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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PERMA-FIX NORTHWEST RICHLAND, INC.)
Richland, Washington)
RCRA ID # WAD 00001 0355)
Respondent)

Docket No.: RCRA-10-2013-0106

**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. The State of Washington has a federally authorized State hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, which administers most RCRA requirements.

1.4. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), EPA may enforce the federally-approved Washington State Dangerous Waste program.

1.5. Notification of this action has been given to the Washington State Department of Ecology (“Department” or “Ecology”) in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

1.6. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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 Perma-Fix Northwest Richland, Inc. (“Respondent”) agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13 and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and

the party against whom an administrative penalty is proposed to be assessed pursuant to RCRA Section 3008(a).

2.3. Part III of this CAFO 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 and permit requirements that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation doing business in the State of Washington as PermaFix Northwest Richland, Inc.

3.2. Respondent is a "person" as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 and Washington Administrative Code ("WAC") 173-303-040.

3.3. At all times relevant to the allegations set forth herein, Respondent is and has been the "owner" and "operator" of the "facility" located at 2025 Battelle Boulevard, Richland, Washington (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10 and WAC 173-303-040.

3.4. Respondent's Facility processed mixed (radioactive and hazardous) waste and polychlorinated biphenyl (PCB) waste pursuant to a permit and PCB approval (Permit No. WAR000010355) issued and administered jointly by EPA and Ecology for the storage and treatment of mixed waste and the storage and disposal of mixed Toxic Substances Control Act-regulated PCB wastes (the "Permit").

3.5. At all times relevant to the allegations set forth herein, the Facility was permitted for thermal treatment, compaction, and stabilization of low-level radioactive waste and radioactive mixed hazardous waste.

3.6. At all times relevant to the allegations set forth herein, Respondent generated

baghouse ash, a mixed waste, by processing low-level radioactive non-hazardous waste, debris, and equipment.

3.7. On May 24-28, 2010, authorized representatives of EPA conducted a RCRA compliance inspection (“2010 Inspection”) of Respondent’s Facility.

3.8. Based on information obtained from the 2010 Inspection, EPA issued a Notice of Violation (“NOV”) to Respondent on March 20, 2012, and issued, separately, a notice that, if the violations were not promptly cured, the Facility would be deemed unacceptable for receipt of Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) remedial wastes. In these documents, EPA cited alleged violations of the Permit and of Washington State dangerous waste regulations including: failure to determine if a generated hazardous waste is a dangerous waste; storage of mixed waste in units not covered by the Permit, in violation of WAC 173-303-800 and of Permit condition III.A.1; storage of on-site generated waste for more than one year, in violation of condition 2.11 of Attachment LL to the Permit; failure to notify Ecology prior to changes in dangerous waste activity, in violation of WAC 173-303-060(2); and failure to follow the permit modification process to add additional storage units, in violation of Permit condition I.B.3. Respondent provided responses to EPA’s notices on April 25, 2012, May 11, 2012, and May 29, 2012, and included information to rebut several of the allegations. On June 7, 2012, EPA notified Respondent that, based on information provided by Respondent, EPA had determined that the violations were no longer on-going; therefore, the Facility remained acceptable for the receipt of off-site wastes generated as a result of removal or remedial activities under CERCLA. In May 2013, Respondent provided additional information to rebut other violations including certification verifying that it had operated the Building 13

Concrete Pad as an accumulation area in compliance with WAC 173-303-200(1)(b)(i), (e), and (f) and (3) as applicable.

Count 1: Storage of Mixed Waste Without a Permit or Interim Status

3.9. WAC 173-303-800 requires that any person who treats, stores, or disposes of dangerous waste must have a permit or interim status. Subject to certain conditions, WAC 173-303-200(1) provides that a generator may accumulate dangerous waste on-site without a permit for 90 days or less after the date of generation. Among other conditions, such waste must be shipped off-site to a designated facility or placed in an on-site facility which is permitted by the Department under WAC 173-303-800 through 845, or recycled, or treated on-site in 90 days or less.

