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FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

In the matter of)	U.S. EPA Docket No.
)	RCRA 09-2010-0014
)	
TMW Corporation)	
)	CONSENT AGREEMENT
)	AND PROPOSED FINAL ORDER
EPA ID No. CAD 072924103)	
)	
<u>Respondent.</u>)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This civil administrative enforcement action was instituted pursuant to Section 3008(a)(1) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 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. The United States Environmental Protection Agency, Region IX ("U.S. EPA") instituted this action by service of a Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing ("Complaint") to TMW Corporation ("Respondent"). The Complaint charged Respondent with violations of Sections 3004, and 3005 of RCRA, 42 U.S.C. §§ 6924, and 6925, and regulations adopted pursuant thereto, at the facility operated by Respondent at 14660 Arminta Street, Van Nuys, California 91405 ("the Facility").

B. JURISDICTION AND PROCEDURE

2. Except as provided in Paragraph 3 below, Respondent neither admits nor denies any allegations of fact or law set forth in the Complaint. Respondent hereby agrees to waive any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b). Respondent hereby consents to the issuance of this Consent Agreement and Final Order ("CAFO") without adjudication.

3. For the purposes of this CAFO only, Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action set forth in the Complaint and over Respondent pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, and 40 C.F.R. §§ 22.4 and 22.37. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and

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issue this CAFO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CAFO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CAFO as provided herein.

C. PARTIES BOUND

4. This CAFO shall apply to and be binding upon Respondent and its agents, successors and assigns until such time as the civil penalty required under Section D has been paid and any stipulated penalties have been resolved. At such time as those matters are concluded, this CAFO shall terminate and constitute full settlement and satisfaction of all claims, violations and penalties alleged in the Complaint.
5. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
6. Until termination of this CAFO, Respondent shall give notice of this CAFO to any successor in interest prior to transfer of ownership or operation of Facility and shall notify EPA no later than one month after such transfer.
7. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CAFO, to execute and to legally bind Respondent to it.

D. PAYMENT OF CIVIL PENALTY

8. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) plus interest in full settlement of the civil penalty claims made in the Complaint. Subject to the payment schedule set forth below, such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Interest will accrue at the rate of 5%, which is the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. Respondent must pay the civil penalty and interest in accordance with the following schedule:

<i>Deadline to Submit Payment</i>	<i>Amount of Payment</i>
No later than THREE MONTHS after the effective date of this CAFO	\$25,246.58
No later than SIX MONTHS after the effective date of this CAFO	\$25,184.93
No later than NINE MONTHS after the effective date of this CAFO	\$25,123.29
No later than TWELVE MONTHS after the effective date of this CAFO	\$25,061.64

9. The aforesaid settlement amount was based upon EPA's consideration of the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), and in accordance with the applicable provisions of

the "June 2003 RCRA Civil Penalty Policy." Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), 69 Fed. Reg. 7121 (Feb. 13, 2004) and 73 Fed. Reg. 75340 (Dec. 11, 2008), authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009.

10. Respondent shall submit payment of the ONE HUNDRED THOUSAND DOLLAR (\$100,000.00) PLUS INTEREST civil penalty in accordance with the schedule set forth above in Paragraph 8. Unless EPA directs payments pursuant to this CAFO to a different address, each payment shall be made in civil penalty shall be paid by remitting a check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074

ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

11. A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both the following Region IX addresses:

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

and

Amy Miller (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

12. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.
13. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received in accordance with the schedule set forth in Paragraph 8 of this CAFO to avoid additional charges. If payment is not received by each deadline specified in the schedule in Paragraph 8 of this CAFO, additional interest will accrue on the principal amount due from the appropriate deadline set forth in the schedule at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent thirty (30) day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the deadline set forth in the schedule in Paragraph 8 of this CAFO.

Respondent will also be liable for stipulated penalties as set forth below for any payment not received by its deadline.

E. STIPULATED PENALTIES

14. In the event Respondent fails to submit a payment to EPA by the time required in this CAFO, Respondent shall pay stipulated penalties up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of delay, and up to FIFTEEN HUNDRED DOLLARS (\$1,500.00) per day for each day of delay thereafter.
15. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
16. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a written demand by EPA for such penalties. Such demand shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Unless EPA directs payments pursuant to this CAFO to a different address, any stipulated penalty payment shall be made in accordance with one of the options set forth above under paragraph 10.
17. At the time payment in accordance with the foregoing paragraph is made, a copy of the check or other form of payment or evidence thereof shall be sent to each of the following Region IX addresses:

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

and

Amy Miller (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105
18. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this action.
19. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

20. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CAFO.

F. RESERVATION OF RIGHTS

21. EPA expressly reserves all rights and defenses that it may have.
22. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CAFO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CAFO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein), 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.
23. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, California, or federal laws and regulations.
24. The entry of this CAFO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of the Complaint.
25. This CAFO is not intended to be nor shall it be construed as a permit. This CAFO does not relieve Respondent of any obligation to obtain and comply with any local, California, or federal permits.

G. OTHER CLAIMS

26. Nothing in this CAFO shall constitute or be construed as a release from any other claim, 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 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.

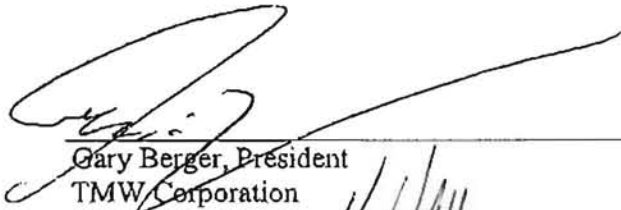
H. MISCELLANEOUS

27. By signing this CAFO, Respondent without admitting or denying them, certifies that all of the alleged violations set forth in Section C of the Complaint, which are or were capable of correction, have been corrected.
28. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
29. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
30. The Effective Date of this CAFO is the date the CAFO, once signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

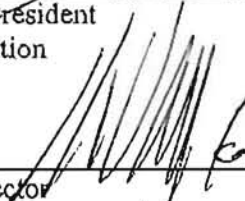
IT IS SO AGREED.

5/27/11
Date

61311
Date



Gary Berger, President
TMW Corporation



Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. RCRA 09-2010-0014) be entered and that TMW CORPORATION, ("Respondent") pay a civil penalty of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) PLUS INTEREST by checks payable to "Treasurer of the United States," or by any another method specified in paragraph 10 of this Consent Agreement and Final Order, within the time frames and in the amounts set forth in the schedule in paragraph 8 of this Consent Agreement and Final Order. A notice of each payment and a copy of each check or other form of payment or evidence thereof shall be sent to the EPA Region IX addresses specified in Paragraph 11 of this Consent Agreement and Final Order within each of the specific, applicable time frames set forth in the Schedule in Paragraph 8.

This Final Order, once signed, shall be effective immediately upon it being filed with the Regional Hearing Clerk.

06/27/11
Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (**Docket No. RCRA-09-2010-0014**) against **TMW Corporation**, was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Gary Berger
President
TMW Corporation
15148 Bledoe Street
Sylmar, CA 91342-2909

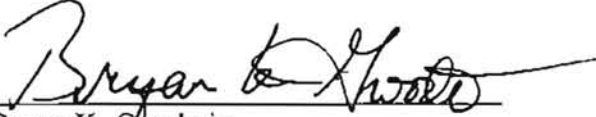
CERTIFIED MAIL NUMBER: 7007-2560-0001-7660-8355

A copy was mailed via POUCH MAIL to:

Hon. Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
MC 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Meredith Newton, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

6/23/11
Date