



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 04 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas H. Thoben
Environmental Sustainability Lead
Patrick Air Force Base
45 Space CES/CEAN
MS9125
1224 Jupiter Street
Patrick Air Force Base, Florida 32925-3343

Re: United States Department of the Air Force
Patrick Air Force Base
Consent Agreement and Final Order
Docket No. RCRA-04-2010-4004(b)

Dear Mr. Thoben:

Enclosed, is a copy of the ratified Consent Agreement and Final Order (CA/FO) in the above-referenced matter that has been filed with the Regional Hearing Clerk and served as required in the Consolidated Rules of Practice, 40 C.F.R. § 22.6. Please make note of the provisions in Section VI of the CA/FO, with respect to payment of the assessed penalty, which is due within 30 days from the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Should you have any questions, please do not hesitate to call me at (404) 562-9536.

Sincerely,

A handwritten signature in cursive script that reads "Marlene J. Tucker".

Marlene J. Tucker
Associate Regional Counsel

Enclosure

cc: Major Deric Prescott, USAF
Mr. Tim Bahr, FDEP

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARINGS
ELEMENT

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RECEIVED
EPA REGION 4

IN THE MATTER OF:)	Docket Number: RCRA-04-2010-4004(b)
)	
United States)	
Department of the Air Force)	
Patrick Air Force Base)	Proceeding under Section 3008(a) of the
1224 Jupiter Street, MS 9125)	Resource Conservation and
Patrick Air Force Base, Florida)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: FL2 570 024 404)	
)	
Respondent)	
)	

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 (F. S.), Part IV Resource Recovery and Management, Section 403-701 *et seq.* (LEXIS 2006). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270; and Sections 403-702 *et seq.* F.S., and regulations promulgated pursuant thereto and set forth at Chapters 62-730 *et seq.*, Florida Administrative Code Annotated Rules (F.A.C.).
2. *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, 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 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 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 and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is the United States, Department of the Air Force (Respondent). Respondent operates a facility at 1224 Jupiter Street, MS 9125, Patrick Air Force Base, Florida, Florida (Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida (the State) received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in Sections 403.702 et seq., F.S., and Chapters 62-730 et seq., F.A.C.
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 received authorization under HSWA.
8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, in June 1997, the State received final authorization from EPA to carry out the universal waste management program in lieu of the federal program set forth in RCRA. The requirements of the authorized State's universal waste management program are found in Fla. Stat. § 403.702 et seq. and F.A.C. Ann. R. 62-730.
9. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), sets forth standards applicable to generators of hazardous waste. The implementing regulations for generators of hazardous wastes requirements are found in 40 C.F.R. Part 262, as adopted by reference in Rule 62-730.160, F.A.C.
10. Pursuant to 40 C.F.R. § 262.11, and Rule 62-730.030, F.A.C., a person who generates a solid waste must determine if that waste is a hazardous waste.
11. Pursuant to 40 C.F.R. § 261.20, and Rule 62-730.030, F.A.C., a solid waste that exhibits any of the characteristics identified in 40 C.F.R. §§ 261.21 through 261.24, is a characteristic hazardous waste.
12. Pursuant to 40 C.F.R. §§ 262.34(g) and Rule 62-730.020, F.A.C., a "large quantity generator" is defined as a generator who generates 1,000 kilograms (kg) or greater of hazardous waste per calendar month.
13. Pursuant to 40 C.F.R. § 273.10 and Rule 62-730.185, F.A.C., a "small quantity handler of universal waste" is a universal waste handler who accumulates 5,000 kg or less of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
14. Pursuant to 40 C.F.R. § 273.13(d)(1), as adopted by reference in Rule 62-710, F.A.C., a small quantity handler of universal waste lamps must keep the containers or packages that contain the universal waste lamps closed.

15. Pursuant to 40 C.F.R. § 273.14(e), as adopted by reference in Rule 62-710, F.A.C., a small quantity handler of universal waste lamps must label or mark the containers or packages that contain the universal waste lamps with one of the following phrases: "Universal Waste-Lamps," or "Waste Lamps," or "Used Lamps."
16. Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State.
17. For purposes of this CA/FO, citations herein to the requirements of RCRA shall constitute a citation to the equivalent requirements of the Florida Statutes and citations herein to the requirements of 40 C.F.R. Parts 124, and 260 through 270, shall constitute a citation to the equivalent requirements of the F.A.C.
18. 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 before issuance of this CA/FO.

IV. EPA ALLEGATIONS AND DETERMINATIONS

19. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Section 403.031(1), F.S., as adopted by reference in Rule 62-730.020, F.A.C.
20. Respondent is the owner and operator of a "facility" located at 1224 Jupiter St, Patrick Air Force Base, Florida, as those terms are defined in 40 C.F.R. § 260.10, as adopted by reference in Rule 62-730.020, F.A.C.
21. Respondent's Facility is Patrick Air Force Base, which provides support and facilities for military testing and training.
22. Respondent is a "large quantity hazardous waste generator" and operates a permitted hazardous waste storage unit. Respondent's current hazardous waste storage permit was issued by the Florida Department of Environmental Protection (FDEP) on November 2, 2007, and expires June 3, 2012.
23. As a result of the maintenance operations at the Facility, Respondent generates universal waste lamps.
24. Respondent uses a barium sulfate solution in the Facility's x-ray laboratory clinic.
25. When intended for disposal, the barium solution remaining in partially used bottles is a solid waste.
26. The barium solution exhibits the characteristic of toxicity for barium.
27. Pursuant to 40 C.F.R. § 261.24, a solid waste that exhibits the characteristic of toxicity for barium is a hazardous waste with the RCRA hazardous waste code D005.

