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ENVIRONMENTAL PROTECTION AGENCY
REGION IX
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of WESTATES CARBON-ARIZONA, INC. Respondent.	Docket No. RCRA-09-94-0001 CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

A. INTRODUCTION

1. This civil administrative enforcement action was instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. This action was instituted by service of a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint"), dated February 15, 1994, on Westates Carbon-Arizona, Inc. ("Respondent"). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). The Complaint charged Respondent with violations of Sections 3002, 3004 and 3005 of RCRA (42 U.S.C. §§6922, 6924 and 6925) and regulations adopted pursuant thereto at a facility (the "Facility") operated by Respondent at 2523 Mutahar St., Parker, Arizona.

B. JURISDICTION AND PROCEDURE

2. Without admitting or denying any of the factual allegations, alleged violations or concusions of law set forth in the Complaint, Respondent hereby agrees to waive any rights Respondent may have to a hearing on any issue relating to this matter, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b), or 40 C.F.R. 22.21. Respondent hereby consents to the issuance of this Consent Agreement and Final Order ("CA/FO") without adjudication or a hearing.

3. Respondent consents to and agrees not to contest the Region 9 Regional Administrator's jurisdiction and authority over the subject matter of the action as set forth in the Complaint and over Respondent pursuant to 42 U.S.C. §6928 and 40 C.F.R. §§22.04(a) and 22.37. The participation of Respondent in this CA/FO shall not be considered an admission of liability and this CA/FO is not admissible in evidence against Respondent in any judicial or administrative proceeding other than a proceeding by EPA or the United States to enforce this CA/FO or a judgment relating to it. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this

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CA/FO or to contest EPA's or the United States' authority to enforce its terms. Further, Respondent will not contest EPA's or the United States' jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceeding, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

C. PARTIES BOUND

4. This CA/FO shall apply to and be binding upon: Respondent and its employees, agents, successors, receivers, trustees and assigns.

5. No change in Respondent's legal status or corporate form shall alter Respondent's obligations under this CA/FO.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. By signing this Consent Agreement and taking actions hereunder, Respondent does not admit or deny the EPA findings of fact or conclusions of law set forth herein.

7. At the Facility, Respondent engages in the thermal reactivation of spent carbon. The Facility's EPA Identification Number is AZD 982 441 263.

8. Respondent stores, and has stored, and treats and has treated spent carbon, some of which is a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and 40 C.F.R. §§260.10 and 261.3. The EPA Hazardous Waste Numbers for this waste include D001, D004-043, and numerous F-, P-, K- and U-listed wastes.

9. Respondent generates, and has generated, "sump sludge" from the clean-out of its Recycle Water Storage Tank (T-9), which is a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5), and 40 C.F.R. §§260.10 and 261.3. This waste bears the EPA Hazardous Waste Numbers of all listed wastes with which it has had contact.

10. Respondent is the "owner" and "operator" of a facility as defined in 40 C.F.R. §260.10.

11. Respondent is a "generator" of hazardous waste as defined in 40 C.F.R. §260.10, and thus is subject to 40 C.F.R. Part 262.

12. The Facility was in existence (as defined in 40 C.F.R. §270.70) on the effective date of the amendments that rendered the Facility subject to the requirement to have a RCRA permit.

13. On or about May 6, 1991, pursuant to Section 3010 of RCRA, 42 U.S.C. §6930, Respondent submitted a Notification of Hazardous Waste Activity to EPA.

14. On or about August 12, 1991, pursuant to Section 3005 of RCRA, 42 U.S.C. §6925, and 40 C.F.R. §270.10(a), Respondent submitted to EPA Part A of a RCRA Permit Application for storage and treatment of hazardous waste at the Facility.

15. The Facility uses a tank system for storage of hazardous wastes within the meaning of 40 C.F.R. 265.190.

16. 40 C.F.R. §265.375 applies to Respondent because the Facility thermally treats hazardous waste in a device other than an enclosed devise using controlled flame combustion, as set forth in §265.370.

17. The Facility obtained interim status pending final administrative disposition of its permit application pursuant to Section 3005(e) of RCRA, 42 U.S.C. §6925(e), and is therefore subject to all interim status standards set forth in 40 C.F.R. Part 265.

18. The Facility began operations on August 23, 1992.

19. On or about August 17, 1993, EPA conducted an inspection at the Facility. It revealed the following:

20. The Facility's Waste Analysis Plan did not specify the methods to be used to meet the requirements of 40 C.F.R. §265.375, constituting a violation of 40 C.F.R. §265.13(b).

21. On certain occasions, the Facility failed to resolve discrepancies between shipments of spent carbon and the accompanying waste profile sheets as specified in its Waste Analysis Plan, constituting a violation of 40 C.F.R. §265.13(b).

22. Respondent failed to refill a self-contained breathing apparatus and air-pack in a timely manner, constituting a violation of 40 C.F.R. §265.15(c).

23. On certain occasions, fugitive air emissions came from the top of the dewatering screw of the Facility's furnace used to reactivate spent carbon and there were leaks from the Facility's dewatering screw, constituting a violation of 40 C.F.R. §265.31.

24. There were certain deficiencies in the Facility's contingency plan, constituting a violation of 40 C.F.R. §265.52(e).

25. The Facility's operating record did not contain a de-

scription and the quantity of each hazardous waste received, the method and date of its treatment or storage, the location of each hazardous waste, and the quantity at each location, resulting in a violation of 40 C.F.R. §265.73(b)(1) and (2).

26. Respondent failed to obtain an assessment and to test certain tanks as required by 40 C.F.R. §265.192(a) and (d).

27. There were numerous cracks in two of the Facility's concrete unloading pads and in a berm, constituting a violation of 40 C.F.R. §265.193(e)(1)(iii).

