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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ALASKA DEPARTMENT OF
TRANSPORTATION & PUBLIC
FACILITIES,

Juneau, Alaska,

Respondent.

DOCKET NO. RCRA-10-2016-0129

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

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

1.2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may enforce the federal hazardous waste program in the State of Alaska.

1.3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, 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 Alaska Department of Transportation & Public Facilities

("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement 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 that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Respondent is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

3.2 Respondent is and was the "owner" and "operator" of the Alaska Department of Transportation & Public Facilities facility located at 6860 Glacier Highway, Juneau, Alaska (the "Facility"), as those terms are defined by 40 C.F.R. § 260.10.

3.3 Respondent is and was a "used oil generator." 40 C.F.R. § 279.10.

3.4 Respondent generates and generated "solid waste." 40 C.F.R. § 261.2.

3.5 Respondent is and was a "generator" of "hazardous waste." 40 C.F.R. §§ 260.10, 261.3.

3.6 Respondent is and was the “owner or operator” of a facility subject to regulation under RCRA. 40 C.F.R. § 270.2.

3.7 At all times relevant to the Consent Agreement, the Facility was not a permitted treatment, storage, or disposal facility, or an interim status facility. RCRA § 3005, 42 U.S.C. § 6925; 40 C.F.R. § 260.10.

3.8 Subject to certain exceptions not applicable to this Consent Agreement, Conditionally Exempt Small Quantity Generators (“CESQGs”) are not subject to regulation under 40 C.F.R. parts 262 through 268, and part 270, provided they comply with certain specified requirements, including not accumulating 1,000 kilograms (2,205 pounds) or more of its hazardous waste and making hazardous waste determinations pursuant to 40 C.F.R. § 262.11. 40 C.F.R. § 261.5(b), (g)(1), and (g)(2).

3.9 If at any time a CESQG accumulates 1,000 kilograms (2,205 pounds) or more of its hazardous wastes, all of those accumulated wastes are subject to the provisions of 40 C.F.R. parts 262 through 268, and part 270, applicable to small quantity generators (“SQGs”) of hazardous waste. 40 C.F.R. § 261.5(g)(2).

3.10 As of May 21, 2012, Respondent had an accumulation area on the east side of the Facility referred to as “the Hill,” in which Respondent had accumulated 4,420 pounds of hazardous wastes. Approximately 3,505 pounds of the hazardous waste that was present on the Hill on May 21, 2012, remained at the Facility until December 5, 2013.

3.11 Between May 21, 2012, and December 5, 2013, Respondent had accumulated more than 2,205 pounds of its hazardous waste, and those hazardous wastes were therefore subject to regulation under the provisions of 40 C.F.R. parts 262 through 268, and part 270, applicable to hazardous wastes generated by a SQG.

Count 1: Failure to Make a Hazardous Waste Determination

3.12 A person who generates a solid waste is required to determine if that solid waste is a hazardous waste, using the method provided in 40 C.F.R. § 262.11(a)-(d). 40 C.F.R. §§ 261.2, 262.11.

3.13 A person who generates a solid waste is required to keep records of any test results, waste analyses, or other determinations made to determine if that solid waste is a hazardous waste. 40 C.F.R. § 262.40(c).

3.14 On May 21, 2012, Respondent had 111 containers located on the Hill, within the Facility. Of the containers on the Hill, at least 80 containers contained solid waste generated by Respondent, for which no hazardous waste determinations had been made.

3.14.1 On June 20, 2012, Respondent determined that 16 containers of solid wastes on the Hill did not contain hazardous wastes, and sent those containers to a landfill.

3.14.2 On or around June 25, 2012, Respondent determined that 30 containers of solid wastes on the Hill contained hazardous wastes, and on June 25, 2012, Respondent transported 915 pounds of hazardous waste to a household hazardous waste collection center.

3.14.3 In August 2012, Respondent repackaged the solid wastes from the remaining containers on the Hill, and moved those solid wastes to another location of the Facility, without making any hazardous waste determinations.

3.14.4 In November 2013, Respondent made hazardous waste determinations for Respondent's remaining solid wastes from the containers from the Hill, which had been repackaged in August 2012.

3.15 **Violation:** Respondent violated 40 C.F.R. § 262.11 by failing to make hazardous waste determinations on solid wastes generated by Respondent.

Count 2: Storage of Hazardous Waste without a Permit or Interim Status

3.16 Any owner or operator of a facility that treats, stores, or disposes of hazardous waste must have a RCRA permit or interim status. RCRA § 3005, 42 U.S.C. § 6925; 40 C.F.R. § 270.1(c).

3.17 A SQG cannot store hazardous waste on-site without a RCRA permit or interim status for any length of time unless certain conditions are met, including, but not limited to, clearly labeling each container with the words “Hazardous Waste” and the date on which the SQG began accumulating its hazardous waste in that container, keeping the hazardous waste containers in good condition, keeping the hazardous waste containers closed during storage except when it is necessary to add or remove waste, and maintaining and operating the facility to minimize the possibility of the release of hazardous waste. 40 C.F.R. § 262.34(a)-(b), (d)-(e).

