

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

USEPA Docket No. RCRA-06-2018-0917

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and the United States Department of the Air Force (“Respondent”), and concerns Barksdale Air Force Base located at 334 Davis Avenue West, Suite 208, Barksdale Air Force Base, Louisiana 71110 (the “Facility”) that was owned and operated by Respondent at all times relevant to the violations alleged herein (“relevant time period”).
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may

amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

10. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) authorizes EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C or EPA’s regulations promulgated thereunder.
11. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the federal government in the same manner and under the same circumstances as against any other person.
12. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3), Complainant makes the findings of fact and conclusions of law which follow.
14. Respondent is a branch of the United States Department of Defense who operates a federal facility in Barksdale Air Force Base, Louisiana, 71110.
15. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes “each department, agency, and instrumentality of the United States,” and within the meaning of and as defined by 33 LAC V.109 [40 C.F.R. § 260.10] which includes a “government agency.”

24. 33 LAC Part V.109, 40 CFR 261.1(c)(8) defines a material as being “accumulated speculatively” if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled, and that during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.
25. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by EPA’s 2016 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of RCRA in amounts up to \$37,500 per day per violation for violations occurring after December 6, 2013 through November 2, 2015, and up to \$57,391 per day for violations that occurred after November 2, 2015 and assessed on or after January 15, 2017. *See 2017 Penalty Inflation Rule Adjustment* (82 Fed. Reg. 3633 (January 12, 2017)).

Count I:

26. The allegations in Paragraphs 1 – 25 are re-alleged and incorporated herein by reference.

34. Therefore, Respondent failed to meet the requirements of 33 LAC 303.A.3 [40 C.F.R. §§ 270.1 & 270.10] by failing to obtain a RCRA permit.

Count II:

35. The allegations in Paragraphs 1 – 34 are re-alleged and incorporated herein by reference.
36. 33 LAC 1103.B [40 C.F.R. § 262.11] requires that a person who generates a solid waste must determine if that waste is hazardous.
37. Respondent was unable to provide an accurate waste determination for spent bead blast media, and therefore was unable to substantiate a claim that the spent bead blast media was not a solid waste.
38. Therefore, Respondent failed to meet the requirements of 33 LAC 1103.B [40 C.F.R. § 262.11] through its failure to provide an accurate hazardous waste determination for spent bead blast media.

Count III:

39. The allegations in Paragraphs 1-38 are re-alleged and incorporated herein by reference.
40. 33 LAC 1103.B [40 C.F.R. § 262.11] requires that generators who generate hazardous waste must determine whether their waste is a hazardous waste, and if the waste is determined to be hazardous, the generator must comply with requirements and exclusions pertaining to the management of the specific waste.
41. Batteries managed under 33 LAC 4145.A [40 CFR 266.80] are solid waste when generated and require a hazardous waste determination when stored before reclamation.
42. Respondent determined that spent lead acid batteries were not solid wastes and did not prepare a hazardous waste determination or a land disposal restriction.

V.
TERMS OF SETTLEMENT

A. Penalty Provisions

46. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the *RCRA Civil Penalty Policy* (2003) and the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and taking into consideration the size of the Respondent's facility, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), cost savings associated with noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is Thirty Four Thousand Two Hundred and Sixty Dollars (\$34,260.00)

47. The penalty shall be paid within ninety (90) days of the effective date of this CAFO, made payable to the Treasurer United States, and in the manner and prescribed time period set forth below.

48. The following are Respondent's options for transmitting the penalty payment:

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express

Mail should be remitted to:

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

Re: U.S. Department of Air Force
RCRA-06-2018-0917

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: David Robertson.

Your adherence to this request will ensure proper credit is given when the penalty payment is received by EPA.

B. Costs

50. Each party shall bear its own costs and attorney's fees.

C. Reservation of Rights

51. This CAFO resolves the civil claims for monetary penalties set forth in Counts I-III of this CAFO. 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. In addition, 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. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

G. Authority to Bind the Parties

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

57. The undersigned Complainant certifies that he has the delegated authority to enter into the terms and conditions of this Consent Agreement and to bind EPA to it.

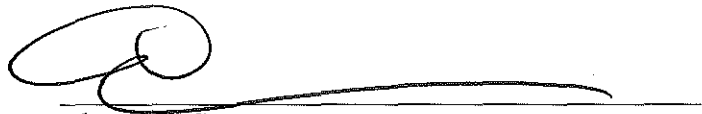
H. Effective Date of Settlement

58. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Re: U.S. Department of Air Force
RCRA-06-2018-0917

FOR THE COMPLAINANT:

Date: July 18, 2018

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line.

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

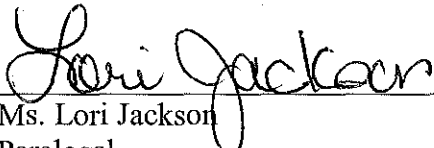
Re: U.S. Department of Air Force
RCRA-06-2018-0917

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2018, the original of the foregoing Consent Agreement and Final Order 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 sent to the following by the method below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 70051820000374579130

Colonel Michael A. Miller
U.S. Department of Air Force
Care of:
Ms. Tracy Warga (2 BW/JA)
334 Davis Ave West
Barksdale AFB, LA 71110



Ms. Lori Jackson
Paralegal