UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SENT VIA E-MAIL

MAY 25 2018

REPLY TO THE ATTENTION OF:

To: Mr. Thomas Athans
1001 Woodward Ave
Suite #400
Detroit, Michigan 48226

Re: Consent Agreement and Final Order
Environmental Geo-Technologies, Inc.
EPA ID Number: MIR000016055
Docket Number: **RCRA-05-2018-0010**

Dear Mr. Athans:

Attached, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on May 25, 2018, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of $20,855, plus interest, in the manner prescribed in paragraphs 66-71 of the CAFO, and reference all checks with the Respondent's site name and docket number **RCRA-05-2018-0010**.

Thank you for your cooperation in resolving this matter. If you have any questions or concerns regarding this matter, please contact Brenda Whitney, of my staff, at 312-353-4796 or at whitney.brenda@epa.gov.

Sincerely,

Gary J. Victorine

Gary J. Victorine, Chief
RCRA Branch

Attachments

cc: Thomas Athans (tathans@heliconholdings.com) (w/CAFO)
Jim Day, MDEQ (DayJ@michigan.gov) (w/CAFO)
Lonnie Lee, MDEQ (LeeL@michigan.gov) (w/CAFO)
Jack Schinderle, MDEQ (schinderlej@michigan.gov) (w/CAFO)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** RCRA-05-2018-0010
	)	
Environmental Geo-Technologies, Inc.	)	**Proceeding to Assess a Civil Penalty**
Romulus, Michigan	)	**Under Section 3008(a) of the Resource**
EPA ID: MIR000016055	)	**Conservation and Recovery Act,**
	)	**42 U.S.C. § 6928(a)**
Respondent.	)	
	)	

REGIONAL HEARING CLERK
RECEIVED
MAY 25 2018
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Environmental Geo-Technologies, Inc., a corporation doing business in the State of Michigan.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies any other allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA,

42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1989).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to $25,000 per day for each violation of Subtitle C of RCRA according to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, may assess a civil penalty of up to $93,750 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 and was assessed between August 1, 2016 and January 15, 2017, and may assess a civil penalty of up to $95,284 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 and was assessed on or after January 15, 2017.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by MAC R 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an "operator" or "owner," as those terms are defined under MAC R. 299.9106(f) and (g) and 40 C.F.R. § 260.10, of a facility located at 28470 Citrin Drive, Romulus, Michigan (facility).

18. At all times relevant to this CAFO, Respondent's facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. The facility is comprised mainly of one building structure with various entry and exit points for truck and foot traffic, and a rail spur. The facility also contains two Underground Injection Control (hereinafter "UIC") wells used for the underground disposal of hazardous waste.

19. Respondent's facility is a "facility," as that term is defined under MAC R 299.9103(q), and 40 C.F.R. § 260.10.

20. At all times relevant to this CAFO, Respondent held a Hazardous Waste Management Facility Operating License ("Operating License") from the State of Michigan Department of Environmental Quality for storage and treatment of incoming listed and characteristic hazardous waste at its facility.

21. The Operating License is effective from September 26, 2011 through September 26, 2021.

22. Respondent's operations consist in part of accepting hazardous liquid wastes from various sources for treatment and disposal. In treatment, Respondent generates "filter cake" and effluent. In disposal, the filter cake is stored in a 20 cubic yard roll-off box (hereinafter "ROB") and is sent off-site for stabilization. The effluent is processed through a filter before being disposed of in a UIC.

23. Respondent also operates an on-site laboratory which generates "laboratory wastes"

that are temporarily stored in 5-gallon buckets or 55-gallon drums.

24. Respondent also generates "incidental wastes" from off-loading incoming tanker trucks and from the general management of wastes through the plant, which are temporarily stored in 5-gallon buckets or 55-gallon drums.

25. At all times relevant to this CAFO, Respondent's filter cake, laboratory wastes, and incidental wastes are "solid wastes" by being discarded, abandoned, and disposed of, as those terms are defined in MAC R 299.9202 and 40 C.F.R. § 261.2.

26. At all times relevant to this CAFO, Respondent's filter cake, laboratory wastes and incidental wastes are "hazardous wastes," as that term is defined in MAC R 299.9203 and 40 C.F.R. § 261.3, carrying the waste numbers from which it was derived including all listings and characteristics.

27. Respondent stored, transported, disposed of, or otherwise handled its hazardous waste in "containers" as that term is defined under MAC R 299.9102(q) and 40 C.F.R. § 260.10. These containers included the aforementioned 5-gallon buckets, 55-gallon containers, and ROBs.

28. At all times relevant to this CAFO, Respondent's holding of hazardous waste in containers constituted hazardous waste "storage," as that term is defined under MAC R 299.9107(dd) and 40 C.F.R. § 260.10.

