

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 AUG 18 PM 3:52

IN THE MATTER OF:)	Docket No. RCRA-08-2016-0006
)	FILED
)	EPA REGION VIII
High Plains Motors, Inc.)	HEARING CLERK
)	COMBINED COMPLAINT AND
EPA ID No. MTR000206946)	CONSENT AGREEMENT
)	
)	Proceeding pursuant to section 3008(a)
)	of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6928(a)
)	
Respondent.)	

The U.S. Environmental Protection Agency, Region 8 (EPA), and Respondent, High Plains Motors, Inc., by their undersigned representatives, hereby consent and agree as follows:

I. INTRODUCTION

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by, inter alia, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6928(a).
3. On September 29, 2015, the EPA filed a Compliance Order and Notice of Opportunity for Hearing (Compliance Order) under section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a).
4. Respondent has completed all compliance activities required under the Compliance Order to the satisfaction of the EPA.
5. The Compliance Order became a final order on October 29, 2015, pursuant to 42 U.S.C. § 6928(b) and 40 C.F.R. 22.37(b).

II. PARTIES BOUND

6. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each

signatory to this Agreement certifies that they are authorized to execute and legally bind the party they represent to this Agreement.

III. STATEMENT OF THE PARTIES

7. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations.
8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
9. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
10. This Agreement, upon incorporation into a final order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

IV. FINDINGS OF FACT AND LAW

11. High Plains is a "person" as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
12. High Plains operates an automobile dealership and service center located at 331 Front Street in Wolf Point, Montana (Facility), which is on privately held land within the exterior boundaries of the Fort Peck Indian Reservation.
13. High Plains is an "owner" and/or "operator" of the Facility as defined at 40 C.F.R. § 260.10.
14. The Facility is a "facility" as defined at 40 C.F.R. § 260.10.
15. On or about July 28, 2015, and July 29, 2015, an EPA representative conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility.
16. During the CEI, the EPA representative observed the following: approximately twenty-four unlabeled containers located in an outdoor storage yard identified by a Facility representative as containing used oil; ten unlabeled containers located indoors in the shop area identified by a Facility representative as containing used oil; three unlabeled tanks identified by a Facility representative as being used for the storage of used oil; releases to the soil of what appeared to be used oil; two unlabeled containers located in an outdoor storage yard identified by a Facility representative as containing paint solvent waste; approximately forty-nine containers of an oil/water/anti-freeze mixture; and evidence of evaporation of lacquer thinner in small open containers.
17. High Plains is a generator of solid waste as defined in 40 C.F.R. §§ 260.10 and 261.2.

18. During the CEI, a Facility representative informed the EPA representative that High Plains had not made hazardous waste determinations for the paint solvent waste, the oil/water/anti-freeze mixture or the lacquer thinner identified in paragraph 16, above.

V. FINDINGS OF VIOLATION

A. Failure to Comply with Used Oil Requirements

19. Pursuant to 40 C.F.R. § 279.20, a used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. On the date of the CEI, the Facility was subject to regulations applicable to used oil generators.
20. Pursuant to 40 C.F.R. §279.22, used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (SPCC) (40 C.F.R. part 112). At the time of the CEI, the Facility was generating used oil, which subjected it to evaluation of the applicability of an SPCC plan.
21. Pursuant to 40 C.F.R. § 279.22(c), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil." At the time of the CEI, the Facility had approximately twenty-four used oil containers in the storage yard, ten used oil containers inside the Facility, and three tanks containing used oil, all of which were unlabeled.
22. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials. At the time of the CEI, several areas of soils stained from a used oil release were observed.
23. High Plains' failure to evaluate the applicability of SPCC, label its used oil containers, and respond to releases of used oil are violations of 40 C.F.R. §§ 279.22, 279.22(c), and 279.22(d), respectively.

B. Failure to Make Hazardous Waste Determinations

24. Pursuant to 40 C.F.R. § 262.11, each person who generates a solid waste shall determine if that waste is a hazardous waste.
25. At the time of the CEI, High Plains had not made a hazardous waste determination on the paint solvent waste, oil/water/anti-freeze mixture and the lacquer thinner described in paragraph 16, above.
26. High Plains' failure to make a hazardous waste determination on these solid wastes is a violation of 40 C.F.R. § 262.11.

C. Treatment of Hazardous Waste Without Authorization

27. Pursuant to 42 U.S.C. § 6925(a), all facilities that treat, store or dispose of hazardous wastes must obtain a permit.
28. At the time of the CEI, High Plains was treating lacquer thinner by evaporating it in small open containers. The Facility provided the lacquer thinner's Material Safety Data Sheet (MSDS), which

showed that the substance would be ignitable at 21° F, and is, therefore, a characteristic ignitable hazardous waste as defined in 40 C.F.R. § 261.21.

