Azad, Ava

From: Mcdonald, Cat D. (AFRC-SH)[MECX Inc.] <cat.d.mcdonald@nasa.gov>
Sent: Friday, February 03, 2017 5:40 PM
To: Freyre, Dominique
Cc: Mcdonald, Cat D. (AFRC-SH)[MECX Inc.]
Subject: RE: EPA - CAFO

Ms. Freyre,

Thank You so much for all of your help!

We will also keep you posted on anything we discover in our research.

You have a wonderful weekend as well.

Thanks Again,
Cat

Cat McDonald
Environmental Lead
NASA Armstrong Flight Research Center
AFRC-SH/MECX
Office (661) 276-5045
Cell (661) 524-1855/802-2455
Fax (661) 276-2254
E-mail: cat.d.mcdonald@nasa.gov

From: Freyre, Dominique [mailto:Freyre.Dominique@epa.gov]
Sent: Friday, February 03, 2017 11:23 AM
To: Mcdonald, Cat D. (AFRC-SH)[MECX Inc.] <cat.d.mcdonald@nasa.gov>
Subject: EPA - CAFO

Hi Cat,

Please find attached the Consent Agreement and Final Order (CAFO) that we discussed this morning.

I hope this helps in answering some of your questions. I will let you know when I hear back from others in my agency on this issue.

Please let me know if there is anything else I can do to help.

Have a great weekend!
Nikki

Dominique S. Freyre
US EPA/OECA/FFEO
1200 Pennsylvania Ave., NW
WJC South Room 2202K
Washington, DC 20460
Phone: 202-564-0433
Email: freyre.dominique@epa.gov

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 SEP 21 AM 8:30

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:	)	
	)	
US Technology Corporation	)	
4200 Munson Street NW	)	
Canton, Ohio 44718	)	**CONSENT AGREEMENT**
	)	**AND FINAL ORDER**
Respondent	)	
	)	Docket No.: RCRA-07-2016-0032
Proceeding under Section 3008(a) of the	)	
Resource Conservation and Recovery	)	
Act as amended, 42 U.S.C. § 6928 (a)	)	
	)	

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and US Technology Corporation (UST or Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. The Respondent is US Technology Corporation (UST), a company incorporated under the laws of Ohio but not listed with the office of the Missouri Secretary of State.

Statutory and Regulatory Framework

5. The state of Missouri (Missouri) has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and Missouri has adopted by reference the federal regulations cited herein at pertinent parts of 10 C.S.R. Title 25. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

Factual Background

6. Respondent is an Ohio corporation and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and in 40 C.F.R. § 260.10, which is incorporated by reference at 10 CSR 25-3.260.

7. Respondent maintains several facilities throughout the United States. These facilities are listed in Appendix A to this CA/FO.

8. At all times relevant to this action, Respondent was in the business of providing bead blast material to its customers. The bead blast media was used to strip paint from airplanes, vehicles and equipment. Such use can result in toxic levels of metals, including cadmium and chromium, in the spent bead blast material (SBM). Once used, the SBM was returned to Respondent. Respondent represented that the SBM would be recycled upon its return.

9. At all times relevant to this action, Respondent was the "operator" of a hazardous waste facility located at 7627 Zero Road, near Berger, Missouri ("the Berger, Missouri facility"), as defined at 40 C.F.R. § 260.10, which is incorporated by reference at 10 CSR 25-3.260. The facility was leased by and co-operated by Missouri Green Materials LLC (MGM).

10. Beginning in or around 2000, Respondent shipped SBM to a company called Hydromex for recycling. Instead of recycling the SBM, Hydromex buried millions of pounds of SBM at its facility in Yazoo City, Mississippi. In 2008, the owner of the Hydromex facility pleaded guilty to illegal storage of hazardous waste and making false statements related to the buried SBM and was sentenced to prison.

11. Between 2003 and 2013, the Mississippi Department of Environmental Quality (MDEQ) worked with Respondent to allow it to recover the SBM from the Hydromex facility in Yazoo City ("the Yazoo City SBM") and recycle it. MDEQ had approved plans to recycle the Yazoo City SBM as roadbed material for the Mississippi Department of Transportation, but after

the project didn't work out, MDEQ determined that the Yazoo City SBM was hazardous waste and told Respondent not to ship any more of the Yazoo City SBM off-site.

12. In December 2013, MDEQ notified the Missouri Department of Natural Resources (MDNR) that numerous shipments of SBM from the Hydromex facility in Yazoo City had been shipped to the Berger, Missouri facility. In addition, MDNR learned that Respondent had shipped SBM from some of its other facilities to the Berger, Missouri facility. These shipments took place between at least October 24, 2013 and December 31, 2013.

13. MDNR personnel inspected the Berger, Missouri facility on December 13, 2013. The inspection revealed that Respondent was storing large quantities of SBM in supersack containers (each measuring approximately 4 feet on each side) and 55-gallon containers at the Berger, Missouri facility.