29. Respondent is a "generator," as that term is defined under MAC R 299.9104(b) and 40 C.F.R. § 260.10.

30. Respondent generated and managed hazardous waste at the facility after November 19, 1980.

31. On March 15-17, 2016, U.S. EPA conducted a Compliance Evaluation Inspection of the facility (the inspection).

32. On May 25, 2016, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

33. On July 6, 2016, Respondent submitted to U.S. EPA a written response to the Notice of Violation, hereinafter referred to as "Response."

34. At all times relevant to this CAFO, Respondent generated more than 1,000 kilograms of hazardous waste at the facility during each calendar month.

35. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Michigan regulations as part of the applicable state hazardous waste management program for the state of Michigan, or both.

Count I: Failure to Meet Conditions for a Storage License Exemption for Hazardous Waste Generators under MAC R. 299.9306

36. Complainant incorporates paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

37. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the storage of hazardous waste restricted from land disposal by any person in an unlicensed area is prohibited.

38. A generator of hazardous waste in Michigan may accumulate hazardous waste on-site in an unlicensed area for 90 days or less, provided that the generator complies with all applicable conditions set forth in MAC R 299.9306(1) – (3) and 40 C.F.R.§ 262.34(a) - (c).

Storage of Hazardous Waste Over 90 Days

39. Pursuant to MAC R 299.9306(3) [40 C.F.R. § 262.34(b)], a generator who accumulates hazardous waste for more than 90 days in an unlicensed area is an operator of a storage facility and is subject to the requirements of Mich. Admin. Code parts 5, 6, and 7 and 40

C.F.R. parts 264, 265, 268, and 270 unless he has been granted an extension to the 90-day period.

40. At the time of the Inspection, Respondent had generated and stored ten full ROBs of listed hazardous waste filter cake outside in an area located at the southeast corner of the property that was not specifically designated with management conditions in the Operating License for the storage of generated wastes. Nine of these containers had been marked with start dates of accumulation greater than 90 days prior to the date of the Inspection.

41. The containers referenced in paragraph 40, above, were marked with the following start dates of accumulation: 2/2/15, 6/5/15, 8/16/15, 8/19/15, 8/28/15, 9/16/15, 9/17/15, 10/9/15, and 11/11/15.

42. At all times relevant to this CAFO, Respondent, as a generator had not applied for coverage under the Operating License for storage of wastes generated at the facility or been granted an extension to accumulate hazardous waste for more than 90 days.

Failure to Label Satellite Accumulation Containers

43. A generator of hazardous waste in Michigan may accumulate hazardous waste on-site in satellite accumulation containers without applying for coverage under the Operating License for storage of wastes generated at the facility and without complying with MAC R 299.9306(1) or 40 C.F.R. § 262.34(a), provided that the generator complies with all applicable conditions set forth in MAC R 299.9306(2) and 40 C.F.R. § 262.34(c).

44. Pursuant to MAC R 299.9306(2), a generator must ensure that while hazardous waste is being accumulated in satellite containers on site, each container is marked with the words "Hazardous Waste" and with either the waste's chemical name or waste number.

45. At the time of the inspection, Respondent failed to properly mark the following

containers:

(a) one 30-gallon container of laboratory waste in the on-site laboratory, which was mislabeled as "Non-Hazardous Waste;"

(b) four 5-gallon buckets of incidental waste positioned beneath sampling ports on the primary settling tanks (PSTs); and,

(c) three 5-gallon buckets of incidental waste used to collect leaks from the unloading pump stations.

46. At all times relevant to this CAFO, Respondent did not apply for coverage under the Operating License for storage of wastes generated at the facility, or comply with MAC R 299.9306(1) or 40 C.F.R. § 262.34(a).

47. The failure to comply with the conditions of MAC R 299.9306(2) and (3) and 40 C.F.R. § 262.34(b) and (c) as noted in paragraphs 43-46, above, subjects the generator of hazardous waste to the requirements of MAC parts 5, 6, and 7 and 40 C.F.R. parts 264, 265, 268, and 270.

48. Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of MAC parts 5, 6, and 7; 40 C.F.R. Part 265; and 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13.

Count II: Failure to Close Containers of Hazardous Waste

49. Complainant incorporates paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

50. Pursuant to MAC R 299.9306(1)(a)(i) and 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(a), a generator must keep hazardous waste containers closed except when it is necessary to add or remove waste.

51. At the time of the Inspection, one 20-cubic yard ROB of filter cake positioned beneath a filter press was open and waste was neither being added nor removed.

52. Pursuant to MAC R 299.9306(2) and 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a), a generator of hazardous waste who holds hazardous waste in satellite accumulation containers must keep those containers closed when waste is neither being added nor removed.

