006, D007), paint rags and tape (D005, D006, D007, F003, F005), liquid solvents/thinners (D001, D005, D007, F003, F005), and solvents/sealants/greases (D001, D005, D007, F003, F005).
24. Used oil (JP-5, hydraulic oil, lubricating oil, kerosene, diesel fuel and synthetic oil), oily rags, lead acid batteries, NiCd batteries, lithium batteries (D003), and antifreeze may also be generated.
25. Respondent manifested 900 pounds of hazardous waste (manifest # 94689) on December 15, 2003, fifty-four (54) days after beginning facility operations on October 23, 2003.
26. A Small Quantity Generator (SQG) of hazardous waste is a generator of between 100-1000 kilograms (220-2200 pounds) of hazardous waste per calendar month, with an on-site accumulation quantity limit of less than or equal to 6000 kilograms (13,200 pounds) of hazardous waste and an accumulation time limit of less than or equal to 180 days.
27. Respondent was a SQG beginning in October, November, or December of 2003, since Respondent generated greater than 100 kilograms (220 pounds) of hazardous waste in either October, November, or December of 2003 (based on the 900 pounds of hazardous waste generated and manifested by the Respondent during its initial 54 days of operation).
28. Respondent maintained the SQG status in 2004, 2005, and 2006, based on a review of the Respondent’s hazardous waste manifests.
29. Respondent contacted FDEP to obtain an EPA identification number in April 2006. In a FDEP letter to Respondent dated April 21, 2006, FDEP assigned the EPA Identification Number FLR 000 127 738 to Respondent.

30. Respondent did not obtain an EPA identification number in accordance with the standards applicable to generators of hazardous waste, for a time period of greater than two years from the time Respondent became a SQG of hazardous waste.
31. Thus, Respondent was in violation of 40 C.F.R. § 262.12(a). This regulation states that generators must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.
32. On the day of the CEI, one 55-gallon satellite accumulation container for solid hazardous waste in the Corrosion Area, was closed but was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
33. Thus, Respondent failed to adhere to a condition in 40 CFR § 262.34(c)(1)(ii) required for exemption from treatment, storage or disposal facility status as set forth in Section 3005 of RCRA, 42 U.S.C. § 6925. This regulation requires containers at or near any point of generation to be marked with the words "Hazardous Waste" or with other words that identify the contents of the containers. Thus, Respondent was illegally storing hazardous waste in violation of 42 U.S.C. § 6925.
34. On the day of the CEI, a used oil container on wheels, referred to by Respondent as a fuel bowser, was storing used oil outdoors near the runway. The container was labeled with the words "Used Oil." The container had a volume greater than 55 gallons. The container was not double-walled and it was not stored on a surface with secondary containment which has the capacity to hold 110% of the volume of the container within the containment area.
35. Thus, Respondent was in violation of F.A.C. Chapter 62-710.401(6) for failing to store a container of used oil with a total capacity equal to or more than 55 gallons that are not double-walled on an oil-impermeable surface inside secondary containment, which has the capacity to hold 110% of the volume of the largest tank or container within the containment area.
36. On the day of the CEI, a basic contingency plan was posted by the telephone, however, the name and telephone number of the designated emergency coordinator was not posted.
37. Thus, Respondent failed to adhere to a condition required in 40 CFR § 262.34(d)(5)(ii)(A) for exemption from Section 3005 of RCRA, 42 U.S.C. § 6925. This regulation outlines a basic contingency plan for small quantity generators to develop and maintain and the requirement to ensure the name and telephone number of the emergency coordinator are posted. Thus, Respondent was illegally storing hazardous wastes in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

38. On the day of the CEI, arrangements with local authorities had not been made to familiarize emergency responders with the facility.
39. Thus, Respondent was in violation of 40 CFR § 265.37 as referred to by 40 CFR § 262.34(d)(4), which states that the owner or operator must attempt to make arrangements with local authorities to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility, etc. Thus, Respondent was illegally storing hazardous wastes in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.
40. Four out of eleven manifests reviewed by EPA/FDEP during the CEI, spanning the time period of May 4, 2006 to November 21, 2006 (following the April 21, 2006, FDEP assignment of Respondent's EPA Identification Number), did not contain the proper generator U.S. EPA Identification Number under Item 1 of the manifest. Thirty-eight (38) manifests, spanning the time period of December 15, 2003 to April 17, 2006 (prior to the April 21, 2006, EPA Identification Number assignment date), did not have a correct EPA Identification Number. The 38 manifests for shipments of hazardous waste indicated the Respondent was a conditionally exempt small quantity generator (CESQG, generates less than or equal to 100 kg, or 220 pounds of hazardous waste, per calendar month) with the letters "CESQG" in item 1 of the manifest.
41. Thus, Respondent was in violation of 40 CFR § 262.20(a) for failing to prepare a manifest which includes the correct generator U.S. EPA Identification Number in Item 1 of the manifest. This regulation requires a generator to prepare the manifest in accordance with the instructions included in the appendix to part 262.

