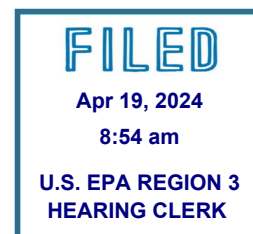


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
Smithsonian Institution : U.S. EPA Docket No. RCRA-03-2024-0083
10th Street, NW and Constitution Ave., :
NW : Proceeding under Section 3008(a) and
Washington, D.C. 20560 : (g) of the Resource Conservation and
: Recovery Act, 42 U.S.C.
Respondent. : Section 6928(a) and (g)
: :
Smithsonian National Museum :
of Natural History :
10th Street, NW and Constitution Ave., :
NW :
Washington, D.C. 20560 :
:
Facility. :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and the Smithsonian Institution’s National Museum of Natural History (“Respondent”) (collectively the “Parties”), pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by inter *alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g) and 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 C.F.R. Part 22. Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), (or the “Act”) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. Factual allegations or legal conclusions in this Consent Agreement are based on provisions of federally authorized District of Columbia Municipal Regulations (“DCMR”) requirements.
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated October 3, 2023, EPA notified the District of Columbia Department of Energy and the Environment (“DOEE”) of EPA’s intent to commence this administrative action against Respondent in response to the alleged violations of RCRA Subtitle C and the District of Columbia (“DC”) Hazardous Waste Regulations that are set forth herein.

GENERAL PROVISIONS

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
8. Except as provided in Paragraph 7, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
9. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
11. Respondent also expressly waives any right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).
12. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

13. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
15. On March 25, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted the District of Columbia authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921- 6939e. The provisions of the District of Columbia's revised authorized hazardous waste management program, through the 1985 final authorization, became requirements of RCRA Subtitle C, enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). The provisions of the District of Columbia's authorized program were published in the District of Columbia Register on September 28, 1984, and were set forth at Chapter 20 of the District of Columbia Municipal Regulations ("DCMR"), Section 4000 et seq. These hazardous waste management regulations incorporated by reference the provisions of 40 C.F.R. Parts 260-265 (July 1, 1982 ed.) and 40 C.F.R. Parts 270 (July 1, 1983 ed.) with certain amendments thereto set forth in 20 DCMR Section 4001. At the time of the 1985 final authorization the District of Columbia was not granted authorization to administer its authorized program in lieu of certain provisions of Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. L. No. 98-616), which amended Subtitle C of RCRA. These provisions remained exclusively enforceable by EPA in the District of Columbia pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
16. On November 9, 2001, EPA granted the District of Columbia authorization to administer its revised hazardous waste management program ("DC Hazardous Waste Regulations"), effective November 9, 2001 (66 Fed. Reg. 46961). The revised program was published in the District of Columbia Register on January 5, 2001 and was set forth at 20 DCMR §§ 4000 et seq. EPA authorized a subsequent revision of the DC Hazardous Waste Regulations on August 20, 2018 (83 Fed. Reg. 42036). The provisions of the District of Columbia's 2001 authorized hazardous waste management regulations, as revised by the 2018 authorization, have become requirements of RCRA Subtitle C enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). The DC Hazardous Waste Regulations includes authority to implement some, but not all, HSWA provisions. To the extent that the District of Columbia's revised program does not include such HSWA authorities, EPA has exclusive authority to enforce such provisions.
17. When EPA last authorized the DC Hazardous Waste Regulations on August 20, 2018, EPA approved the District of Columbia's incorporation by reference of the then current federal regulations which were in effect as of July 1, 2004. As a result, 40 C.F.R. § 262.34