53. At the time of the Inspection, the following containers were not closed and waste was neither being added nor removed:

(a) Four 5-gallon buckets of incidental waste positioned beneath sampling ports on the PSTs; and

(b) Two 5-gallon buckets of incidental waste used to collect leaks from the unloading pump stations.

54. Respondent's failure to close containers of hazardous waste except when necessary to add or remove waste violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at MAC R 299.9306(1)(a)(i) and 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(a), as well as at MAC R 299.9306(2) and 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a).

Count III: Failure to Sign Manifest

55. Complainant incorporates paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

56. Pursuant to MAC R 299.9304(2)(d) and 40 C.F.R. § 262.23(f)(1)(ii), a generator must sign Item 18c of an original manifest shipping document if the original manifest is used for a rejected shipment that is returned to the generator by a designated facility.

57. At the time of the inspection, Respondent failed to sign Item 18c of a manifest for one ROB of filter cake that was offered by the Respondent on August 19, 2015, and subsequently rejected by the designated facility.

58. Respondent's failure to sign Item 18c of a rejected manifest violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at MAC R 299.9304(2)(d) and 40 C.F.R. § 262.23(f)(1)(ii).

Count IV: Violation of Part II, Condition C.1. of the Operating License

59. Complainant incorporates paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

60. According to Condition C.1. of Part II of the Operating License, the licensee shall inspect the facility in accordance with the Inspection Requirements, Attachment 3, of the Operating License, and comply with the inspection requirements of MAC R 299.9605(1) and 40 C.F.R. § 264.15.

61. Under 40 C.F.R. § 264.15(b)(4), at minimum, the inspection schedule must include the items and frequencies called for in, among other regulations, 40 C.F.R. §§ 264.193 and 264.195.

62. Under 40 C.F.R. § 264.195(b), the owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment.

63. 40 C.F.R. § 264.193(c)(3) clarifies that the leak detection system should be designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, unless the operator demonstrates exception to this rule to the Regional Administrator.

64. At the time of the inspection, Respondent was operating a shift schedule five days a week. Respondent was conducting inspections of leak detection equipment Monday through Friday, and not on a 24-hour schedule which included Saturdays or Sundays.

65. Respondent's failure to conduct daily inspections of leak detection equipment every 24 hours violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the License Condition C.1. of Part II of the Operating License.

Civil Penalty

66. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is $20,855.00. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

67. Within 30 days after the effective date of this CAFO, Respondent must pay a $20, 855.00 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

[The check must state [the case title] and the docket number of this CAFO].

[for electronic funds transfer][by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:]

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

[In the comment or description field of the electronic funds transfer, state [the case title] and the docket number of this CAFO.]

[for ACH, also known as REX or remittance express][by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:]

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

[for on-line payment][by on line payment. To pay on line go to:]

WWW.PAY.GOV
Use the Search Public Forms option and enter 'sfo 1.1' in the search field.
Open form and complete required fields.

68. [for payment by check] A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brenda Whitney (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

69. This civil penalty is not deductible for federal tax purposes.

70. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

71. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

73. At the time of signing of this CAFO, Respondent returned to compliance with the RCRA violations alleged in the CAFO.

74. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

75. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

76. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

77. The terms of this CAFO bind Respondent, its successors, and assigns.

78. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

79. Each party agrees to bear its own costs and attorney's fees in this action.

80. This CAFO constitutes the entire agreement between the parties.

81. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Oviedo.Luis@epa.gov (for Complainant), and tathans@heliconholdings.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

Environmental Geo-Technologies - Respondent

4/25/18
Date

Tom Athans
Vice-President
Environmental Geo-Technologies,
Inc./Helicon Holdings, Inc.

United States Environmental Protection Agency, Complainant

5/17/2018
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Land and Chemicals Division

In the Matter of:
Environmental Geo-Technologies, Inc.
Docket No. RCRA-05-2018-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

May 25, 2018
Date

Ann L Coyle
Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: **Environmental Geo-Technologies, Inc.**
EPA ID Number: **MIR000016055**
Docket Number: **RCRA-05-2018-0010**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number **RCRA-05-2018-0010**, which was filed on May 25, 2018, in the following manner to the addressees:

Copy to Respondent by Certified U.S. Mail Return-Receipt Requested:	Mr. Arthur H. Siegal Jaffe Raitt Heuer & Weiss, P.C. 27777 Franklin Road, Suite 2500 Southfield, Michigan 58034
Copy by e-mail to Respondent: **(Authorized in CAFO)**	Mr. Thomas Athans (Representative for Respondent) tathans@heliconholdings.com
Copy by e-mail to Attorney for Complainant:	Luis Oviedo oviedo.luis@epa.gov
Copy by e-mail to Case Assignee:	Brenda Whitney whitney.brenda@epa.gov
Copy by e-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: May 25, 2018

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5