14. EPA conducted sampling of the SBM at the Berger, Missouri facility on June 3 through 6, 2014. The results of this sampling confirmed that Respondent was storing hazardous waste at the Berger, Missouri facility. Over 77% of the samples analyzed from this sampling event failed the Toxicity Characteristic Leaching Test (TCLP) for cadmium and/or chromium.

15. According to MDNR personnel, there are approximately nine million pounds of SBM from the Hydromex facility in Yazoo City, Mississippi at the Berger, Missouri facility as well as approximately four million pounds of SBM from other facilities owned by Respondent. In its response to an EPA information request, Respondent stated that the four million pounds of SBM had been shipped from Respondent's facilities in Utah, Arkansas, Georgia and Ohio.

RCRA Violation

16. The allegations stated in paragraphs 6 through 15 above are herein re-alleged and incorporated as if fully set forth herein.

Operation of a RCRA storage facility without a permit

17. Pursuant to 40 C.F.R. Part 261, which is incorporated by reference at 10 CSR 25-3.260, a solid waste may be a hazardous waste either because the waste meets a hazardous waste listing or because the waste exhibits a hazardous characteristic.

18. Analysis of the samples collected by EPA in June 2014 showed that the SBM exhibited the hazardous characteristic of toxicity for cadmium and/or chromium, and is therefore a "hazardous waste" within the meaning of 40 C.F.R. § 260.10, which is incorporated by reference at 10 CSR 25-3.260.

19. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 260.390.1(1) of the Revised Statutes of Missouri (RSMo), require each person owning or operating a facility for the

treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

20. Respondent does not have a permit to operate a hazardous waste treatment, storage or disposal facility.

21. Respondent's operation of a hazardous waste storage facility at 7627 Zero Road, Berger, Missouri is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and Section 260.390.1(1) of the Revised Statutes of Missouri (RSMo).

CONSENT AGREEMENT

22. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

23. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO set forth below.

24. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

25. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of the CA/FO.

26. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

27. This CA/FO addresses all civil administrative claims for the RCRA violation identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

28. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

30. This CA/FO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

31. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 16 of the Final Order, that all requirements hereunder have been satisfied.

32. By its signature on this CA/FO, Respondent certifies that it is currently in compliance with RCRA.

Reservation of Rights

33. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

34. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

35. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any 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 Berger, Missouri facility.

36. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste by Respondent at the Berger, Missouri facility may present an imminent and substantial endangerment to human health and the environment.

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

III. FINAL ORDER

A. Work To Be Performed

1. While Complainant is not seeking civil penalties as part of this Final Order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for the assessment of civil penalties for failure to take any actions contained within a Compliance Order.

2. **Contractor selection.** Within fourteen (14) days of the effective date of this Final Order, Respondent shall notify EPA of the name and qualifications of its selected Contractor, subject to EPA approval, to carry out all activities set forth herein. All work performed under this Final Order shall be under the direction and supervision of a professional engineer licensed in the state of Missouri or other Missouri licensed environmental professional with expertise in environmental investigations and remediation.

3. **Project Manager selection.** Within fourteen (14) days of the effective date of this Final Order, Respondent shall notify EPA of the name and qualifications of its selected Project Manager. To the greatest extent possible, Respondent's Project Manager shall be readily available during all work to be performed hereunder. Respondent's Project Manager shall have the authority to act on behalf of Respondent.

4. Respondent shall notify EPA of the name and qualifications of any other Contractors or Subcontractors retained to perform work under this CA/FO at least seven (7) days prior to commencement of such work.

5. EPA retains the right to approve or disapprove the selected Contractors, Subcontractors, or Project Manager retained by the Respondent. If EPA disapproves of any Contractors, Subcontractors, or Project Managers, Respondent shall retain a different Contractor, Subcontractor, or Project Manager, and notify EPA of the new Contractor, Subcontractor, or Project Manager's name and qualifications within seven (7) business days following receipt of EPA's disapproval. If EPA still disapproves of the selected Contractor, Subcontractor, or Project Manager, Respondent shall propose a different Contractor, Subcontractor and/or Project Manager until all are approved by EPA's representative identified in Paragraph 12 below.

6. Also within fourteen (14) days of the effective date of this Final Order, Respondent shall provide written or documentary evidence that Respondent has secured access to the Berger, Missouri facility for Respondent and Respondent's Project Manager, Contractor and subcontractors, as well as for EPA personnel and MDNR personnel.

7. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit to EPA a Work Plan for the treatment, sampling and off-site disposal of all of the SBM in storage at the Berger, Missouri facility. The Work Plan shall include:

a. A detailed description of the proposed treatment, sampling and disposal of all SBM currently located at the Berger, Missouri facility. The Plan will provide for treatment and sampling of SBM to meet the applicable Land Disposal Restriction requirements for characteristic wastes as set forth at 40 C.F.R. Part 268, and subsequent off-site disposal which meets all federal, state and local hazardous and solid waste regulations. The Work Plan shall also provide for performance of confirmation sampling to determine whether any SBM remains in the building, structures, areas where SBM has been loaded or unloaded, soil around the building, or any other part of the Berger,

Missouri facility that may have been affected by the storage, treatment or release of SBM, and a plan to remediate any residual SBM contamination.

b. A Quality Assurance Project Plan (QAPP), which shall address quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans" (EPA QA/R-5, EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans" (EPA QA/G-5, EPA/240/R-02/009, December 2002), as well as other such applicable guidance identified by EPA. The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations both prior to and after treatment. The QAPP shall also state what analytical laboratory Respondent will use for analysis of samples required by the Work Plan.

c. A Health and Safety Plan (HASP) to ensure the safety of the individuals working on the treatment and disposal of the SBM. The HASP shall be consistent with applicable Occupational Safety and Health Administration regulations. The HASP will not be subject to EPA approval or disapproval.

d. A schedule for implementation of all activities described in the work plan, including potential sampling and remediation of any residual contamination.

e. A scale diagram of the Berger, Missouri facility showing the warehouse building and all on-site structures; the location and type of proposed background and confirmation sampling points.

f. A list of the hazardous constituents (including underlying hazardous constituents) which will be analyzed for each sample collected, based on the composition of the SBM;

g. The proposed action levels (i.e., Regional Screening Levels for Chemical Contaminants at Superfund Sites) for the hazardous constituents described in paragraph (f) above. The purpose of the proposed action levels are to indicate whether contamination is present in the building, structures, soils or other areas of the Berger, Missouri facility where SBM was managed, treated or stored.

h. Provisions for additional work in the event that confirmation sampling indicates that SBM remains at any part of the Berger, Missouri facility. The Work Plan shall include a description of the actions that Respondent will take to remove soil, debris or other contaminated media and/or material as necessary to demonstrate that all SBM has been removed from all affected parts of the Berger, Missouri facility.

8. The Work Plan shall be reviewed and approved by EPA's representative identified in Paragraph 13 in accordance with the procedures outlined in Paragraph 14 of this Final Order.

9. Within fourteen (14) days of receipt of EPA's written approval of the Work Plan, Respondent shall commence the implementation of all activities required by the Work Plan, in accordance with the schedules set forth therein.

10. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Final Order. Respondent shall notify EPA not less than thirty (30) calendar days in advance of any confirmation sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

11. Within thirty (30) days of completion of all activities required by the approved Work Plan, Respondent shall submit to EPA's representative identified below a final report which summarizes the completion of all activities and includes legible copies of all SBM sampling and analysis results; confirmatory sampling and analysis results; shipping documents for the treated SBM; Land Disposal Restriction Notices; all logs and measurements for the treatment of the SBM indicating the weights and volumes of SBM, cement and water used during treatment; and other documentation generated as a result of the implementation of the approved Work Plan.

12. Any hazardous waste generated by Respondent at the Berger, Missouri facility during the implementation of the approved Work Plan must be transported off-site to a permitted hazardous waste treatment, storage or disposal facility, in accordance with all applicable federal, state and local regulation. Legible copies of all hazardous waste manifests and land disposal restriction notices must be provided to EPA within thirty (30) days of each shipment of hazardous waste from the Berger, Missouri facility.

13. All documents required to be submitted under this Final Order shall be sent to:

Elizabeth Koesterer
Environmental Engineer
AWMD/WEMM
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

14. EPA's representative will review and either approve the Work Plan, or approve the Work Plan with comments. Respondent shall implement the Work Plan as approved or as approved with comments. Failure to implement the approved Work Plan shall constitute a violation of this Final Order.

B. Parties Bound

15. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

C. Termination

16. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/14/2016
Date

Belinda L. Holmes
Senior Counsel

19 Sep 2016
Date

Mary Goetz, Chief
Waste Enforcement and Materials Management Branch

RESPONDENT:
US TECHNOLOGY CORPORATION

9/9/2016
Date

Signature, President

Raymond F. Williams, President
Printed name

IT IS SO ORDERED. This Final Order shall become effective immediately.

Sept. 21, 2016
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

APPENDIX A

US Technology Warehouse
Building E-16 Freeport Center
Clearfield, Utah 84061

US Technology Warehouse
6500 Grand Avenue
Fort Smith, Arkansas 72904

US Technology Warehouse
380 Allied Industrial Boulevard
Macon, Georgia 31206

LT Warehouse
1250 Bedford Avenue SW
Canton, Ohio 44710

US Technology Warehouse
220 Seventh Street SE
Canton, Ohio 44702

IN THE MATTER Of US Technology Corporation, Respondent
Docket No. RCRA-07-2016-0032

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

holmes.belinda@epa.gov

Copy by First Class Mail to Respondent:

Laura Mills, Esq.
Mills, Mills, Fiely & Lucas
101 Central Plaza South
Canton, Ohio 44702

Dated: 9/21/16

Kathy Robinson
Hearing Clerk, Region 7