- (2004) is the currently enforceable version of that RCRA regulation in the District of Columbia. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein when referring to the federal regulations incorporated by reference into the DC Hazardous Waste Regulations are to the 2004 Federal regulations in effect at the time the DC Hazardous Waste Regulations were authorized.
18. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
 19. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, and certain provisions of the DC Hazardous Waste Regulations, set forth at 20 DCMR §§ 4000 et seq. at its facility.
 20. Respondent is, and at the time of the violations alleged herein has been, the owner and operator of the Smithsonian National Museum of Natural History located at 10th Street, NW & Constitution Ave., NW, Washington, D.C. 20560 (the “Facility”), which is further described below.
 21. Respondent is, and at the time of the violations alleged herein was, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.
 22. Respondent is, and at the time of the violations alleged herein has been, the “owner” and “operator” of a “facility,” as the terms “facility,” “owner” and “operator” are defined in 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.
 23. The Facility conducts scientific research in the fields of vertebrate zoology, invertebrate zoology, botany, anthropology, paleobiology, entomology, and mineral science.
 24. Respondent is, and at all times relevant to this Consent Agreement and Final Order has been, a “generator” of, and has engaged in the “storage” in “containers” at the Facility of, material as described below that are “solid wastes” and “hazardous wastes” as those terms are defined by 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.
 25. Respondent is, and at all times relevant to this Consent Agreement and Final Order has been, a large quantity generator of hazardous waste as defined under 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 262.10, and a small quantity handler

- of universal waste as defined under 20 DCMR § 4273, which incorporates by reference 40 C.F.R. § 273.9.
26. The analysis and research conducted at the Facility generates numerous hazardous waste chemicals including hydrochloric acid, sulfuric acid, hydrofluoric acid, acetic acid, naphthalene, ethyl alcohol, isopropyl alcohol, ammonium hydroxide, potassium peridotite, sodium nitrate, and phosphorus pentoxide.
 27. Hydrochloric acid, sulfuric acid, hydrofluoric acid, acetic acid, and ammonium hydroxide are hazardous wastes (EPA Hazardous Waste No. D002), within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.22, because they exhibit the characteristic of corrosivity.
 28. Ethyl alcohol and isopropyl alcohol are hazardous wastes (EPA Hazardous Waste No. D001), within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.21, because they exhibit the characteristic of ignitability.
 29. Potassium peridotite is a toxic hazardous waste (EPA Hazardous Waste No. D011) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.24, because it exhibits the characteristic of toxicity.
 30. Sodium nitrate is a toxic hazardous waste (EPA Hazardous Waste No. D007) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.24, because it exhibits the characteristic of toxicity.
 31. Phosphorus pentoxide nitrate is a toxic hazardous waste (EPA Hazardous Waste No. D003) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.23, because it exhibits the characteristic of reactivity.
 32. Naphthalene is a hazardous waste (EPA Hazardous Waste No. U165) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. Part 261, Subpart D, because it is a listed hazardous waste.
 33. On March 14, 2023, the United States Environmental Protection Agency, Region 3 (“EPA”), conducted an unannounced Compliance Evaluation Inspection (“CEI”) at the Facility to examine the Respondent’s compliance with the DC Hazardous Waste Regulations and applicable federal hazardous waste regulations.
 34. On October 17, 2023, EPA sent a Notice of Potential Violation and Opportunity to Confer (NOPVOC) letter to Respondent advising it of EPA’s preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s compliance with the DC Hazardous Waste Regulations and federal hazardous waste regulations at the Facility.

35. On the basis of EPA's findings during the CEI and Respondent's response to EPA's NOPVOC letter, EPA alleges that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, certain requirements of the DC Hazardous Waste Regulations promulgated thereunder, and certain applicable federal hazardous waste regulations.

Count 1

Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status

36. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
37. 20 DCMR § 4270.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
38. 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.34, provides, in pertinent part, that a generator of hazardous waste must meet a series of conditions in order to accumulate hazardous waste on site for a period of ninety-days or less without a permit or interim status.
39. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a), provides, in pertinent part, that a generator may accumulate hazardous waste in containers for 90 days or less without a permit provided that such person, mark or label storage containers containing hazardous waste with a "Hazardous Waste" label and a date clearly identifying the beginning of the contents' accumulation period.
40. During the March 14, 2023 CEI, EPA officials observed that the Museum maintained various cabinets containing hazardous waste storage containers in a Hazardous Waste Accumulation Area (HWAA). Within the HWAA, EPA officials discovered one carboy containing Formalin with no hazardous waste label, one 5-gallon can containing gasoline with no hazardous waste label or accumulation start date, four boxes labeled hazardous waste with no accumulation start date, and two 1-quart containers with no hazardous waste label or accumulation start date.
41. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), and, by further reference the container management requirements of 40 C.F.R. § 265.174, provides that a generator may accumulate hazardous waste in containers for 90 days or less without a permit provided that such person, at least weekly, inspect areas where containers are stored. The generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

