

RECEIVED  
11 NOV 27 AM 11:13  
HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
	)	
	)	Docket No.: RCRA-10-2012-0012
Burlington Environmental, Inc.	)	
Kent, Washington	)	
	)	<b>CONSENT AGREEMENT AND</b>
Respondent.	)	<b>FINAL ORDER</b>
	)	
Proceeding under Section 3008(a) of the	)	
Resource Conservation and Recovery	)	
Act, 42 U.S.C. § 6928(a)	)	
_____	)	

**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. 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 Burlington Environmental, Inc. (“Respondent”) agrees to the issuance of, the Final Order contained in Section 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), for violations of Section 3004 of RCRA, 42 U.S.C. § 6924, the corresponding federal regulations and the EPA-authorized Washington dangerous waste management regulations set forth in Chapter 173 of the Washington Administrative Code (“WAC”), and permit requirements.

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. The state of Washington has adopted regulations for the management of dangerous wastes found at WAC 173-300.

3.2. Respondent is a "person" as that term is defined in WAC 173-303-040.

3.3. Respondent owns and operates a permitted dangerous waste facility located at 20245 77<sup>th</sup> Avenue South, Kent, Washington (the "Facility").

3.4. The Facility is subject to the requirements of Dangerous Waste Permit Number WAD 991281767 (the "Permit"), which was issued on August 27, 1998.

3.5. The Permit became effective on August 27, 1998, and expired on August 27, 2008. In accordance with WAC 173-303-806(7), the Permit was administratively extended and continued to be in effect from August 27, 2008, until the present.

#### **Counts 1 and 2: Failure to Properly Operate the Facility and Obtain Required Information**

3.6. Permit condition I.E.5. requires Respondent at all times to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Respondent to achieve compliance with the conditions of the Permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures.

3.7. Permit condition II.B.1. requires Respondent to design, construct, maintain, and operate the Facility to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of dangerous waste or dangerous waste constituent to air, soil, or surface or ground water that could threaten human health or the environment.

3.8. Permit Condition II.A.6 requires that Respondent obtain accurate and complete information for each wastestream and states that inaccurate or incomplete waste analysis information provided by the generator is not a defense for noncompliance with the waste management requirements and conditions of the Permit.

3.9. On July 21, 2009, Respondent shredded approximately 650 pounds of D008 dangerous waste, lead-contaminated filters, and vacuum debris in the Dangerous Waste Shredder at the Facility, causing a fire. Among other things, Respondent did not accurately identify an unidentified powder that was a component of the waste.

3.10. On July 27, 2009, Respondent shredded the contents of a 55-gallon drum which contained fertilizer, weed killers, and other wastes in the Dangerous Waste Shredder at the Facility, causing a fire. Among other things, Respondent did not accurately identify all components of the waste.

3.11. Respondent's failure on two occasions to properly operate systems of treatment and control, to operate the Facility in a manner to minimize the possibility of fire, and to obtain accurate and complete information for each wastestream treated violated Permit conditions I.E.5, II.B.1, and II.A.6.

### **Count 3: Failure to Properly Train Employees**

3.12. Permit Attachment FF requires that all new employees and employees assuming new duties successfully complete job-specific training relevant to their job duties in the areas of waste identification and recordkeeping, dangerous waste management/facility operations, lab procedures, and release prevention and emergency response.

3.13. Respondent's employees Robert Silva and Jesman Duenas did not receive training on the operation of the Dangerous Waste Shredder prior to operating it on July 21, 2009.

3.14. Respondent's failure to properly train Robert Silva and Jesman Duenas prior to their operation of the Dangerous Waste Shredder violated the requirements of Permit Attachment FF.

**Count 4: Failure to Separate Incompatible Wastes During Treatment**

3.15. Under Permit condition D.3.0., Respondent may not treat incompatible wastes simultaneously in process areas unless the incompatible wastes are in separate containment trays.

3.16. On July 27, 2009, Respondent treated a 55-gallon drum containing fertilizer, weed killers, and other wastes that were incompatible with one another in the Dangerous Waste Shredder.

3.17. Respondent's treatment of incompatible waste materials in the Dangerous Waste Shredder on July 27, 2009, violated Permit condition D.3.0.

**Count 5: Failure to Separate Incompatible Materials**

3.18. Permit condition III.C.4. requires that Respondent place and store ignitable and reactive dangerous wastes in accordance with Permit Attachment II.

