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| **From:** | Smith, Candace |
| **To:** | Gallagher, Shirin; Chu, Xiangyu; Dalrymple, Anne; R10 Press Team; Downey, Scott; Jiles, Jordana; Kral, Laurie |
| **Subject:** | RCRA-10-2014-0163 - Flint Hill Resources - CAFO |
| **Date:** | Monday, September 08, 2014 1:57:36 PM |
| **Attachments:** | RCRA-10-2014-0163 CAFO_OCR.pdf |

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A copy of this CAFO was sent out today, via Certified Mail, to Jane E. Schilmoeller.
Here is the pdf.

Candace H. Smith
Administrative Assistant / Management Analyst
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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|---|---|---|
| In the Matter of: | ) | DOCKET NO. RCRA-10-2014-0163 |
| FLINT HILLS RESOURCES ALASKA, LLC NORTH POLE REFINERY | ) | **CONSENT AGREEMENT** |
| North Pole, Alaska | ) | |
| Respondent. | ) | |

## 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. 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 Flint Hills Resources Alaska, LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").



**U.S. Environmental Protection Agency**
**1200 Sixth Avenue, Suite 900, ORC-158**
**Seattle, Washington 98101**
**(206) 553-1037**

## 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 EPA's 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. EPA'S ALLEGATIONS

3.1 40 C.F.R. § 260.10 defines a "person" as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

3.2 40 C.F.R. § 261.2(a)(1) defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§260.30 and 260.34.

3.3 40 CFR § 261.3 defines "hazardous waste" as a "solid waste" that has not been excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.4 40 CFR § 260.10 defines a "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.5 Respondent is an Alaska limited liability company doing business in the state of Alaska.

3.6 Respondent is a "person" as that term is defined by 40 C.F.R. § 260.10.

3.7 At all times relevant to the allegations set forth herein, Respondent has been the "owner" and "operator" of the facility located at 1100 H & H Lane, North Pole, Alaska (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10.

3.8 At all times relevant to EPA's allegations, the Facility was a petroleum refinery that refined crude oil to produce petroleum derivatives including gasoline. Groundwater remediation activities, among other processes at the Facility, result in the generation of solid and hazardous wastes.

3.9 The Facility is a "generator" as defined by 40 C.F.R. § 260.10.

3.10 At all times relevant to the allegations set forth herein, the Facility was not a permitted treatment, storage, disposal facility, nor an interim status facility under Section 3005 of RCRA, 42 U.S.C. § 6925.

## VIOLATIONS ALLEGED BY EPA

### COUNT 1: Failure to Make a Hazardous Waste Determination

3.11 40 C.F.R. § 262.11 requires a person who generates solid waste to determine if that waste is a hazardous waste using the methods provided in 40 C.F.R. § 262.11(a)-(d).

3.12 On June 19, 2013, Respondent conducted groundwater remediation activities at the Facility that caused the generation of spent groundwater pre-filters containing iron sulfide (hereafter "spent groundwater pre-filters").

3.13 At the time of the generation of the spent groundwater pre-filters, Respondent had not made a hazardous waste determination for the waste in accordance with the methods specified at 40 C.F.R. § 262.11(a)-(d).

3.14 40 C.F.R. § 261.21(a)(2) provides that a solid waste exhibits the characteristic of ignitability if a representative sample of a non-liquid waste is capable under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

3.15 40 C.F.R. § 261.23(a)(1) provides that a solid waste exhibits the characteristic of reactivity if a representative sample of the waste is normally unstable and readily undergoes violent change without detonating.

3.16 The spent groundwater pre-filters generated on June 19, 2013, subsequently self-ignited and caused two fires that burned vigorously and persistently, thereby exhibiting the characteristics of ignitability and reactivity.

3.17 Respondent's failure to determine that the spent groundwater pre-filters generated at the Facility were hazardous waste is a violation of 40 C.F.R. § 262.11.

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

3.18 Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste have a permit or interim status.

3.19 40 C.F.R. § 262.34(a) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.34(a)(1)-(4) or 40 C.F.R. § 262.34(b).