3.18 As of May 21, 2012, Respondent had accumulated approximately 4,420 pounds of hazardous waste on the Hill.

3.18.1 On June 25, 2012, Respondent sent 915 pounds of the hazardous waste from the east side of the Facility to a household hazardous waste collection center.

3.18.2 On December 5, 2013, Respondent contracted with transporters of hazardous waste to remove approximately 3,505 pounds of hazardous waste from the Facility, which represented the remainder of the hazardous waste from the east side of the Facility.

3.19 As a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 262 applicable to a SQG, Respondent was required to label or clearly mark each

container and tank of hazardous waste being accumulated on-site with the words "Hazardous Waste." 40 C.F.R. § 262.34(a)(3), (d)(4).

3.19.1 On May 21, 2012, Respondent was storing hazardous waste in the Facility's Cold Shed in an unlabeled, red, 55-gallon container.

3.19.2 On May 21, 2012, Respondent was storing hazardous waste on the Hill in containers that were not labeled with the words "Hazardous Waste."

3.20 As a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 262 applicable to a SQG, Respondent was required to clearly mark each container of hazardous waste being accumulated on-site with the date upon which each period of accumulation begins. 40 C.F.R. § 262.34(a)(2), (d)(4).

3.20.1 On May 21, 2012, Respondent was storing hazardous waste on the Hill in containers that were not labeled with the date Respondent began accumulating that hazardous waste.

3.20.2 On May 21, 2012, Respondent was storing hazardous waste in the Facility's Cold Shed in a red 55-gallon container that was not marked with the date Respondent began accumulating that hazardous waste.

3.21 As a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. parts 262 and 265 applicable to a SQG, if Respondent stored hazardous waste in any container that was not in good condition or began to leak, Respondent was required to transfer that hazardous waste to a container that was in good condition, or otherwise manage that waste in accordance with the requirements of 40 C.F.R. part 265. 40 C.F.R. § 262.34(d)(2), (e); 40 C.F.R. § 265.171.

3.21.1 On May 21, 2012, Respondent was storing hazardous waste in a red 55-gallon container that was in poor condition in the Facility's Cold Shed.

3.22 As a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 265 applicable to a SQG, if Respondent stored hazardous waste in any container, Respondent was required to always keep that container closed during storage, except when it is necessary to add or remove waste. 40 C.F.R. § 265.173(a).

3.22.1 On May 21, 2012, Respondent was storing hazardous waste in three 55-gallon containers in the Facility's Cold Shed, one that was at the west end of the Cold Shed and two that were upstairs. These three containers were neither closed nor in the process of having waste added or removed.

3.23 As a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 265 applicable to a SQG, Respondent was required to open, handle, and store containers holding hazardous waste in a manner that may not rupture the container or cause it to leak. 40 C.F.R. § 265.173(b).

3.23.1 On May 21, 2012, Respondent was storing containers of hazardous waste on the Hill that were exposed to the elements.

3.24 On May 21, 2012, Respondent had accumulated over 2,205 pounds of hazardous waste on-site, and did not satisfy the criteria required for a SQG to store hazardous waste on-site. As a result, Respondent was required to either have a RCRA permit or interim status to accumulate its hazardous waste on-site for any length of time. 40 C.F.R. § 262.34.

3.25 In order to store hazardous waste on-site in satellite accumulation areas at or near the point of generation for any length of time, a SQG is required to meet certain conditions,

including by not limited to clearly labeling each container with the words “Hazardous Waste” or other words that clearly identify the contents of the container. 40 C.F.R. § 262.34(c)(1).

3.25.1 On May 21, 2012, Respondent had a satellite accumulation area in which a 55-gallon container was being used to collect hazardous waste from punctured aerosol cans; the container was not clearly labeled with the words “Hazardous Waste” or other words to clearly identify the contents of that container.

3.25.2 On May 21, 2012, as a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 262 applicable to a SQG, and which did not satisfy the requirements within 40 C.F.R. § 262.34(c), Respondent was not eligible to store hazardous waste on-site in satellite accumulation areas for any length of time.

3.26 A SQG is required to maintain and operate its Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. 40 C.F.R. § 262.34(d)(4), (e); 40 C.F.R. § 265.31.

3.26.1. On May 21, 2012, as a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 262 applicable to a SQG, Respondent was storing containers of hazardous waste on the Hill on an unmonitored part of the property where the containers were exposed to the elements and were not stored in a manner that would prevent the containers from rupturing or leaking.

3.27 A generator of a hazardous waste subject to regulation under the provisions of 40 C.F.R. part 263 is required to receive a Transporter Identification Number from EPA prior to engaging in the offsite movement of that hazardous waste by air, rail, highway, or water. 40 C.F.R. § 263.11(a).

3.27.1 On June 25, 2012, as a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 263, Respondent did not have a Transporter Identification Number when Respondent transported 915 pounds of hazardous waste to a household hazardous waste collection center.

3.28 A generator of hazardous waste subject to regulation under the provisions of 40 C.F.R. part 263 who transports, or offers for transport that hazardous waste for offsite treatment, storage, or disposal is required to prepare a hazardous waste manifest on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to 40 C.F.R. part 262. 40 C.F.R. §§ 260.10, 262.20(a)(1).