3.19. Condition D1.2.3. of Permit Attachment II prohibits the storage of incompatible wastes within common secondary containment areas and requires wastes to be grouped and stored according to U.S. Department of Transportation (DOT) hazardous materials classifications.

3.20. Under permit condition III.F., containerized wastes and other materials that are incompatible (as specified in Table D1-2 of Attachment II and as defined for incompatible wastes in WAC 173-303-040) may not be stored within the same secondary containment area, and incompatible materials in check-in areas must be segregated according to compatibility groups specified in Table D1-2 of Attachment II.

3.21. Table D1-2 states, among other things, that the following materials are incompatible:

- Flammables are incompatible with oxidizers and corrosives;
- Oxidizers are incompatible with flammables and corrosives;
- Acids are incompatible with flammables, oxidizers, and corrosives; and
- Alkalines are incompatible with flammables and corrosives.

3.22. On March 2, 2009, acidic dangerous wastes were stored with flammable dangerous wastes, and alkaline dangerous wastes were stored with acidic dangerous wastes.

3.23. On March 3, 2009, alkaline dangerous wastes were stored with acidic dangerous wastes, dangerous waste acids were stored with flammable dangerous wastes, and alkaline dangerous wastes were stored with flammable dangerous wastes.

3.24. On March 4, 2009, alkaline dangerous wastes were stored with acidic dangerous wastes, and acidic dangerous wastes were stored with flammable dangerous wastes.

3.25. On March 5, 2009, oxidizer dangerous wastes were stored with alkaline dangerous wastes, alkaline dangerous wastes were stored with acidic dangerous wastes, and alkaline dangerous wastes were stored with flammable dangerous wastes.

3.26. On March 6, 2009, alkaline dangerous wastes were stored with flammable dangerous wastes.

3.27. On March 11, 2009, alkaline dangerous wastes were stored with acidic dangerous wastes, and acidic dangerous wastes were stored with flammable dangerous wastes.

3.28. On March 13, 2009, alkaline dangerous wastes were stored with oxidizer dangerous wastes, alkaline dangerous wastes were stored with flammable and acidic dangerous wastes, and flammable dangerous wastes were stored with alkaline dangerous wastes.

3.29. On March 16, 2009, alkaline dangerous wastes were stored with acidic dangerous wastes, and acidic dangerous wastes were stored with flammable dangerous wastes.

3.30. On March 18, 2009, flammable dangerous wastes were stored with acidic dangerous wastes.

3.31. On March 19, 2009, acidic dangerous wastes were stored with oxidizer dangerous wastes, acidic dangerous wastes were stored with alkaline dangerous wastes, and flammable dangerous wastes were stored with alkaline dangerous wastes.

3.32. On March 20, 2009, acidic dangerous wastes were stored with flammable dangerous wastes.

3.33. On March 23, 2009, alkaline dangerous wastes were stored with flammable dangerous wastes, alkaline dangerous wastes were stored with acidic dangerous wastes, and acidic dangerous wastes were stored with flammable dangerous wastes.

3.34. On March 25, 2009, acidic dangerous wastes were stored with flammable dangerous wastes, and oxidizer dangerous wastes were stored with flammable dangerous wastes.

3.35. On April 2, 2009, acidic dangerous wastes were stored with flammable dangerous wastes.

3.36. On April 6, 2009, alkaline dangerous wastes were stored with flammable dangerous wastes.

3.37. On April 7, 2009, flammable dangerous wastes were stored with acidic dangerous wastes.

3.38. On April 8, 2009, flammable dangerous wastes were stored with acidic dangerous wastes, acidic dangerous wastes were stored with alkaline dangerous wastes, and alkaline dangerous wastes were stored with flammable dangerous wastes.

3.39. On April 9, 2009, flammable dangerous wastes were stored with acidic hazardous wastes, and acidic hazardous wastes were stored with alkaline dangerous wastes.

3.40. On April 13, 2009, alkaline dangerous wastes were stored with acid dangerous wastes, and acid dangerous wastes were stored with flammable dangerous wastes.