28. Respondent stored hazardous waste in a location not specified in the its permit application and without complying with applicable regulations (including 40 C.F.R. §§265.31 and 265.174), resulting in violations of those regulations and 40 C.F.R. §§270.71(a)(2).

E. CIVIL PENALTY; PAYMENTS

29. By signing this CA/FO, Respondent consents to the assessment against it of a civil penalty of FIFTY-SEVEN THOUSAND FIVE HUNDRED FIFTEEN DOLLARS ($57,515), in full settlement of the civil penalty claims made in the Complaint.

30. Respondent shall submit payment of the $57,515 civil penalty within 30 (thirty) days after the Effective Date.

31. Interest on the penalty payment due hereunder shall begin to accrue on the Effective Date and continue to accrue until the date payment is received by the United States. Interest shall accrue at the rate of 6% (six per cent) per annum and shall be due and payable on each anniversary of the Effective Date when any portion of the penalty to be paid hereunder remains due. In addition to such interest payments, in accordance with the Debt Collection Act of 1982 and 40 C.F.R. §13.11, Respondent shall pay (a) an administrative handling charge of fifteen dollars ($15.00) for each month past the due date during which payment is not received and (b) late fees on any penalty amount not paid within 90 days after the due date at a 6% (six percent) per annum rate. Late payment charges specified in the preceding sentence shall be paid monthly.

32. Nothing in the preceding paragraph or any other provision of this CA/FO shall preclude EPA from pursuing any remedies or sanctions available by reason of Respondent's failure to comply with any requirement of this CA/FO.

33. All payments hereunder shall be made by certified or cashier's check to the Treasurer of the United States of America and shall be remitted to:

U. S. Environmental Protection Agency
Region 9 Hearing Clerk
P. O. Box 360863M
Pittsburgh, Pennsylvania 15251.

All payments by check shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Alternatively, payments may be made by Funds Transfer Deposit (EPA Form 2570-6) through the Federal Reserve Communication System (FRCS) to the account of the U.S. Treasury at the Federal Reserve Bank of New York. Copies of all transmittals of payment shall be sent simultaneously to Laura Gentile, H-4-1, EPA Region 9, 75 Hawthorne St, San Francisco, CA 94105 and the Regional Hearing Clerk, EPA Region 9, RC-1, 75 Hawthorne St., San Francisco, CA 94105.

H. RESERVATION OF RIGHTS

34. Except for those rights specifically waived in this paragraph, EPA reserves all statutory and regulatory rights, powers, authorities and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory rights, powers, authorities and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this CA/FO. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, that EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States; provided, however that EPA hereby waives its rights to seek civil penalties (other than as set forth herein) against Respondent arising from the alleged violations and findings of fact as specifically set forth in the Complaint. Except for those rights specifically waived in the preceding sentence, Respondent reserves all statutory and regulatory rights, powers, authorities and remedies, both legal and equitable, that Respondent has under RCRA, CERCLA or any other statute, rule or under common law.

35. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA, CERCLA or any other applicable local, tribal, State or federal laws or regulations.

36. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any applicable local, tribal, State or federal permits.

37. EPA reserves the right to perform any site characterization, feasibility study, response (including remedial or removal) and/or corrective actions pursuant to RCRA, CERCLA or other legal authority at the Facility or elsewhere. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the United States in connection with any such action.

I. OTHER CLAIMS

38. Nothing in this CA/FO shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, entity or corporation (other than Respondent) for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility or any other location.

J. MISCELLANEOUS

39. This CA/FO may be amended or modified only by written agreement signed by EPA and Respondent.

40. The effective date of this CA/FO (the "Effective Date") is the date on which Respondent receives it after its execution by the Regional Judicial Officer. A return receipt shall constitute adequate evidence of such receipt. Upon the Effective Date, this CA/FO shall be binding and in full effect without further notice.

41. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation hereof.

42. The under signed representative of each party hereby certifies that he or she is authorized to enter into this CA/FO, to execute it and to legally bind such party to it.

8/28/95
Date

Jeff Zelikson
Director, Hazardous Waste
Management Division

7/13/95
Date

By:
Westates Carbon-Arizona, Inc.
Name of signing officer: Stephen Richmond
Title of signing officer: Jr. Attorney

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No. RCRA 09-94-0001) be entered and Respondent shall pay in the manner and at the times specified herein, a civil penalty in the amount of FIFTY-SEVEN THOUSAND FIVE HUNDRED FIFTEEN DOLLARS ($57,515), and shall perform all other actions required by the Consent Agreement. This Final Order shall become effective in accordance with the terms of Paragraph 40 herein.

8/31/95
Date

Steven W. Anderson
Steve W. Anderson
Regional Judicial Officer

CERTIFICATION OF SERVICE

I hereby certify that the original copy of the Consent Agreement and Final Order dated September 5, 1995 was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent by first class mail to:

Frank W. Vanderheyden
Administrative Law Judge
Office of Administrative Law Judges
United States Environmental Protection Agency
401 "M" Street, S. W. (1900)
Washington, D. C. 20460

and by federal express and by certified mail, return receipt requested, to:

Monte McCue, Plant Manager
Westates Carbon-Arizona, Inc.
2523 Mutahar Street
P.O. Box E
Parker, Arizona 85344

and by first class mail to:

Stephen M. Richmond
Senior Counsel
Wheelabrator Environmental Systems, Inc.
Liberty Lane
Hampton, NH 03842

September 13, 1995
Date

Gloria Brownlee
Hazardous Waste Management Division