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Attorneys for Respondent
CLEAN HARBORS
BUTTONWILLOW, L.L.C.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA 09-2015-0011
CLEAN HARBORS)	
BUTTONWILLOW, L.L.C.,)	Answer and Request for Hearing
)	
<u>Respondent.</u>)	

DETERMINATION OF VIOLATION

INTRODUCTION

Respondent Clean Harbors Buttonwillow, L.L.C. hereby answers the Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (“Complaint”) filed by the United States Environmental Protection Agency, Region IX (“EPA” or “Complainant”).

1. Paragraph 1 calls for a legal conclusion for which no response is required.
2. Respondent admits the allegations of Paragraph 2.
3. Respondent admits the allegations of Paragraph 3.
4. Respondent admits the allegations of Paragraph 4 to the extent that they relate to hazardous wastes that are subject to federal or state land disposal restrictions.
5. Respondent admits the allegations of Paragraph 5.

6. Respondent admits that it submitted a permit renewal application for the Buttonwillow Facility to the Department of Toxic Substances Control on October 1, 2006. Respondent lacks knowledge or information sufficient to form a belief as the allegation that the permit application “is currently under review.”
7. Respondent admits the allegations of Paragraph 7.
8. Paragraph 8 calls for a legal conclusion for which no response is required. Respondent denies that it violated Sections 3004 and 3005 of RCRA or the federally authorized California regulations adopted pursuant thereto.
9. Paragraph 9 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 9. Without limiting the generality of the foregoing, Respondent specifically denies that it is subject to civil penalties of any amount or that it can be compelled to take any actions with respect to the operations alleged to give rise to liability in this case.
10. Paragraph 10 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 10.
11. Paragraph 11 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 11.
12. Respondent admits the first sentence of Paragraph 12. Respondent lacks knowledge or information sufficient to form a belief as to the allegations relating to the dates the State of California’s authorization was updated.
13. Respondent admits the allegations of Paragraph 13.
14. Respondent admits the allegations of Paragraph 14.
15. Paragraph 15 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 15.
16. Paragraph 16 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 16.
17. Respondent denies the allegations of Paragraph 17.

JURISDICTION

18. Respondent admits the allegations of Paragraph 18.
19. Respondent admits the allegations of Paragraph 19.
20. Respondent admits the allegations of Paragraph 20.
21. Respondent admits the allegations of Paragraph 21.

22. Answering Paragraph 22, Respondent lacks knowledge or information sufficient to form a belief as to what hazardous wastes it is alleged to have “stored” at the time of the violations alleged in this Complaint.
23. Answering Paragraph 23, Respondent admits that it is engaged in the business of “treatment” of certain hazardous wastes as defined under California and federal law.
24. Answering Paragraph 24, Respondent admits that it is engaged in the business of “disposal” of certain hazardous wastes as defined under California and federal law, but denies that the management of treated hazardous wastes in temporary staging piles, in accordance with Respondent’s permit, constitutes “disposal.”
25. Respondent admits the allegations of Paragraph 25 to the extent they refer to hazardous wastes that are treated to meet applicable land disposal restrictions and then permanently disposed of in a waste management unit at the Facility. Respondent denies the allegations of Paragraph 25 to the extent they refer to Respondent’s management of treated hazardous wastes in temporary staging piles.
26. Answering Paragraph 26, Respondent admits that it generates certain hazardous wastes at the Facility. With respect to the remaining allegations of Paragraph 26, Respondent incorporates by reference its responses to Paragraphs 22 through 25.
27. Paragraph 27 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 27.
28. Paragraph 28 calls for a legal conclusion for which no response is required and on that basis Respondent denies the allegations of Paragraph 28.
29. Answering Paragraph 29, Respondent admits that EPA conducted an inspection at the Facility from October 18 through 22, 2010. Respondent lacks knowledge or information sufficient to form a belief as to the purpose of EPA’s inspection and on that basis denies the remaining allegations of Paragraph 29.
30. Respondent denies the allegations of Paragraph 30.
31. Respondent denies the allegations of Paragraph 31.
32. Respondent denies the allegations of Paragraph 32.
33. Paragraph 33 calls for a legal conclusion for which no response is required.
34. Answering Paragraph 34, Respondent is informed that oral notice of the Complaint was provided to the Department of Toxic Substances Control in a meeting on September 30, 2015, but lacks knowledge or information sufficient to form a belief as to whether that notice satisfied the statutory notice requirements of Section 3008(a)(2) of RCRA and on that basis denies the remaining allegations of Paragraph 34.