3.41. On April 15, 2009, acid dangerous wastes were stored with alkaline dangerous wastes.

3.42. On April 16, 2009, acid dangerous wastes were stored with flammable dangerous wastes.

3.43. On April 17, 2009, alkaline dangerous wastes were stored with acid dangerous wastes.

3.44. On April 21, 2009, acid dangerous wastes were stored with flammable dangerous wastes.

3.45. On April 22, 2009, alkaline dangerous wastes were stored with flammable dangerous wastes, and acid dangerous wastes were stored with flammable dangerous wastes.

3.46. Respondent's failure to separate incompatible waste materials in each of the 24 instances identified in paragraphs 3.22 through 3.45 violated Permit condition III.C.4.

**Count 6: Failure to Remove Dangerous Wastes from Containers that are Not in Good Condition**

3.47. Under permit condition III.D.1., if a container holding dangerous waste is not in good condition, Respondent must transfer the dangerous waste from that container to either a compatible container which is in good condition or to an overpack container within 24 hours of discovery.



3.48. Under Permit condition III.D.1., a container is not in good condition if it exhibits excessive rusting, structural defects, or any other condition that could lead to container rupture or leakage.

3.49. On both April 23 and 24, 2009, dangerous waste was in a 55-gallon container (drum number KNT-1702M-028) in poor condition located in the South Container Storage Area at the Facility.

3.50. On both April 23 and 24, 2009, dangerous waste was in a dilapidated cardboard box inside plastic sheeting (identified as container number KNT-3672N-042) in the North Container Storage Area at the Facility.

3.51. Respondent's failure to remove dangerous wastes from containers that were not in good condition within 24 hours of discovery violated Permit condition III.D.1.

**Count 7: Failure to Maintain Required Aisle Space**

3.52. Permit condition III.C.1. requires that containers be placed or stored in rows no more than two (2) containers wide and that the rows have at least 30 inches of aisle space between them.

3.53. Permit conditions D1.2.2 and F3.2. require that rows of containers have at least 30 inches of aisle space between them.

3.54. On April 23, 2009, containers of waste were in the aisle space between the cells in the 24-hour staging area at the Facility so the aisle space between the rows was less than 30 inches.

3.55. On March 3, April 2, April 10, and April 14, 2009, the aisle space between rows of containers at the Facility was less than 30 inches.

3.56. Respondent's failure to maintain at least 30 inches of aisle space between rows of containers at the Facility on March 3, April 2, April 10, April 14, and April 23, 2009, violated Permit conditions III.C.1, D1.2.2, and F.3.2.

**Count 8: Failure to Properly Stack Containers**

3.57. Permit condition II.B.1 requires that Respondent operate the Facility in a manner which minimizes possibility of any unplanned sudden or non-sudden release of dangerous waste., Unsafe stacking of containers may lead, among other things, to a sudden or non-sudden release of dangerous waste.

3.58. On April 24, 2009, in the Container Storage Area at the Facility, approximately 13 containers were stacked on two pallets in a manner which was unsafe.

3.59. On March 6, March 16, March 17, March 20, April 3, April 6, and April 13, 2009, containers were stacked unsafely.

3.60. Respondent's failure to safely stack containers at the Facility on the eight occasions identified in paragraphs 3.58 through 3.59 violated Permit condition II.B.1.

**Count 9: Failure to Keep Containers Closed**

3.61. Permit Condition III.C.5. requires that Respondent keep all dangerous waste containers securely closed except when adding, removing, inspecting, or sampling waste.

3.62. On April 23 and 24, 2009, two different containers containing flammable and toxic liquid dangerous wastes were staged for batch processing in the TSCA/RCRA area of the Facility with their container drum rings unsecured.

3.63. Respondent's failure to keep the two containers securely closed violated Permit Condition III.C.5.

**Count 10: Improper Storage of Universal Waste**

3.64. Respondent is a large quantity handler of universal waste.

3.65. WAC 173-303-573(20)(c) requires a large quantity handler of universal waste to manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

3.66. WAC 173-303-573(20)(c)(iii) requires a large quantity handler of universal waste to store lamps accumulated in cardboard or fiber containers indoors, meaning in a structure that prevents the container from being exposed to the elements.

3.67. On April 23, 2009, several boxes of waste lamps labeled as “fluorescent tubes” were stored in a location at the Facility that was exposed to the elements.

3.68. Respondent’s failure to store universal waste lamps indoors in a manner that prevented exposure to the elements violated WAC 173-303-573(20)(c)(iii).