V. TERMS OF AGREEMENT

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

42. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in paragraphs 6, 7, and 8 above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
43. The Respondent neither admits nor denies the factual allegations or legal conclusions set out in this CA/FO.
44. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
45. 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.

46. Respondent waives any right it may have pursuant to 40 CFR § 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.
47. 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.
48. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
49. Respondent has submitted to EPA, and EPA has approved, a document entitled "Demonstration of Compliance" describing how hazardous waste is currently managed at the facility, how Respondent has come into compliance for each violation cited in this CA/FO, and which indicates how Respondent will maintain compliance with the RCRA regulations.
50. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

51. Respondent consents to the payment of a civil penalty in the amount of \$10,000.00 within 30 calendar days of the effective date of this CA/FO.
52. Respondent will arrange for payment to EPA with a check issued by the U.S. Treasury. The facility name and the docket number for this matter shall be referenced on the face of the check or on accompanying documentation. Payment shall be tendered to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, Pennsylvania 15251-7099

Respondent shall submit a copy of the payment when it is available from Treasury to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

and to:

Larry L. Lamberth, Acting Chief
South Section
RCRA & OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

VII. RESERVATION OF RIGHTS

53. 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.
54. If EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this CA/FO for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
55. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
56. 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 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.
57. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VIII. OTHER APPLICABLE LAWS

58. All actions required to be taken pursuant to this CAFO 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.

IX. OPPORTUNITY TO CONFER UNDER THE FFCA

59. As provided in Section 102(b)(2) of the FFCA, 42 U.S.C. § 6961(b)(2), no administrative order issued to a department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall become final until such department, agency, or instrumentality has had the opportunity to confer with the EPA Administrator. This requirement is satisfied by providing the opportunity to confer with a Regional official with properly delegated authority within a reasonable period of time following the issuance of the order, but as a matter of policy, the Administrator will retain that opportunity to confer personally. **Respondent acknowledges its right to confer with the EPA Administrator, but having resolved this matter pursuant to 40 C.F.R. § 22.13(b) before the filing of a Complaint, no conference was necessary.**

X. PARTIES BOUND

60. 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.

61. 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.

62. 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.

XI. SERVICE OF DOCUMENTS

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

Mita Ghosh
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909
(404) 562-9568

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

Connie R. Kane
Office of Assistant Chief Counsel
U.S. Customs and Border Protection
6650 Telecom Drive
Indianapolis, IN 46278
(317) 614-4903

XII. SEVERABILITY

65. 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.

XIII. EFFECTIVE DATE

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

AGREED AND CONSENTED TO:

U.S. Customs and Border Protection

By: W. Ralph Basham Dated: 8/6/07
W. Ralph Basham
Commissioner

U.S. Environmental Protection Agency

By: N. M. Kumar Dated: 8/29/07
Narindar M. Kumar, Chief
RCRA & OPA Enforcement and Compliance Branch
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

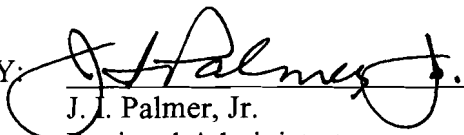
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U.S. Department of Homeland Security) of the Resource Conservation and
13510 Aerospace Way, Building 14) Recovery Act, 42 U.S.C. § 6928(a)
Jacksonville, FL 32221)
EPA ID No.: FLR 000 127 738)
)
)
Respondent.)

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 CFR 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 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 14th day of Sept., 2007.

BY:



J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

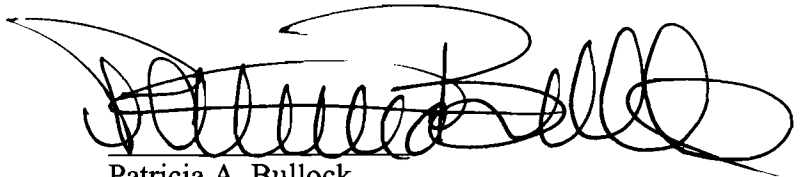
I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of U.S. Customs and Border Protection, Docket Number: RCRA-04-2007-4003(b), on **SEP 17 2007** 2007, and on **SEP 17 2007** 2007, served the parties listed below in the manner indicated:

Mita Ghosh (Via EPA's internal mail)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

Connie Kane (Via Certified Mail - Return Receipt Requested)
Office of Assistant Chief Counsel
U.S. Customs and Border Protection
6650 Telecom Drive
Indianapolis, IN 46278

Date:

9-17-07



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511