ALLEGED VIOLATIONS

COUNT I

Failure to Properly and Timely Manage Land Disposal Restricted Hazardous Waste

35. Respondent hereby incorporates its responses to the allegations set forth in Paragraphs 1 through 34.
36. Paragraph 36 calls for a legal conclusion for which no response is required.
37. The first sentence of Paragraph 37 calls for a legal conclusion for which no response is required. Respondent denies the second sentence of this paragraph to the extent it alleges that Respondent is not in compliance with the 1996 Permit.
38. Paragraph 38 calls for a legal conclusion for which no response is required.
39. Paragraph 39 calls for a legal conclusion for which no response is required.
40. Paragraph 40 calls for a legal conclusion for which no response is required.
41. Paragraph 41 calls for a legal conclusion for which no response is required. Respondent denies that § 66268.50(a) applies to waste that has already been treated.
42. Paragraph 42 calls for a legal conclusion for which no response is required. Respondent denies that § 66268.50(b) applies to waste that has already been treated.
43. Paragraph 43 calls for a legal conclusion for which no response is required. Respondent denies that § 66268.50(c) applies to waste that has already been treated.
44. Answering Paragraph 44, Respondent admits that Permit Condition II.R.1. of the Facility's 1996 Permit establishes requirements relating to the management of treated hazardous waste pending disposal or retreatment of the waste, but denies that this permit condition may be interpreted by EPA without regard to the manner in which it is interpreted by the Department of Toxic Substances Control.
45. Answering Paragraph 45, Respondent admits that Permit Condition II.R.1. prohibits the mixing of waste from more than one stabilization batch in a waste curing area prior to post-treatment verification analysis, but denies it has violated this permit condition.
46. Answering Paragraph 46, Respondent admits that Permit Condition II.R.1. specifies conditions that must be met if more than one stabilization batch of waste is stored in a waste curing area prior to post-treatment verification analysis, but denies it has violated this permit condition.

47. Respondent admits that Paragraph 47 accurately states the conditions set forth in Permit Condition II.R.1., but denies it has violated any of these conditions as they are interpreted by the Department of Toxic Substances Control.
48. Answering Paragraph 48, Respondent admits that Permit Condition II.R.1. defines the term "Bin" for purposes of this condition, but denies that this term may be interpreted by EPA without regard to the manner in which it is interpreted by the Department of Toxic Substances Control.
49. Respondent admits the factual allegations of Paragraph 49, but denies any implication that the facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
50. Answering Paragraph 50, Respondent admits that at the time of the October 2010 inspection, treated waste from the stabilization unit was being managed in temporary staging piles located in the waste curing area. The waste curing area is located on the surface of, and within the footprint of WMU 34, as described in, and in accordance with, the Supplemental Landfill Operations Plan. The staging piles were placed on top of, and were completely covered by, heavy-duty plastic liners which served to separate the waste from the ground surface and to fully contain the waste. The staging piles were positioned so that the discrete batches of stabilized waste were clearly separated from each other. The entire waste curing area is surrounded by rigid walls that are covered with heavy plastic sheeting and that serve to wall off the waste curing area from the remainder of the unit. Respondent denies that the management of treated waste as described constitutes a violation of the Permit or applicable laws or regulations.
51. Respondent lacks knowledge or information sufficient to form a belief as to the number of treated waste piles that were observed by EPA during the October 2010 inspection. Respondent admits the piles were located on the surface of WMU 34, on top of and fully covered with plastic sheeting. Respondent denies the remaining allegations of Paragraph 51.
52. Respondent admits the factual allegations of Paragraph 52 but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
53. Respondent admits the factual allegations of Paragraph 53 but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
54. Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 54, and on that basis denies the allegations of Paragraph 54.
55. Respondent admits the factual allegations of Paragraph 55, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
56. Respondent admits the factual allegations of Paragraph 56, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
57. Respondent admits the factual allegations of Paragraph 57, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.