42. During the March 14, 2023 CEI, EPA officials observed that the Museum maintained various cabinets containing hazardous waste storage containers in a HWAA. Upon request for the inspection records associated with this HWAA, EPA officials further observed that the Museum did not conduct weekly inspections for seven weeks between December 12, 2021 and February 6, 2022 and for two weeks between February 6, 2022 and February 19, 2022.
43. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(4) and, by further reference, the personnel training requirements of 40 C.F.R. § 265.16(c), provides that a generator may accumulate hazardous waste in containers for 90 days or less without a permit provided that such person provides employees responsible for managing hazardous waste with an annual review of the initial hazardous waste management training required in 40 C.F.R. § 265.16(a).
44. During the March 14, 2023 CEI, EPA officials observed that the Museum's training records, beginning in calendar year 2020 and extending to the date of inspection, did not contain training records in calendar year 2021 for the Museum's Safety and Occupational Health Specialist, or training records in any of the relevant calendar years for the Museum's Acting Associate Director of Facility Operations.
45. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(4), and, by further reference the contingency plan requirements of 40 C.F.R. § 265.52, provides, in pertinent part, that a generator may accumulate hazardous waste in containers for 90 days or less without a permit provided that such person maintains a contingency plan for their facility designed to address certain emergency incidents and unplanned releases of hazardous waste and constituents. The regulation further requires that the plan contain an action/evacuation plan for facility personnel and that the generator keep the plan up to date with contact information for primary and alternate emergency coordinators, in addition to the order in which those coordinators should be contacted.
46. During the March 14, 2023 CEI, EPA officials observed that the Museum's contingency plan did not contain an action or evacuation plan for facility personnel in the event of certain emergencies like fire, explosions, or unplanned releases. EPA officials further observed that the contingency plan was last updated in 2019, identified the names of one retired employee and another employee that had transferred occupations as emergency coordinators, and did not specify which emergency coordinator would act as primary and alternate.
47. At the time of Inspection Respondent failed to comply with the conditions for the temporary storage (i.e., 90 days or less) of hazardous waste by a generator under 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.34(a), and therefore did not qualify for an exemption from permitting/interim status.
48. By failing to qualify for an exemption from the permitting/interim status, Respondent operated a hazardous waste treatment or storage facility, as defined in 20 DCMR §

4260.1, which incorporates by reference 40 C.F.R. § 260.10, without maintaining the necessary permit/interim status required under 20 DCMR § 4270.1, which incorporates by reference 40 C.F.R. § 270.1(b).

49. By failing to comply with 20 DCMR § 4270.1, which incorporates by reference 40 C.F.R. § 270.1(b), Respondent violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 2

Failure to Properly Mark or Label Universal Waste Containers

50. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
51. 20 DCMR § 4273.1 incorporates by reference 40 C.F.R. § 273.14, which requires, in pertinent part, that a small quantity handler of universal waste label or mark waste lamps or waste lamp containers with a “Universal Waste - Lamp(s),” “Waste Lamp(s),” or “Used Lamp(s)” label.
52. 20 DCMR § 4273.1 incorporates by reference 40 C.F.R. § 273.14, which requires, in pertinent part, that a small quantity handler of universal waste label or mark universal waste batteries or universal waste battery containers with a “Universal Waste - Battery(ies),” “Waste Battery(ies),” or “Used Battery(ies)” label.
53. During the March 14, 2023 CEI, EPA officials observed that Respondent maintained a fluorescent lamp storage room containing various spent fluorescent lamps in or outside of storage containers. Within the storage room, EPA officials further observed several boxes containing waste lamps stacked in a fashion that obscured any universal waste labels, boxes containing waste lamps that were mislabeled or without a universal waste label, and waste lamps outside of storage containers without an attached universal waste label.
54. During the March 14, 2023 CEI, EPA officials observed that the Respondent’s HWAA contained various cabinets with universal waste storage containers. Within the HWAA cabinets, EPA officials discovered multiple plastic bags containing waste batteries without a universal waste label.
55. At the time of Inspection Respondent failed to label or mark universal waste batteries and lamps with the required labels or markings specified under 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.14.
56. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.14, Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, and is subject to