3.20 40 C.F.R. § 262.34(a)(1), which incorporates by reference the requirements of 40 C.F.R. § 265.173(a), allows a generator to store its hazardous waste in a container provided that the container must always be closed during storage, except when it is necessary to add or remove waste.

3.21 From June 19, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll-off container that did not have a lid.

3.22 Respondent failed to store a hazardous waste in a container that was always closed except when necessary to add or remove waste as required by 40 C.F.R. § 262.34(a)(1) and 40 C.F.R. § 265.173(a).

3.23 40 C.F.R. § 262.34(a)(2) requires that a generator clearly and visibly mark the date upon which each period of accumulation begins for inspection on each container holding a hazardous waste.

3.24 From June 19, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll-off container which was not marked with a hazardous waste accumulation start date.

3.25 Respondent did not clearly and visibly mark the date of each period of hazardous waste accumulation on its hazardous waste container as required by 40 C.F.R. § 262.34(a)(2).

3.26 40 C.F.R. § 262.34(a)(3) provides that, while being accumulated on-site, each container storing a hazardous waste be labeled or marked clearly with the words "Hazardous Waste."

3.27 From June 19, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll-off container which was not marked with the words "Hazardous Waste."

3.28 Respondent stored a hazardous waste at the facility without labeling the waste's container with the words "Hazardous Waste" as required by 40 C.F.R. § 262.34(a)(3).

3.29 40 C.F.R. § 262.34(a)(4), which incorporates by reference the requirements of 40 C.F.R. § 265.31, requires a generator of hazardous waste to maintain and operate its facility in such a manner as 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.

3.30 On June 20, 2013, and June 22, 2013, Respondent maintained and operated its facility in such a manner that spent groundwater pre-filters, a hazardous waste, were exposed to oxygen and caused pre-filters in the roll-off container to ignite.

3.31 Respondent failed to maintain and operate the Facility in such a manner as to minimize the possibility of a fire, as required by 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.31.

3.32 Respondent failed to comply with the conditions for the accumulation of hazardous waste at the Facility without a permit or interim status specified at 40 C.F.R. § 262.34(a)(1)-(4) and 40 C.F.R. § 262.34(b). Therefore, Respondent operated the Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

3.33 Under Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $37,500 per day for each violation, 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 or legal 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 violation and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined that an appropriate penalty to settle this action is $80,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 and will do so within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (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 cashier's check

or certified check 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 check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, 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-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Xiangyu Chu, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
chu.xiangyu@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of 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 penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed 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 pursuant to 26 U.S.C. § 6621 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 penalty described in Paragraph 4.3, including any additional costs incurred under Paragraphs 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 violations alleged in Part III and is managing spent groundwater pre-filters generated at the Facility as a hazardous waste.

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

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

DATED:

8/29/14

FOR RESPONDENT:

SHERYL CORRIGAN
Senior Vice President Environmental Health and Safety
Flint Hills Resources Alaska LLC

DATED:

9-4-14

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: | ) | DOCKET NO. RCRA-10-2014-0163 |
| FLINT HILLS RESOURCES ALASKA, LLC NORTH POLE REFINERY | ) | **FINAL ORDER** |
| North Pole, Alaska | ) | |
| Respondent. | ) | |

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



**U.S. Environmental Protection Agency**
**1200 Sixth Avenue, Suite 900, ORC-158**
**Seattle, Washington 98101**
**(206) 553-1037**

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 8th day of September 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10



**U.S. Environmental Protection Agency**
**1200 Sixth Avenue, Suite 900, ORC-158**
**Seattle, Washington 98101**
**(206) 553-1037**

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Flint Hills Resources Alaska, LLC, Docket No.: RCRA-10-2014-0163**, 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:

Shirin Gallagher, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
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:

Jane E. Schilmoeller
Associate General Counsel – Environmental
Flint Hills Resources Alaska LLC
4111 East 37th Street North
Wichita, KS 67220

DATED this 8th day of Sept, 2014.

Candace H. Smith

CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10