28. On March 24, 2009, representatives of the EPA and FDEP performed a RCRA compliance evaluation inspection (CEI) of the Facility.
29. During the CEI, EPA and FDEP representatives observed the Respondent storing universal waste lamps in boxes. Some of the boxes were not properly labeled and marked with the required phrases to identify the contents as waste lamps. In addition, the inspectors observed that some of the boxes were not closed.
30. Complainant alleges that Respondent was in violation of 40 C.F.R. §§ 273.13(d)(1) and 273.14(e), as adopted by reference in Rule 62-710.210, F.A.C., by storing universal waste lamps in unlabeled and open containers.
31. At the time of the CEI, Respondent had not made a hazardous waste determination for the barium solution.
32. Complainant alleges that Respondent was in violation of 40 C.F.R. § 262.11, as adopted by reference in Rule 62-730.160(1), F.A.C., by failing to make a hazardous waste determination for the barium solution.

V. TERMS OF AGREEMENT

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

33. Within thirty (30) calendar days of receipt of the executed copy of this CA/FO, Respondent shall submit to EPA and FDEP a certification signed by a duly authorized representative stating that the Facility is in compliance that all violations alleged in this CA/FO have been corrected.

This certification shall be as follows:

"I certify under penalty of law, to the best of my knowledge and belief that all violations alleged in this CA/FO have been corrected. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

34. The certifications required to be submitted under this CA/FO shall be mailed to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Tim Bahr, Administrator, Hazardous Waste Programs
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

35. For the purpose of this CA/FO, Respondent admits the jurisdictional allegations set out above.
36. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations contained in this CA/FO.
37. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations contained herein, and its right to appeal this CA/FO.
38. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the violations alleged herein, on the basis of any issue related to the Paperwork Reduction Act.
39. Respondent waives any right it may have pursuant to 40 C.F.R. § 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.
40. 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.
41. The parties agree that they will pay their own costs and attorney's fees.
42. The parties agree that compliance with the terms of this CA/FO shall resolve the alleged violations of RCRA in this CA/FO.

VI. CIVIL PENALTY

43. Respondent consents to the payment of a civil penalty in the amount of Three Thousand One Hundred Dollars (\$3,100).
44. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The Facility name and the docket number for this matter shall be referenced on the face of each check. Payments shall be tendered to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
808 17th Street NW
Washington, DC 20074
Contact - Jesse White, (301) 887-6548
ABA: 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account Number: 310006
CTX Format

Respondent shall submit a copy of each payment to the following addressees:

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

and to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

45. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).
46. Any requirement for the payment or obligation of funds by the Respondent established under the terms of this CA/FO shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

VII. PARTIES BOUND

47. This CA/FO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, and 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.
48. 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.
49. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to this CA/FO.

VIII. RESERVATION OF RIGHTS

50. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to raise any and all applicable defenses to any enforcement action for alleged future violations of RCRA. If Respondent is charged with violation of this CA/FO, Respondent does not waive its right to prove compliance with the terms of this CA/FO.
51. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, 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.

52. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future 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.
53. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
54. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
55. The provisions of this CA/FO shall be deemed satisfied upon Respondent's full implementation of the actions required in this CA/FO.
56. Pursuant to paragraph 3.3.1 of Air Force Instruction 32-7047, *Environmental Compliance Tracking and Reporting*, 8 April 2004, the Enforcement Action shall be considered closed with signature of all parties to the agreement.

IX. OTHER APPLICABLE LAWS

57. All actions required to be taken pursuant to this CA/FO 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.

X. SERVICE OF DOCUMENTS

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

Marlene Tucker, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

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

Thomas Thoben
Hazardous Waste Program Manager
Patrick Air Force Base
1224 Jupiter St
Patrick Air Force Base, Florida 32925-3343

XI. SEVERABILITY


60. 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.

XII. EFFECTIVE DATE

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

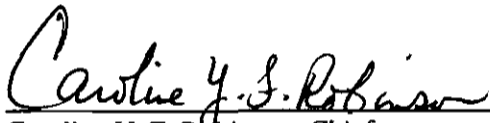
AGREED AND CONSENTED TO:

**United States,
Department of the Air Force
Patrick Air Force Base**

By: 
B. EDWIN WILSON
Colonel, USAF
Commander, 45th Space Wing

Dated: 3 MAY 10

U.S. Environmental Protection Agency

By: 
Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 5/7/10

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2010-4004(b)
)
United States) Proceeding under Section 3008(a) of the
Department of the Air Force) Resource Conservation and
Patrick Air Force Base, Florida) Recovery Act, 42 U.S.C. § 6928(a)
1224 Jupiter Street MS 9125)
EPA ID No.: FL2 570 024 404)
)
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 C.F.R. 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 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 27th day of May, 2010.

BY: J. Stt Grh
A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of United States, Department of the Air Force, Patrick Air Force Base, Docket Number: RCRA-04-2010-4004(b), on the parties listed below in the manner indicated:

Marlene Tucker,
OEA – 13th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

(Via EPA's internal mail)

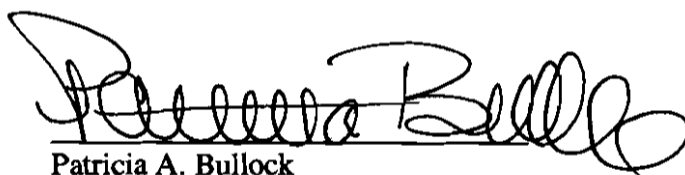
Javier García
RCRA Division – 10th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

(Via EPA's internal mail)

Mr. Thomas H. Thoben
Environmental Sustainability Lead
Patrick Air Force Base
45 Space CES/CEAN
MS9125
1224 Jupiter Street
Patrick Air Force Base, Florida 32925-3343

(Via Certified Mail- Return Receipt Requested)

Date 6-4-10



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