29. High Plains' treatment of hazardous waste without a permit is a violation of 42 U.S.C. § 6925(a).
30. The State of Montana has been notified of this action in accordance with section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

VI. TERMS OF SETTLEMENT

A. Civil Penalty

31. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and after consideration of the facts of this case, the EPA has determined that a civil penalty of five thousand seven hundred and fifty-eight dollars (\$5,758.00) is appropriate to settle this matter.
32. Respondent consents and agrees to pay a civil penalty in the amount of five thousand seven hundred and fifty-eight dollars (\$5,758.00) in the manner described below:
 - a. Payment shall be in a single payment of \$5,758.00, due no later than thirty (30) calendar days from the date of the final order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:
U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Linda Jacobson
U.S. Environmental Protection Agency (8ENF-RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

33. If the payment is not received by the specified due date interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
34. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 3rd day from the date of the final order, and for each subsequent 30-day period that the debt, or any portion thereof, remains

unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within thirty days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

35. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

B. Supplemental Environmental Project

36. In response to the violations of RCRA alleged herein and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in this Agreement and in Appendix A, which the parties agree is intended to secure significant environmental or public health protection and improvement.

37. Respondent shall complete a SEP as described below:

- a. The SEP will consist of developing and implementing a junk vehicle recycling program on the Fort Peck Indian Reservation, as described in Appendix A.
- b. The SEP will be completed by October 31, 2018.
- c. Respondent's total expenditure for the SEP shall be no less than seventeen thousand and two hundred and seventy-two dollars (\$17,272.00).
- d. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

38. Respondent has elected to use Trader's Den of Poplar, Montana, as a third-party contractor to assist with implementation of the SEP. Respondent has represented to the EPA that Trader's Den has experience in the type of activities to be performed under the SEP. The specific activities to be performed by Trader's Den on behalf of Respondent are described in Appendix A to this Agreement. Respondent is responsible for ensuring that the entity or entities performing any portion of the SEP comply with all applicable terms of this Agreement.

39. Respondent has selected the residents of the Fort Peck Indian Reservation, including members of the Fort Peck Assiniboine & Sioux Tribes (Tribes), as the beneficiaries of the SEP.

40. Respondent certifies that, as of the date of this Agreement,

- a. that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$17,272.00;
- b. that, as of the date of executing this Agreement, Respondent is not required to perform or develop the SEP by any federal, state, tribal, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Agreement;

- d. that Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity;
- f. that for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. that Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP, and it has inquired of the SEP recipient and/or SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or the implementer that neither is a party to such a transaction.

41. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP under this Agreement shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency to enforce federal laws."

42. Within thirty (30) days after completion of the SEP described in Appendix A, Respondent shall submit a SEP Completion Report to the EPA. The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented, including a description of any problems encountered in completing the SEP and the solutions thereto;
- b. an itemized list with documentation (including invoices and/or purchase orders) of all Respondent's SEP expenditures;
- c. a description of the specific environmental and/or public health benefits resulting from implementation of the SEP, including (i) the volume of used oil burned for energy recovery, (ii) the number of batteries recycled, (iii) the amount of coolant recycled, (iv) the approximate amount, in tons, of metal crushed and recycled or reused, and (v) identification of the facility or individual recycling or reusing the recovered materials; and
- d. a certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this Agreement.

43. The SEP Completion Report shall include the following certification, to be signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

44. The SEP Completion Report shall be submitted on or before the due date specified in paragraph 42 to Linda Jacobson at the address provided in paragraph 32.

45. After receiving the SEP Completion Report, the EPA shall notify Respondent, in writing, (i) regarding any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that the EPA concludes that the SEP has been completed satisfactorily, or (iii) determine that the SEP has not been completed satisfactorily.
46. If the EPA elects to exercise option (i) in paragraph 45, i.e. the SEP Completion Report is determined to be deficient but the EPA has not made a final determination about the adequacy of the SEP completion itself, the EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency from the EPA within fourteen (14) days of receipt of such notification. The EPA and Respondent shall have an additional thirty (30) days from the EPA's receipt of such notification of objection to reach agreement on changes necessary to the SEP Completion Report. If the EPA and Respondent cannot reach agreement on any such issue within this 30-day period, the EPA shall provide a written statement of its decision on the adequacy of the SEP to Respondent, which decision shall be final and binding upon Respondent.
47. In the event Respondent fails to comply with any terms or provision of this Agreement relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Agreement, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. Except as provided in subparagraphs b and c below, if the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this Agreement, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of \$18,000.00, minus the amount that Respondent can demonstrate it spent on the SEP.
 - b. The EPA shall determine whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP.
 - c. If Respondent fails to timely and completely submit the SEP Completion Report required by this Agreement, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted.
 - d. Respondent shall pay any stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in section I.A.b above.
 - e. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Agreement.
48. Respondent shall maintain legible copies of documentation for the SEP Completion Report and for any other information submitted to the EPA relating to this SEP for five years and shall provide the EPA and the Tribes with copies of such documentation within fourteen days of any request from the EPA or the Tribes as applicable, for this documentation.
49. Respondent shall provide the EPA with quarterly reports describing the actions Respondent has taken to meet its obligations under the SEP. These reports are due every three (3) months after the effective date of this Agreement, with each quarterly report due ten (10) days after the end of each calendar quarter (e.g. October 10, 2016, for the third quarter of 2016, January 10, 2017 for the first quarter of 2017, etc.). These reports should include, at a minimum, a detailed update on the

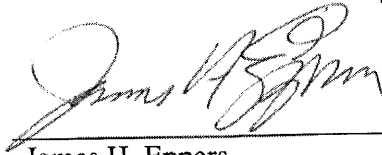
progress of the SEP, including a description of activities completed, milestones met during the reporting period, potential setbacks, expenditures made in implementation of the SEP, the vehicle recycling forms for each vehicle processed during the previous quarter and those activities scheduled for the next reporting period. In the first quarterly report, Respondent shall also submit copies of any marketing materials developed to publicize the SEP.