the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 3

Failure to Properly Manage Universal Waste and Waste Containers

57. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
58. 20 DCMR § 4273.1 incorporates by reference 40 C.F.R. § 273.13 which requires, in pertinent part, that a small quantity handler of universal waste lamps manage waste lamps so that the items remain in a closed, structurally sound container and that any breakage or leakage from damaged waste lamps must be immediately cleaned up and placed into a new container.
59. During the March 14, 2023 CEI, EPA officials observed that Respondent maintained a fluorescent lamp storage room containing various spent fluorescent lamps in and outside of storage containers. Within the storage room, EPA officials discovered various waste lamps in open containers and outside of containers, in addition to shattered glass from one or more waste lamps.
60. At the time of Inspection Respondent failed to manage waste lamps as specified under 20 DCMR § 4273, which incorporates by reference 40 C.F.R. § 273.13.
61. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.13, Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 4

Failure to Conduct Required Weekly Inspections

62. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
63. 20 DCMR § 4264.1 incorporates by reference 40 C.F.R. § 264.174 which requires, in pertinent part, that an owner or operator of a hazardous waste facility conduct weekly inspections to identify leaking containers and deterioration of containers or the containment system.
64. During the March 14, 2023 CEI, EPA officials observed that the Museum maintained various cabinets containing hazardous waste storage containers in a HWAA. Upon request for the inspection records associated with this HWAA, EPA officials further observed that the Museum did not conduct weekly inspections for seven weeks

between December 12, 2021 and February 6, 2022 and for two weeks between February 6, 2022 and February 19, 2022.

65. For several weeks from December 2021 through February 2022, Respondent failed to fully comply with the weekly inspection requirement as specified under 20 DCMR § 4264, which incorporates by reference 40 C.F.R. § 264.174.
66. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.174, Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 5

Failure to Conduct Required Training

67. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
68. 20 DCMR § 4264.1 incorporates by reference 40 C.F.R. § 264.16, which requires, in pertinent part, that an owner or operator of a hazardous waste facility ensure that facility personnel complete training targeted at teaching compliance with necessary RCRA hazardous waste regulations within six months of their employment or assignment to the facility. The cited regulations further require that the generator ensure facility personnel take part in an annual review of this initial training.
69. During the March 14, 2023 CEI, EPA officials observed that Respondent's training records, beginning in calendar year 2020 and extending to the date of inspection, did not contain training records in calendar year 2021 for the Museum's Safety and Occupational Health Specialist, or training records in any of the relevant calendar years for the Museum's Acting Associate Director of Facility Operations.
70. From 2020 through 2022, Respondent failed to fully comply with the initial and annual refresher training requirements required under 20 DCMR 4264.1, which incorporates by reference 40 C.F.R. § 264.16.
71. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.16(c), Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 6

Failure to Update and Maintain Required Contingency Plan

72. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

73. 20 DCMR § 4264.1 incorporates by reference 40 C.F.R. § 264.52 which requires, in pertinent part, that an owner or operator of a hazardous waste facility maintain a contingency plan for their facility designed to address certain emergency incidents and unplanned releases of hazardous waste and constituents. The regulation further requires that the plan contain an action/evacuation plan for facility personnel and that the generator keep the plan up to date with contact information for primary and alternate emergency coordinators, in addition to the order in which those coordinators should be contacted.
74. During the March 14, 2023 CEI, EPA officials observed that the Respondent's contingency plan did not contain an action or evacuation plan for facility personnel in the event of certain emergencies like fire, explosions, or unplanned releases. EPA officials further observed that the contingency plan was last updated in 2019, identified the names of one retired employee and another employee that had transferred occupations as emergency coordinators, and did not specify which emergency coordinator would act as primary and alternate.
75. From 2019 through March 14, 2023, Respondent failed to maintain a contingency plan in compliance with the requirements of 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.52.
76. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.52, Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