#### **Count 11: Failure to Maintain Signage**

3.69. Permit Attachment DD requires Respondent to post signs printed with the legend “Danger - Unauthorized Personnel Keep Out” on the gates and approximately every 50 feet along the perimeter fence of the Facility. The signs must be visible from any approach to the facility and legible from a distance of 25 feet. They must be attached to the gates and the fence at a height of approximately five feet.

3.70. On April 24, 2009, a warning sign that had been posted on the fence along the Facility property line, bordering Mutual Materials, was on the ground.

3.71. Respondent’s failure to have a sign posted on the fence at a height of approximately five feet approximately every 50 feet violated the requirements of Permit Attachment DD.

#### **Count 12: Failure to Maintain Emergency Equipment**

3.72. Permit Condition II.B.2. requires Respondent to ensure that all water-related safety equipment remain operable at all times.

3.73. Permit Attachment F3.1.2 requires that equipment used for spill and emergency response identified in Table G5-1 and Figures G4-4 and G4-5 be readily available and inspected for access and operability in the event of an emergency.

3.74. The emergency shower and the eyewash unit in the Facility's Lab Pack Area are emergency equipment identified in Table G5-1 and Figures G4-4 and G4-5.

3.75. On April 23, 2009, access to the emergency shower and eyewash unit in the Lab Pack Area was blocked by a 55-gallon container.

3.76. On March 13, 2009, the eyewash unit was frozen and inoperable.

3.77. Respondent's failure to ensure that the emergency shower and eyewash equipment were operable and readily accessible at all times violated Permit Condition II.B.2. and Permit Attachment F3.1.2.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Paragraphs 3.1 through 3.5 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 nature of the violation, Respondent's actions to correct the violation after having been notified by Complainant, and 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 TWO- HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.).

4.4. Respondent agrees to the payment of the civil penalty set forth in Paragraph 4.3, with interest, according to the following schedule:

Payment Due Date (From Effective Date of CAFO)	Principal	Interest	Total Payment
30 days	\$137,500	\$0	\$137,500
60 days	\$137,500	\$229	\$137,729

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and 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.

4.6. 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

Kevin Schanilec, Senior Enforcement Engineer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop: OCE-127  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

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 be 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 nonpayment penalties, as set forth 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 thirty (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 thirty (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 ninety (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 and shall not be deductible for purposes of federal taxes.

4.9. 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.

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

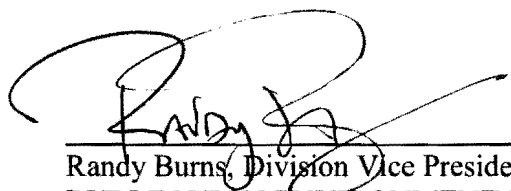
4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

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

STIPULATED AND AGREED BY:

FOR RESPONDENT

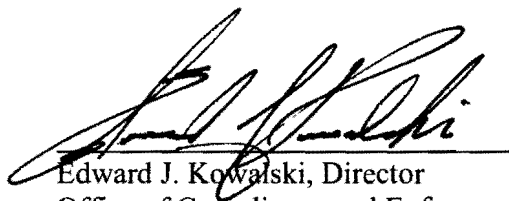


Randy Burns, Division Vice President  
BURLINGTON ENVIRONMENTAL, INC.

10/26/11  
Date

STIPULATED AND AGREED BY:

FOR COMPLAINANT



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

11/08/2011  
Date

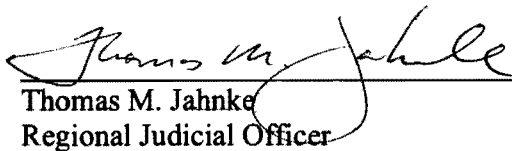
## V. FINAL ORDER

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. 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, the Washington Administrative Code, and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 23<sup>d</sup> day of November 2011.

  
Thomas M. Jahnke  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Burlington Environmental, Inc. DOCKET NO.: RCRA-10-2012-0012** was filed with the Regional Hearing Clerk on Nov. 23, 2011.

On Nov. 23, 2011, the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Nov. 23, 2011, to:

Randy Burns  
Burlington Environmental, Inc.  
20245 77th Ave. S  
Kent, WA 98032

DATED this 23 day of November, 2011.

Carol Kennedy  
Signature  
Print Name: Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10