VII. GENERAL PROVISIONS

50. This Agreement, including Appendix A, contains all terms of the settlement agreed to by the parties.
51. This Agreement shall not relieve Respondent of its obligation to comply with RCRA and its implementing regulations.
52. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.
53. Nothing in this Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this Agreement.
54. The parties agree to forward the executed Agreement to the Regional Judicial Officer in accordance with 40 C.F.R. § 22.18(b)(2) with a request that it be incorporated into a final order.
55. Each party shall bear its own costs and attorney fees in connection with this matter.
56. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations and facts alleged herein.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
COMPLAINANT**

AUG 16 2016

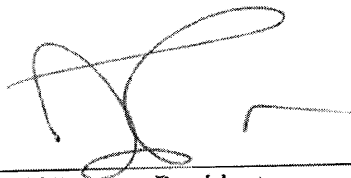


James H. Eppers
Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice



Aaron Urdiales
Director
RCRA/CERCLA Technical Enforcement
Program
Office of Enforcement, Compliance and
Environmental Justice

**HIGH PLAINS MOTORS, INC.,
RESPONDENT**



Jeff Presser, President
High Plains Motors, Inc.

Appendix A to Agreement
In the Matter of High Plains Motors, Inc., Respondent
Docket No. RCRA-08-2016- 0006

As the Supplemental Environmental Project (SEP) for the above-referenced Combined Complaint and Consent Agreement (Agreement), the Respondent shall develop and implement a junk vehicle recycling program on the Fort Peck Indian Reservation. Respondent reasonably believes it will be able to address approximately 86 junk vehicles under the SEP. After seeking input from the Fort Peck Assiniboine & Sioux Tribes (Tribes) and the EPA, Respondent will target the Wolf Point and Poplar areas of the Fort Peck Indian Reservation. The Tribes have agreed to help Respondent publicize this project. Marketing materials and advertisement paid for by the Tribes will not be credited toward Respondent's obligation to spend \$17,272.00 performing the SEP.

For the amount of \$17,272.00, Respondent proposes to:

- Remove abandoned or inoperable vehicles from the Fort Peck Indian Reservation, focusing on Tribal Housing Authority-owned housing units.
- Remove potential sources of pollution from the vehicles, including, but not limited to, oil, coolant, transmission fluid, brake fluid, gasoline, and batteries.
- Properly dispose of RCRA-regulated materials, according to standard industry practice, e.g. recycling the coolant and burning the oil for heat.
- Deposit vehicles at the Trader's Den junk yard, which has been approved by the Tribes, for crushing and recycling.

Respondent has elected to pay a third-party contractor, Trader's Den, to recover and remove the junk vehicles for crushing and recycling. Trader's Den will also remove the RCRA-regulated materials and deliver the used oil and anti-freeze to Respondent's place of business, High Plains Motors, for proper disposal. Trader's Den will salvage the batteries. Respondent shall create a form which, at a minimum, describes the vehicle by VIN number or physical description (where VIN number is unavailable) and by which both Respondent and Trader's Den certify that the vehicle and its potentially hazardous materials have been removed and properly disposed of. The forms shall be submitted to the EPA in the SEP Completion Report. Respondent has agreed to pay Trader's Den \$200.00 per vehicle, unless circumstances demand a different amount. If the price per vehicle changes, Respondent must document the necessity of the price difference in the itemized list of expenditures it includes in the SEP Completion Report.

Respondent, with assistance from the Tribes, will make all reasonable efforts to publicize the SEP such that the owners of inoperable vehicles voluntarily sign over title to their vehicles for proper disposal. However, if Respondent is unable to fulfill its obligations under this Agreement through a voluntary program, Respondent will assist the Tribes in effecting lease compliance orders, which may be issued to Housing Authority clients who are in violation of their lease by storing inoperable vehicles on Housing Authority property. Respondent will offer this service to the Tribes until it has spent the amount required by this Agreement on the SEP, within a two year period, not to exceed October 31, 2018.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **HIGH PLAINS MOTORS, INC.; DOCKET NO.: RCRA-08-2016-0006** was filed with the Regional Hearing Clerk on August 18, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 18, 2016, to:

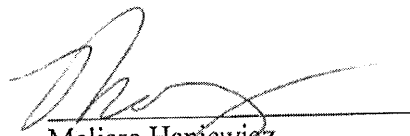
Respondent

Jeff Presser, President
High Plains Motors, Inc.
331 Front Street
Wolf Point, Montana 59201

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 18, 2016



Melissa Hanewicz
Regional Hearing Clerk

