

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

In the Matter of:

Duncan Aviation, Inc.,

Respondent

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Docket No. RCRA-07-2026-0214

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Duncan Aviation, Inc. (“Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

This administrative action is being conducted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

Parties

1. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
2. Respondent is Duncan Aviation, Inc., a corporation incorporated under the laws of and authorized to do business in the state of Nebraska.

Statutory and Regulatory Framework

3. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential

hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

4. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3001, 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6921, 6922, 6924, and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 260, 261, 262, 265, and 270.

5. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

6. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

7. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator of EPA to promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

9. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management (hereinafter “128 N.A.C.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

10. The regulation at 128 N.A.C., Ch. 1, § 103, defines “person” as an individual, partnership; limited liability company; association; public or private corporation trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

11. The regulation at 128 N.A.C., Ch. 1, § 052 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 128 N.A.C., Ch. 1, § 138 defines “treatment” as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. The regulation at 128 N.A.C., Ch. 1, § 125 defines “storage” as the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste. Under these regulations, storage means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. The regulation at 128 N.A.C., Ch. 1, § 042 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. “Solid waste” is defined at 128 N.A.C., Ch. 2.

16. “Hazardous waste” is defined at 128 N.A.C., Ch. 3.

17. The regulation at 128 N.A.C., Ch. 1, § 060 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in Chapter 3 or whose act first causes a hazardous waste to become subject to regulation.

18. The regulation at 128 N.A.C., Ch. 1, § 085 defines “large quantity generator” as a generator who generates in a calendar month, a total quantity of hazardous waste that is greater than or equal to 1,000 kilograms (2,200 pounds). If a large quantity generator also generates acute hazardous waste, those acute hazardous wastes are subject to the exemptions and regulations of Chapter 10.

19. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

20. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$124,426 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

21. Respondent is a corporation and authorized to conduct business within the state of Nebraska. Respondent is a "person" as defined in 128 N.A.C., Ch. 1, § 103.

22. Respondent owns and operates a facility located at 3701 Aviation Road, Lincoln, Nebraska 68524 (the "facility"). Respondent provides jet aircraft services that include aircraft interior and paint refurbishment, engineering, and maintenance. Respondent employs approximately 1,400 people at the facility.

23. On or about February 26, 1990, Respondent notified the EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, of its regulated waste activity as a Large Quantity Generator (LQG) of hazardous waste. Respondent obtained the following RCRA ID number: NED980971733.

24. On or about September 23 and 24, 2025, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter "the Inspection") of the hazardous waste management practices at Respondent's facility. Based on a review of the inspection report and the information provided during the Inspection by facility personnel, it was determined that Respondent was operating, at the time of the Inspection, as a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

Violations

25. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

**Operating as a Treatment, Storage or Disposal Facility
Without a RCRA Permit or RCRA Interim Status**

26. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 25 above, as if fully set forth herein.

27. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statute 81-1505(13), and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

28. At the time of the Inspection, Respondent did not have a permit or interim status.

Generator Requirements

29. The regulations at 128 N.A.C., Ch. 10, § 004 state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 128 N.A.C., Ch. 10, § 004 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to containerize hazardous waste

30. The regulations at 40 C.F.R. § 262.34(a)(1)(i) and 128 N.A.C., Ch. 10, § 004.01A, require generators to place hazardous waste in containers.

31. During the Inspection, the Inspector observed the following hazardous waste that had not been containerized at the Facility:

- a. Chrome-contaminated wastewater in Paint Hangar 1; and
- b. Chrome paint and wash water residue in the Structures Shop.

Failure to perform annual refresher of hazardous waste training

32. The regulations at 40 C.F.R. § 262.34(a)(4) and 128 N.A.C., Ch. 10, § 004.01H require, in part, that the generator comply with Chapter 19 (Personnel Training).

33. Pursuant to 40 C.F.R. § 265.16(c) and 128 N.A.C., Ch. 19, § 001.03, facility personnel must take part in an annual review of the initial RCRA training program.

34. At the time of the Inspection, Respondent had failed to conduct required annual contingency plan training for one employee in 2024.

Failure to maintain training descriptions

35. The regulations at 40 C.F.R. § 262.34(a)(4) and 128 N.A.C., Ch. 10, § 004.01H require, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

36. Pursuant to 40 C.F.R. § 265.16(d)(3), as found in 40 C.F.R. Part 265, Subpart B, and N.A.C. 128, Ch. 19, § 004.03, the owner or operator must maintain a written description of the type and amount of both introductory and continuing training that will be given to each person whose position at the facility is listed in the regulations and related to hazardous waste management.

37. At the time of the Inspection, Respondent had failed to maintain written descriptions of training requirements for each position related to hazardous waste management.

Satellite Accumulation

38. The regulations at 40 C.F.R. § 262.34(c)(1) and 128 N.A.C., Ch. 10, § 005 allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as “satellite accumulation”. At the time of the Inspection, Respondent failed to comply with the following satellite accumulation requirements:

Failure to close satellite accumulation containers

39. The regulations at 40 C.F.R. § 262.34(c)(1)(i), referencing 40 C.F.R. § 265.173(a), and 128 N.A.C., Ch. 10, § 004.01A2, as referenced by § 005.01A, allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

40. At the time of the Inspection, the following satellite accumulation containers containing hazardous waste were open:

- a. One container in area 5604 – Blast Room; and
- b. One container in area 5604 – Landing Gear.

Failure to label satellite accumulation containers

41. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) and 128 N.A.C., Ch. 10, § 005.01B allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the generator mark the containers either with the words, "Hazardous Waste," or with other words that identify the contents of the container.

42. At the time of the Inspection, the following satellite accumulation containers containing hazardous waste were not labeled with the words, "Hazardous Waste" or other words to identify the contents of the container:

- a. Two containers in area 5604 – Landing Gear Paint Preparation; and
- b. Two containers in area 5604 – Landing Gear Paint Booth.

43. Because Respondent failed to comply with the generator requirements set forth above, Respondent was not authorized to store hazardous waste at the Facility for any length of time and, therefore, was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

44. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

45. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

46. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

47. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

48. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

49. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: ric.voelker@duncanaviation.com.

Penalty Payment

50. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Forty-Eight Thousand Four Hundred Ninety-Four Dollars (\$48,494), as set forth below.

51. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be made using any payment method provided at <http://www.epa.gov/financial/makepayment>. For instructions for wire transfers and additional information, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

52. A copy of the confirmation of payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Sam Bennett, Attorney
bennett.sam@epa.gov.

53. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, 31 U.S.C. § 3717(e)(2).

General Provisions

54. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

55. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

56. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

57. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

58. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Alyse Stoy
Acting Director
Enforcement and Compliance Assurance Division

Date

Sam Bennett
Office of Regional Counsel

RESPONDENT:

Duncan Aviation, Inc.

08/03/2026
Date

Kramer Lyons
Signature

Kramer Lyons, VPO General Counsel
Printed Name
Title

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

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

Copy via Email to Complainant:

Sam Bennett
Office of Regional Counsel
bennett.sam@epa.gov

Kevin Snowden
Enforcement and Compliance Assurance Division
snowden.kevin@epa.gov

Copy via Email to Respondent

Ric Voelker
ric.voelker@duncanaviation.com

Copy delivered to the State of Nebraska:

Nebraska Electronic Docket (e-copy)
dwee.ecmupload@nebraska.gov

Jeff Edwards (e-copy)
Nebraska Department of Environment and Energy
jeffery.edwards@nebraska.gov

Dated this _____ day of _____

Sign