58. Respondent admits the factual allegations of Paragraph 58, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
59. Respondent admits the factual allegations of Paragraph 59, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
60. Respondent admits the factual allegations of Paragraph 60, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
61. Respondent admits the factual allegations of Paragraph 61, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
62. Respondent admits the factual allegations of Paragraph 62, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
63. Respondent admits the factual allegations of Paragraph 63, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
64. Respondent admits the factual allegations of Paragraph 64, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
65. Respondent admits the factual allegations of Paragraph 65, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
66. Respondent admits the factual allegations of Paragraph 66, but denies that these facts, as alleged, constitute a violation of the Permit or applicable laws or regulations.
67. Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 67 and on that basis denies the allegations of Paragraph 67.
68. Respondent denies the allegations of Paragraph 68.

CIVIL PENALTY

69. The first sentence of Paragraph 69 calls for a legal conclusion for which no response is required. Respondent denies the remainder of this paragraph.
70. Respondent denies the allegations of Paragraph 70.

COMPLIANCE ORDER

71. Respondent denies that it is in violation of its Hazardous Waste Management Permit, as that permit has been interpreted by the Department of Toxic Substances Control since 1996.
72. No response is required to Paragraphs 72 through 82.

AFFIRMATIVE DEFENSES

73. Respondent hereby incorporates its responses to Paragraphs 1 through 72. As separate and additional defenses to each of the claims asserted in the Complaint, Respondent alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Petition, and each purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

EPA failed to provide legally adequate notice to the State of California of its intention to file this action against Respondent, as required by RCRA Section 3008(a)(2), and therefore lacks jurisdiction to bring the action.

THIRD AFFIRMATIVE DEFENSE

Each and every cause of action is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Each and every cause of action is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

Each and every cause of action is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

EPA's action is arbitrary and capricious and in violation of law.

SEVENTH AFFIRMATIVE DEFENSE

EPA's action is based on an informal guidance memorandum that was issued by EPA Headquarters in violation of the rulemaking requirements of the federal Administrative Procedure Act, 5 U.S.C. § 553, et seq.

EIGHTH AFFIRMATIVE DEFENSE

EPA is engaged in disparate treatment of similarly situated facilities that operate temporary staging piles and has wrongfully singled out Respondent for enforcement.

PRELIMINARY STATEMENT OF GROUNDS FOR DEFENSE

74. RCRA Section 3004(k) (42 U.S.C. § 6924(k)) prohibits the “land disposal” of restricted hazardous waste that has not been treated to meet applicable LDRs. Under RCRA section 3004(k), “land disposal” is defined as “any placement of hazardous waste into a landfill, surface impoundment, waste pile, injection well, land treatment facilities, salt dome formation, salt bed formation, or underground mine or cave.” 42 U.S.C. § 6924(k) (emphasis added). The statute does not use the phrase “on a landfill.” The term “placement” is not defined in the statute, but was intended by Congress to contemplate permanent disposition of waste in one of the enumerated units where, over time, hazardous constituents could leach into the environment if the wastes were not treated.

75. The temporary staging piles at the Buttonwillow Facility are located on the surface of (not in) the landfill, within the area protected by the Facility’s double liner/leachate control system and groundwater monitoring program. A further description of the waste curing area where the temporary staging piles are located is provided in Respondent’s response to Paragraph 50, incorporated herein by reference. Upon confirmation that applicable LDRs have been achieved, the waste is relocated to the active disposal area of the landfill and buried. Respondent consistently achieves a very high rate of passage (in excess of 95%), as determined through extensive verification sampling that greatly exceeds the amount of sampling conducted by similarly situated facilities.

76. Section 3.2.3.1 of the Facility’s Waste Analysis Plan states that “[t]reated waste undergoing final placement in a landfill will . . . not be restricted from land disposal . . .” (emphasis added). Management of treated wastes in a temporary staging pile is not “final placement in a landfill.”

77. In the unusual circumstance where it is determined that applicable LDRs were not achieved through initial treatment, the waste is picked up and returned to the treatment unit for further treatment. Neither the regulations, the 1996 Permit, the Supplemental Landfill Operations Plan or the Facility’s Waste Analysis Plan specify a time limit within which waste must be retreated.

78. Respondent maintains that the state-issued RCRA Part B Permit for the Buttonwillow Facility is interpreted by the Department of Toxic Substances Control to allow the use of temporary staging piles as described, and that the operating practice is both lawful under RCRA and environmentally prudent. EPA’s Complaint ignores essential facts regarding the Buttonwillow Facility, namely that the temporary staging piles (which are themselves staged on and completely covered by plastic) are further contained within a fabricated, plastic-draped, rigid structure that holds and isolates the waste. The Department of Toxic Substances Control considers this structure to constitute a “sturdy box or container” that meets the requirements of the 1996 Permit.

