UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	)	
AL-KEL ALLIANCE, INC. **WILMER, TEXAS**	)	**DOCKET NO. RCRA-06-2012-0926**
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Al-Kel Alliance, Inc., Wilmer, Texas ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I.
PRELIMINARY STATEMENT

1. This proceeding for the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

2. On or about March 19, 2012, Complainant issued to Respondent an Administrative Complaint ("Complaint") under Section 3008(a) of RCRA, as amended, which proposed a compliance order against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed compliance order assessment.

3. Respondent filed its Answer to the Complaint on March 22, 2012.

4. EPA and Respondent (collectively "Parties") agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this Consent Agreement and Final Order ("CAFO") is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the Complaint.

5. For the purposes of this proceeding, the Respondent only admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in both the Complaint and this CAFO.

6. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order.

7. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the issuance of the compliance order and agrees to provide requested documentation to support compliance.

II.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Respondent is a corporation incorporated in and under the laws of the State of Texas and was authorized to do business in Texas in October 2001, and as such, Respondent is a "person," as that term is defined in 30 T.A.C. § 335.1 [40 C.F.R. §§ 260.10 and 270.2].

9. Respondent's Registered Agent for service in the State of Texas is James Edward Alexander, Jr., 500 N. Willow, Sherman, TX 75090.

10. Respondent owns and/or operates a container and tank trailer cleaning facility along with all contiguous land and structures, other appurtenances and improvements at

2012 N. Goode Road in Wilmer, TX ("facility"), and the operation of which was the subject of the Complaint.

11. The Complaint specified Findings of Fact and Conclusions of Law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "generator" subject to 30 T.A.C. Subpart C [40 C.F.R. Part 262]. EPA alleged that Respondent violated requirements of 30 T.A.C. Subpart C [40 C.F.R. Part 262] as set forth in the Complaint.

12. With the issuance of the Complaint, the State of Texas was notified and given an opportunity to consult with EPA regarding the proposed assessment of a compliance order against Respondent.

III.
COMPLIANCE ORDER

13. Respondent and EPA agree that Respondent has complied with, and will continue to comply with as applicable, the following Sections of the Complaint under the subheading "Compliance Order": Sections A, B, C, D, F, G, J, N. EPA deems the aforementioned Sections satisfied.

14. With the exception of Paragraphs 15 through 21 below in this Compliance Order Section, if not specifically addressed herein, those matters set forth in the Compliance Order portion of the Complaint are deemed satisfied by EPA. EPA has determined that the following Sections set forth in the Complaint are not yet considered satisfied; however, EPA and Respondent have discussed such Sections and Respondent agrees to submit and comply with those Sections, to EPA's reasonable satisfaction, subject to stipulated penalties if such compliance is not achieved within the time frames set forth below. Therefore, pursuant to

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the specified time period.

15. Regarding Section E of the Complaint, within thirty (30) days of the effective date of this CAFO, Respondent shall have completed its development of a training plan for its employees in order to supplement and expand upon its current employee training program to comply with 40 C.F.R. § 265.16 and shall provide EPA with such training plan/policy.

16. Regarding Section H of the Complaint, within thirty (30) days of the effective date of this CAFO, Respondent will develop and provide EPA with a facility specific checklist (to which Respondent will adhere) for maintenance and testing of alarm systems, fire protection equipment, spill control equipment, and decontamination equipment to comply with 40 C.F.R. § 265.33.

17. Regarding Section I of the Complaint, within thirty (30) days of the effective date of this CAFO, Respondent will ensure that all personnel involved in the operation have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee to comply with 40 C.F.R. § 265.34.

18. Regarding Section K of the Complaint, within thirty (30) days of the effective date of this CAFO, Respondent will provide documents that it has made, or attempted to make, appropriate arrangements with local police and hospital officials regarding the type of waste handled at the facility and the potential need for the services of these organizations to comply with 40 C.F.R. § 265.37.

19. Regarding Section L of the Complaint, within thirty (30) days of the effective date of this CAFO, Respondent shall amend and provide to EPA its contingency plan for the facility to comply with 40 C.F.R. Part 265 Subpart D.

20. Regarding Section M of the Complaint, Respondent has agreed that it does, and will continue to, ensure that hazardous waste determinations are being made on all consolidated wastes and wastes generated at the facility (regardless of what field tests reveal) in accordance with EPA approved test methods, specifically, 40 C.F.R. § 262.11(c)(1) and also per the TES Waste Determination Procedures document provided to the EPA from Respondent on May 29, 2012.

21. In all instances in which this CAFO requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HE)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Gabriel Salinas

IV.
TERMS OF SETTLEMENT

A. PARTIES BOUND

22. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

B. STIPULATED PENALTIES

23. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any provision of Section III of this CAFO, Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 750
16th through 30th day	$ 1,250
31st day and beyond	$ 2,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

24. Such stipulated penalties will not be become immediately due and payable; rather, Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Prior to providing such written demand, Respondent may request, in writing, for an extension of up to no more than fifteen (15) days to correct such noncompliance, which EPA may choose to grant such extension, in its sole and reasonable discretion. However, if Respondent does not make such request prior to the stated time periods as set forth herein that Respondent must adhere to in order to return to compliance, Respondent will have lost its ability to make such a request and will be deemed in noncompliance and subject to stipulated penalties. If thirty (30) days after any demand is made upon Respondent to pay in full the assessed stipulated penalties, interest shall accrue as set forth below. The stipulated penalties shall be paid by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of

three (3) ways: regular United States Postal Service (including certified mail), overnight mail, or wire transfer. For any United States Postal Service, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, *e.g.* Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

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

PLEASE NOTE: Docket number RCRA-06-2012-0926 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the

CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

25. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

27. EPA will also assess a fifteen dollar ($15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is

due and an additional fifteen dollars ($15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days.. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

28. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

C. NOTIFICATION

29. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent: Blain Vinson
Chief Operating Officer
Al-Kel Alliance, Inc.
4217 Mint Way
Dallas, TX 75237

and

Walter D. James III
James PLLC
The Renaissance
1117 Glade Road, Suite 140
Colleyville, TX 76034

D. MODIFICATION

30. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

31. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

32. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous waste, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

F. COSTS

33. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

G. EFFECTIVE DATE

34. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

H. EXECUTION of CAFO

35. To execute this CAFO, Respondent shall forward a copy of the CAFO, with original signature, to:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HE)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Gabriel Salinas

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 8·6·2012

Al-Kel Alliance, Inc.

FOR THE COMPLAINANT:

Date: 8·21·12

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 8-22-12

Patrick Rankin
EPA Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2012, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional hearing Clerk, U.S. EPA – Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, certified mail, return receipt requested, 7010 2780 0002 4356 4115, addressed to the following:

Blain Vinson
Chief Operating Officer
Al-Kel Alliance, Inc.
4217 Mint Way
Dallas, TX 75237

Walter D. James III
James PLLC
The Renaissance
1117 Glade Road, Suite 140
Colleyville, TX 76034

Bryan H. Sinclair, MC-219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Hand-delivered: Tom Rucki
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lori Jackson
Paralegal Specialist