3.28.1 On June 25, 2012, as a CESQG with hazardous wastes subject to regulation under the provisions of 40 C.F.R. part 262, Respondent did not prepare a manifest for the shipment of hazardous waste before transporting 915 pounds of hazardous waste to a household hazardous waste collection center.

3.29 For all time periods relevant to this Consent Agreement, Respondent did not have interim status, and Respondent did not have or obtain a RCRA permit for the storage of hazardous waste. RCRA § 3005, 42 U.S.C. § 6925; 40 C.F.R. § 270.1(c).

3.30 **Violation:** Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) from at least May 21, 2012, to December 5, 2013, when Respondent operated a treatment, storage, and/or disposal facility without a RCRA permit or interim status.

Count 3: Failure to Label Used Oil Containers with the Words “Used Oil”

3.31 Respondent was required to clearly label Respondent’s containers and aboveground tanks that contained used oil with the words “Used Oil.” 40 C.F.R. § 279.22(c)(1).

3.32 On May 21, 2012, by the used oil filter crusher in the Facility, Respondent had not labeled a container used for containing the used oil from the crushed oil filters with the words "Used Oil."

3.33 On May 21, 2012, within the SEF shop of the Facility, Respondent had not labeled a container used for containing used oil from vehicle oil changes with the words "Used Oil."

3.34 **Violation:** Respondent violated 40 C.F.R. § 279.22(c)(1) when Respondent failed to properly label containers used by Respondent to contain used oil.

Enforcement Authority

3.35 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. part 19, EPA may assess a civil penalty of not more than \$37,500 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA that occurs prior to August 1, 2016, issue an order requiring compliance, or both.

3.36 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. part 19, EPA may assess a civil penalty of not more than \$93,750 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA that occurs on or after August 1, 2016, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$118,100 (the "Assessed Penalty").

4.4. Respondent agrees to payment of the penalty cited in Paragraph 4.3, as follows:

4.4.1. Respondent agrees to payment of \$59,050 of the Assessed Penalty referenced in Paragraph 4.3 within 30 days of the effective date of the Final Order;

4.4.2. Respondent agrees to payment of \$59,578.66 by August 15, 2017, which represents \$59,050 of the Assessed Penalty referenced in Paragraph 4.3 and \$528.66 of interest.

4.4.3. Respondent agrees that the portion of the Assessed Penalty that is not paid within 30 days of the effective date of the Final Order attached hereto will bear interest at the Treasury Current Value of Funds Rate (CVFR) in effect at the time the Final Order is issued, and that interest will be compounded monthly from the effective date of the Final Order. The Secretary of the Treasury set the CVFR at 1.00% for the period of January 1 through December 31, 2016. 31 U.S.C. § 3717(a). 80 Fed.Reg. 69777.

4.5. Payments under this Consent Agreement and the Final Order may be paid by treasury warrant (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a treasury warrant must be 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, Missouri 63197-9000

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

4.6. Concurrently with payment, Respondent must serve photocopies of the treasury warrant, or proof of other payment method, 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-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.Teresa@epa.gov

Kristin McNeill
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
McNeill.Kristin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. *Interest.* Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however,

that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

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

4.8.3. *Nonpayment Penalty.* Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

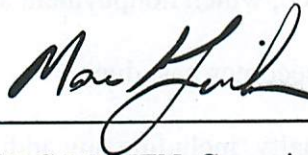
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

9/14/16

FOR RESPONDENT:

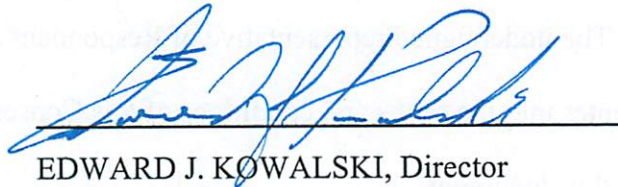


MARC LUIKEN, Commissioner
Alaska Department of Transportation & Public Facilities

DATED:

9/15/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**ALASKA DEPARTMENT OF
TRANSPORTATION & PUBLIC
FACILITIES,**

Juneau, Alaska,

Respondent.

DOCKET NO. RCRA-10-2016-0129

FINAL ORDER

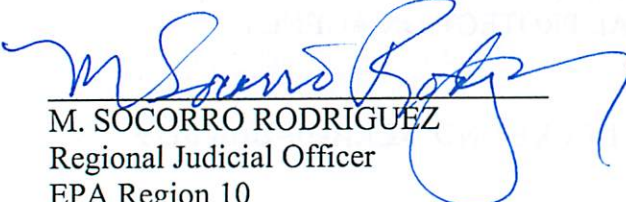
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16th day of September, 2016.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Alaska Department of Transportation & Public Facilities, Docket No.: RCRA-10-2016-0129**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Chris Bellovary
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 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 to:

Marc Luiken
Commissioner
Alaska Dept. of Transportation & Public Facilities
Office of the Commissioner
3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500

DATED this 26 day of September, 2016.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10