3.10. At the time of the 2010 Inspection, Respondent had accumulated and stored at least six containers of baghouse ash, a mixed waste, in Building 15 (a unit not covered by Respondent's permit) for more than 90 days awaiting analytical results. These mixed waste containers of baghouse ash were identified as: LL07400642, generated on August 1, 2007, analytical results dated May 6, 2010, 1,009 days after the waste in the container was generated; LL07400667, generated on August 15, 2007, analytical results had not been received at the time of the inspection on May 24, 2010, 1,013 days after the waste in the container was generated; LL07400668, generated August 15, 2007, analytical results dated May 6, 2010, 995 days after the waste in the container was generated; LL08200326, generated July 3, 2008, analytical results dated May 6, 2010, 672 days after the waste in the container was generated; LL09201540, generated December 31, 2009, analytical results had not been received at the time of the inspection on May 24, 2010, 144 days after the waste in the container was generated; and

LL09201566, generated on December 31, 2009, analytical results had not been received at the time of the inspection on May 24, 2010, 144 days after the waste in the container was generated.

3.11. Respondent violated WAC 173-303-800 by storing containers of mixed waste (baghouse ash) for more than 90 days without a permit or interim status. Each container of mixed waste stored for more than 90 days without a permit or interim status constitutes a separate violation.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. In light of the seriousness of the violations, Respondent's good faith efforts to comply, Respondent's actions to correct the violations after having been notified by Complainant, Respondent's willingness to settle this matter without litigation, and in accordance with the RCRA Civil Penalty Policy, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is one hundred and eighty-seven thousand, six hundred twenty dollars (\$187,620).

4.4. Respondent agrees to the payment of the civil penalty set forth in Paragraph 4.3, within 30 days of the effective date of the CAFO.

4.5. Payment under this CAFO must be made payable to the order of "Treasurer, United States of America" by cashier's check, certified check, or by Automated Clearinghouse (ACH) for receiving U.S. currency.

- a. Payment by cashier's check or certified check shall be delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

- b. Payment by Automated Clearinghouse (ACH) must be accompanied by a statement identifying the title and docket number of this action. Payment must be made 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 310006
CTX Format

4.6. In the event payment is made by cashier's check or certified check, Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Cheryl B. Williams
U.S. Environmental Protection Agency
Region 10, Mail Stop: OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

In the event payment is made by ACH, Respondent must send a notice by email to acctsreceivable.cinwd@epa.gov demonstrating that payment has been made and referencing the title and docket number of this action. Respondent must serve photocopies of the notice on the Regional Hearing Clerk and EPA Region 10 at the addresses provided above.

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due dates set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such a failure may also subject Respondent to a civil action to collect the assessed penalty under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), together with interest, handling charges, and additional nonpayment penalties described below.

4.7.1. Interest. Any unpaid portion of the of the assessed penalty shall bear interest at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.7.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay a nonpayment penalty in an amount equal to six percent (6%) per annum on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA.

4.9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violations alleged in Part III.

4.12. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

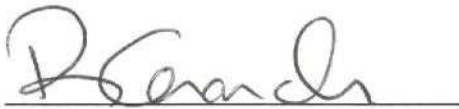
4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

STIPULATED AND AGREED BY:

FOR RESPONDENT



Richard Grondin
Vice President/General Manager
PERMA-FIX NORTHWEST RICHLAND INC.

6/25/2013
Date

STIPULATED AND AGREED BY:

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

7/16/2013
Date

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in Part III or alleged in the NOV. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA, and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 16th day of July 2013



Thomas M. Jahnke
Regional Judicial Officer
EPA REGION 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: PERMA-FIX NORTHWEST RICHLAND, INC., DOCKET NO. RCRA-10-2013-0106**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to **Attorney for Complainant**:

Joan C. Shirley, Assistant Regional Counsel
U.S. EPA Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
shirley.joan@epa.gov

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to **Attorney for Respondent**:

J. Mark Morford, Attorney
STOEL RIVES LLP, Attorneys at Law
900 SW Fifth Ave., Suite 2600
Portland, OR 97204-1268
jmmorford@stoel.com

1:16 PM on July 20 13
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10