UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7000 0520 0025 3714 8666
Return Receipt Requested

Re: TSCA-9-2005-0002

Date: MAY 03 2005

Mr. Andrew M. Kenefick, Esq.
Senior Legal Counsel
Waste Management, Inc.
801 Second Ave., Suite 614
Seattle, WA 98104

Dear Mr. Kenefick:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. Section 22.13 and 22.18, which contains the terms of the settlement reached with David Kim of the EPA Region 9 Office of Regional Counsel. Your completion of all actions enumerated in the CA/FO will resolve this case. If you have any questions, please contact Christopher Rollins at (415) 947-4166.

Sincerely,

Enrique Manzanilla
Director
Communities and Ecosystems Division

Enclosures

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

NANCY MARVEL
Regional Counsel
United States Environmental Protection Agency, Region IX

DAVID H. KIM
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

Attorneys for Complainant

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	)	Docket No. TSCA-09-2005-0002
	)	
Chemical Waste Management, Inc.	)	CONSENT AGREEMENT
	)	AND FINAL ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 and 22.18
Respondent	)	
	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX") and Chemical Waste Management, Inc. ("Respondent") agree to settle this case initiated under the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2601 et seq., and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. The Complainant is the Director of the Communities and Ecosystems Division (formerly Cross Media Division), EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Director of the Communities and Ecosystems Division.

3. Respondent is a Delaware corporation that owns and operates a solid and hazardous waste disposal facility located near Kettleman City, California (the "Facility").

B. STATUTORY AND REGULATORY BASIS

4. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), establishes requirements for handling and disposal of polychlorinated biphenyls ("PCBs").

5. EPA has issued comprehensive regulations governing manufacturing, processing, distribution, and disposal of PCBs at 40 C.F.R. Part 761.

6. Section 15 of TSCA, 15 U.S.C. § 2614, provides that "[i]t shall be unlawful for any person to (1) fail or refuse to comply with . . . (B) any requirement prescribed by section 2604 or 2605 [section 6 of TSCA] of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title. . . ."

C. ALLEGED VIOLATIONS

7. Respondent is a "person" as that term is defined by 40 C.F.R. § 761.3.

8. On February 16, 1983, EPA Region IX issued an approval (the "Approval") to Respondent pursuant to section 6(e) of TSCA, 15 U.S.C. § 2605(e), and 40 C.F.R. § 761.75. The Approval authorized Respondent to construct and operate Landfill B-16 ("B-16") to dispose of PCB wastes.

9. EPA amended the Approval on February 22, 1988 and December 3, 1990.

10. At all times relevant to this action, Condition B of the Approval provided that "Landfill B-16 shall be designed, constructed and maintained as specified in plans submitted with the application dated August 5, 1983."

11. At all times relevant to this action, Condition D of the Approval provided that "Operational guidelines and procedures shall be adhered to at all times and shall be, for Landfill B-16, as specified in the Operation Plan submitted to EPA on February 5, 1981, as revised on September 17, 1982 and August 5, 1983, and hereby incorporated as a conditional part of this Approval to Operate. . . ."

12. At all times relevant to this action, Section III.F.2 of the August 5, 1983 Operation Plan for B-16 required installation of a monitoring well and three pressure-vacuum lysimeters at B-16 to detect any moisture or leachate within the unsaturated zone immediately beneath B-16.

13. At all times relevant to this action, Section III.F.3 of the August 5, 1983 Operation Plan for B-16 required monthly monitoring of the lysimeters for the presence of fluids. If any fluids were detected, they were required to be sampled and analyzed for PCBs, pH, specific conductance, and chlorinated organics.

14. From or about March 2000 to November 2003, Respondent failed to perform monthly monitoring of the lysimeters at B-16 for the presence of fluids, in violation of Section

III.F.3 of the August 5, 1983 Operation Plan for B-16, Conditions B and D of the Approval, and section 15 of TSCA, 15 U.S.C. § 2614.

D. RESPONDENT'S ADMISSIONS

15. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

16. Respondent hereby consents to the assessment of a civil penalty in the amount of TEN THOUSAND DOLLARS ($10,000), in conjunction with performance of the tasks set forth in Section I.F of this CAFO, as full, final, and complete settlement of the civil claims alleged in Section I.C of the CAFO. The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

Mellon Bank
U.S. EPA Region IX Hearing Clerk
P.O. Box 371099M
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the

penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

17. Payment of the above civil administrative penalty and any monies used to perform the tasks set forth in Section I.F of this CAFO shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

18. If Respondent fails to pay the civil administrative penalty specified in Paragraph 16 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA the stipulated penalty of $15,000 instead of the specified civil administrative penalty. Complainant also reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with TSCA and the implementing regulations.

19. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:

    a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such

collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in Paragraph 16. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of

Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. SUPPLEMENTAL ENVIRONMENTAL PROJECT

20. Respondent agrees to donate to Kings County Environmental Health Services ("KCEHS") some or all of the air quality and other environmental monitoring equipment (the "Environmental Equipment") as specified in the January 21, 2005 letter from Keith Winkler, Deputy Director, KCEHS, 330 Campus Drive, Hanford, California, 93230, to Robert G. Henry of Respondent (Attachment A). Respondent shall spend at least $37,500 (including all taxes, shipping, and handling costs) for the purchase of the Environmental Equipment to be donated to KCEHS. Respondent is, however, not obligated to purchase all of the equipment identified on Attachment A provided that Respondent has spent at least $37,500 for the Environmental Equipment. Within 30 days of the effective date of this CAFO, Respondent shall order and arrange for the payment and delivery of the Environmental Equipment.

21. Within 60 days of the effective date of this CAFO, Respondent shall submit a final report from a responsible corporate official to EPA Region IX that certifies completion of the donation required by Paragraph 20 of this CAFO and includes documentation verifying its expenditures for the Environmental Equipment. This documentation shall include, but is not limited to, copies of receipts, invoices, purchase orders and/or contracts. For purposes of this paragraph, the term "responsible corporate official" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- and decision-making

functions for the corporation, or (b) the manager of one or more operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. In addition, the final report shall contain the following certification statement:

> Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify that based on my inquiry of the person or persons directly responsible for gathering the information, this information is true, accurate, and complete.

Finally, the final report shall include documentation or a written acknowledgment from KCEHS showing that the Environmental Equipment has been received by that office. The deadline for submitting the final report may be extended up to 90 days if the donation of the Environmental Equipment has not been completed and/or documentation of written acknowledgment of receipt of the Environmental Equipment has not been received within 60 days of the effective date of this CAFO, in spite of Respondent's good faith and timely efforts to complete the donation and/or obtain the KCEHS documentation or acknowledgment. To obtain an extension of the deadline for submitting the final report, Respondent must send a written request to the Toxics Office Manager at the address specified in Paragraph 22 of this CAFO before the expiration of the deadline. The Toxics Office Manager must grant or deny the request within five business days of its receipt. Any decision regarding Respondent's request for an extension will be within the sole discretion of the Toxics Office Manager and will not be subject to further review.

22. All submittals required to be made pursuant to Paragraph 21 of this CAFO shall be sent by certified mail, with return receipt requested, to Christopher Rollins (CED-4) at:

Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

23. Except as provided in Paragraph 26 below, if the requirements of Paragraph 20 are not completed satisfactorily, Respondent shall immediately pay a stipulated penalty of $37,500.

24. If the requirements of Paragraph 20 are completed satisfactorily but Respondent spends less than $37,500 for the donation of the Environmental Equipment, Respondent shall immediately pay a stipulated penalty calculated as the difference between the actual costs incurred for the donation and $37,500.

25. Unless Respondent has already paid a stipulated penalty pursuant to Paragraph 23 above, if Respondent fails to submit a final report complying with the requirements set forth in Paragraph 21 by the deadline specified in the same, Respondent shall pay a penalty of $250 for every day that the report is late for the first fifteen days of delinquency and $500 for every day thereafter.

26. If the requirements of Paragraphs 20 and 21 are not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete those requirements; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended to complete those requirements, no stipulated penalty will be required.

27. The determination of whether the tasks have been completed in satisfactory manner and whether Respondent has made good faith, timely efforts to complete the tasks shall be within the sole discretion of EPA.

G. RETENTION OF RIGHTS

28. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.

29. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

30. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

32. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

33. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT CHEMICAL WASTE MANAGEMENT, INC.:

4/15/05
DATE

By: Robert G. Henry
Title: Director of Operations
Address: Chemical Waste Management, Inc.
P.O. Box 471
Kettleman City, CA 93239

FOR COMPLAINANT EPA REGION IX:

5/02/05
DATE

Enrique Manzanilla
Director, Communities and Ecosystems Division
(formerly Cross Media Division)
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and Chemical Waste Management, Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2005-0002) be entered, and Respondent shall pay a civil administrative penalty in the amount of $10,000, perform the tasks set forth in Section I.F of the Consent Agreement, and otherwise comply with the terms set forth in the Consent Agreement.

5/3/05
DATE

JOANNA DELUCIA
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATION OF SERVICE

I certify that the original and the foregoing Consent Agreement and Final Order in the matter of **Chemical Waste Management, Inc., Docket Number TSCA-9-2005-0002**, has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

Robert G. Henry
Director of Operations
Chemical Waste Management, Inc.
P.O. Box 471
Kettleman City, CA 93239

Certified Mail No.:
7000 0520 0021 6107 3020

and

Andrew M. Kenefick, Esq.
Senior Legal Counsel
Waste Management, Inc.
801 Second Avenue, Suite 614
Seattle, WA 98104

Certified Mail No:
7000 0520 0025 3714 8666

Date: May 3, 2005

Danielle E. Carr

Danielle E. Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105