CIVIL PENALTY

77. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **sixty-five thousand three hundred seventy-six dollars (\$65,376)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
78. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including, the following the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020, which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

79. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, i.e., EPA Docket No. RCRA-03-2024-0083;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
 - d. Respondent's Treasury Account Symbol is **33010001**. Please also quote fund string 000-2023-010001-330000-6998-2710-5000. Inquiries concerning this payment may be made to **Charmone Williams, Finance Manager** who may be contacted at williach@si.edu or **202-534-6182**.
 - e. Payment may be made using the Intra Governmental Payment and Collection application (IPAC), **Agency Location Code 68-01-0727**, and Respondent's Treasury Account Symbol **33010001**. Please include the Docket Number of this action (EPA Docket No. RCRA-03-2024-0083) in the description field of the IPAC.
 - f. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously email to:

Elliott Adler
Assistant Regional Counsel (3RC40)
U.S. EPA, Region 3
Philadelphia, PA 19103
adler.elliott@epa.gov

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

80. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of

such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

81. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
82. The parties consent to service of the Final Order by e-mail at the following valid email addresses: adler.elliott@epa.gov for Complainant, and earhartf@si.edu for Respondent.

GENERAL SETTLEMENT CONDITIONS

83. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
84. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
85. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

86. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or

regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

87. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

ANTIDEFICIENCY ACT

88. Respondent shall seek all existing funds to meet the requirements of this Consent Agreement and Final Order. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this Consent Agreement and Final Order. Nothing in this Consent Agreement and Final Order shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

EXECUTION /PARTIES BOUND

89. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

90. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

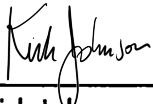
ENTIRE AGREEMENT

91. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

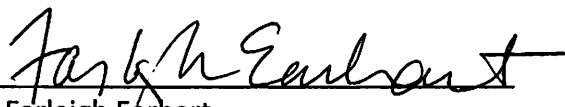
For Respondent:

Smithsonian Institution

Date: 3/27/24

By: 
Kirk Johnson
Director, National Museum of Natural History

Attorney for Respondent:

By: 
Farleigh Earhart
Associate General Counsel

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Elliott Adler
Assistant Regional Counsel
U.S. EPA, Region 3
adler.elliott@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
Smithsonian Institution : U.S. EPA Docket No. RCRA-03-2024-0083
10th Street, NW and Constitution Ave., :
NW : Proceeding under Section 3008(a) and
Washington, D.C. 20560 : (g) of the Resource Conservation and
: Recovery Act, as amended, 42 U.S.C.
Respondent. : Section 6928(a) and (g)
: :
Smithsonian National Museum :
of Natural History :
10th Street, NW and Constitution Ave., :
NW :
Washington, D.C. 20560 :
:
Facility. :

FINAL ORDER

Complainant, the Director of the Director, Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Smithsonian Institute have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with 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 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020, and the statutory factors set forth in Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **sixty-five thousand three hundred seventy-six dollars (\$65,376)** in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:
	:
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	:
Smithsonian National Museum	:
of Natural History	:
10th Street, NW and Constitution Ave.,	:
NW	:
Washington, D.C. 20560	:
	:
Facility.	:

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Chun-Hsi Wong
Associate Director for Operations
National Museum of Natural History
wongc@si.edu

Farleigh Earhart
Associate General Counsel
Smithsonian Office of General Counsel
earhartf@si.edu

Elliott Adler
Assistant Regional Counsel
U.S. EPA, Region 3
adler.elliott@epa.gov

Jeremy Dearden
Physical Scientist
U.S. EPA, Region 3
dearden.jeremy@epa.gov

*In Re: In the Matter of: Smithsonian National Museum
of Natural History*

EPA Docket No. RCRA-03-2024-0083

[Digital Signature and Date]

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 3