79. The Department of Toxic Substances Control has not taken enforcement action against Respondent in connection with its use of temporary staging piles.

80. EPA Region 9 was provided with an opportunity to review and comment on the draft Hazardous Waste Facility Permit at the time it was proposed to be issued. EPA did not raise any objection at that time to the staging of waste on the surface of the landfill or at any other time over the ensuing 15 years, up until the date of the 2010 inspection.

81. Respondent is not aware of any enforcement action taken by any other EPA regional office relating to the use of temporary staging piles.

REQUEST FOR HEARING

82. Respondent hereby requests a hearing in this matter. For the reasons set forth below, Respondent further requests that the hearing be set no earlier than June 1, 2016.

83. Justification for the requested hearing date is as follows. Respondent also operates permitted hazardous waste landfills in Region 6 and Region 8, and employs temporary staging piles at these landfills. In addition, there are at least two other landfills (one in Region 9, outside California, and one in Region 10) that currently employ temporary staging piles. With the concurrence of the Director of the Office of Resource Conservation and Recovery, EPA Region 6 is working with Respondent to develop an appropriate protocol for use of temporary staging piles. It is Respondent's understanding that Region 6 is coordinating with other EPA regions in this process.

84. The LDR Program is a national program that must be applied consistently across the country. Any protocol that is developed through the Region 6 process will be subject to review and approval by EPA Headquarters. A successful outcome to this process, including EPA Headquarters endorsement of a temporary staging pile protocol, would obviate the need for legal proceedings relating to the use of temporary staging piles under RCRA.

85. No enforcement action has been taken by Region 6, Region 8 or Region 10 relating to the use of temporary staging piles in those regions.

86. The requested schedule will allow time for ongoing discussions with EPA Region 6 to be concluded and for Headquarters review and consideration of a proposed solution. Postponement of the hearing in this matter until June 1 or thereafter will serve the interests of administrative efficiency, fairness, and national consistency in administration of the federal LDR Program. The requested hearing schedule will not prejudice Complainant, will avoid or reduce the need for expenditure of time and resources relating to the defense of the Complaint by both Parties, and will facilitate the ultimate efficient resolution of all alleged violations, as set forth in the Complaint.

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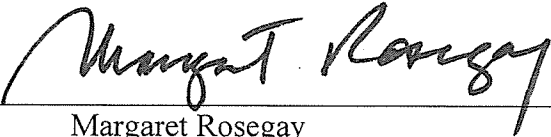
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RESERVATION OF DEFENSES AND RIGHT TO FILE AMENDED ANSWER

87. In accordance with 22 CCR § 22.15(e), Respondent hereby reserves the right to file a motion to amend its Answer to include additional facts and defenses as they become apparent or available, including but not limited to facts and defenses arising out of the Region 6 process.

Respectfully submitted,

Dated: November 5, 2015



Margaret Rosegay
Pillsbury Winthrop Shaw Pittman LLP

Attorneys for Respondent
Clean Harbors Buttonwillow, L.L.C.

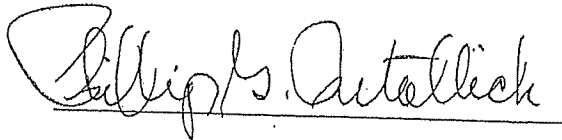
VERIFICATION

I, Phillip G. Retallick, declare:

1. I am Senior Vice President, Regulatory Affairs for Clean Harbors Environmental Services, Inc. I am an authorized signatory for Clean Harbors Buttonwillow, L.L.C. in the above captioned matter, and I make this verification for and on its behalf.

2. I have read the foregoing ANSWER AND REQUEST FOR HEARING and am informed and believe that the matters stated therein are true and correct and on that basis allege them to be true.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California, and that this Verification is executed this 5th day of November 2015, at Columbia, SC.



Phillip G. Retallick

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998.

On November 5, 2015, I served the following document(s) described as

ANSWER AND REQUEST FOR HEARING

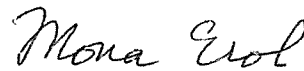
on the following parties in this action:

Regional Hearing Clerk
United States Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Mimi Newton
Assistant Regional Counsel
US Environmental Protection Agency
Region IX (ORC-3)
75 Hawthorne Street
San Francisco, CA 94105

Executed on November 5, 2015, at San Francisco, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Mona Erol