



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Stephanie Hollembaek
Environmental Executive
US Department of Justice
Federal Bureau of Prisons
320 First Street, N.W., 10th Floor
Washington, D.C. 20001

RE: Notice of Determination on Voluntary Self-Disclosure Submitted by the Bureau of Prisons for Federal Correctional Institution - Marianna; Docket Number: 04-2011-9142

Dear Ms. Hollembaek:

Enclosed is a Notice of Determination (NOD) regarding the federally enforceable violations disclosed to the U.S. Environmental Protection Agency on December 27, 2010, by the Bureau of Prisons (BOP) for Federal Correctional Institution (FCI) Marianna, in Marianna, Florida. For FCI Marianna, the BOP disclosed potential violations of the following environmental statutes: the Clean Air Act, 42 U.S.C. §§ 7401 to 7671q; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 to 11050; and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k.

The enclosed NOD documents the EPA's findings that several violations self-disclosed by the BOP meet the criteria of the EPA Policy: "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 *Fed. Reg.* 19618 (April 11, 2000) (Audit Policy), and the Audit Agreement between the U.S. Department of Justice, the BOP and the EPA, Region 4. The NOD also documents the EPA's findings regarding potential violations that were determined not to be violations of federal law, or were found to be outside scope of the Audit Policy and were not reviewed.

As a result of the EPA's review of the information provided, the EPA intends to take no further action with respect to the federally enforceable violations identified and resolved by the NOD. If you have any questions, please feel free to contact me at (404) 562-8530 or buso.roberto@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roberto X. Busó".

Roberto X. Busó
Associate Regional Counsel

Enclosure

cc:

Craig Meyers

Associate General Counsel, Real Estate & Environmental Law

320 First Street, N.W. Room 900D

Washington, DC 20534

Stephen Flannery

Environmental Protection Manager

320 First Street, N.W. 10th Floor

Washington, DC 20534

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	<u>NOTICE OF DETERMINATION</u>
)	
Federal Bureau of Prisons)	DOCKET NUMBER: 04-2011-9142
Federal Correctional Institution- Marianna)	
3625 FCI Road)	
Marianna, Florida 32446)	Proceeding under Section 3008(a) of the
)	Resource Conservation and Recovery Act,
)	42 U.S.C. § 6928; Emergency Planning and
)	Community Right-to-Know Act, 42 U.S.C.
)	§§ 11001 to 11050; and Federal Water Pollution
)	Control Act, 33 U.S.C. §§ 1251 to 1387.
Respondent.)	
_____)	

NOTICE OF DETERMINATION

Pursuant to the U.S. Environmental Protection Agency policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" 65 *Fed. Reg.* 19618 (April 11, 2000) (Audit Policy), and the "Audit Agreement Between the U.S. Department of Justice, the Federal Bureau of Prisons, and the EPA" (Audit Agreement), the EPA hereby issues this Notice of Determination on federally enforceable violations disclosed to EPA on December 27, 2010, by the Federal Bureau of Prisons (BOP) for Federal Correctional Institution (FCI) Marianna, located in Marianna, Florida.

AUDIT POLICY

The EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, the EPA may substantially reduce or eliminate gravity-based civil penalties. However, the EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies all of the conditions summarized below, as set forth in the Audit Policy and modified by the Audit Agreement, the EPA will not seek gravity-based penalties for violations of the federal environmental requirements that were self-disclosed. The nine elements of the Audit Policy are: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

FINDINGS OF FACT

On December 27, 2010, the BOP disclosed potential violations of the Clean Air Act (CAA), 42 U.S.C. §§ 7401 to 7671q; the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 to 1387; the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11001 to

11050; and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k, at FCI Marianna. The potential violations were discovered during a self-audit conducted at FCI Marianna from October 4 to 6, 2010, and reported to the EPA on December 27, 2010. On March 18, 2011, the BOP submitted a final compliance report and certified that the violations had been corrected by February 2011.

The EPA finds that the following disclosures by the BOP for FCI Marianna are federally enforceable violations:

Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 to 11050:

Disclosure # EPCRA-001; 40 C.F.R. §§ 372.28 & 373.30 – The BOP disclosed that FCI Marianna failed to notify the EPA of a release of lead above the reporting threshold in EPA’s Toxic Release Inventory (TRI) regulations.

Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 to 1387:

Disclosure # TM-001; 40 C.F.R. § 112.5 – The BOP disclosed that FCI Marianna’s SPCC Plan, prepared in 2007, did not include all oil-storage containers 55-gallons or larger, included inaccurate information, and that the facility did not provide secondary containment for two 55-gallon drums of oil.

Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k:

Disclosure # HW-001; 40 C.F.R. §§ 261.5(g)(1) & 262.11 – The BOP disclosed that FCI Marianna failed to perform a hazardous waste determination on sediment collected from the oil/water separator prior to disposal.

Disclosure # HW-002; 40 C.F.R. § 262.5(g)(3) – The BOP disclosed that at FCI Marianna there was no system in place for the proper disposal of unused Meals Ready to Eat (MRE) heat packets generated at FCI Marianna.

Disclosure # UW-001; 40 C.F.R. § 279.22(c)(1) – The BOP disclosed that FCI Marianna failed to label one 250-gallon used oil tank, three 55-gallon used oil drums, and two 15-gallon used oil containers. Additionally, one 15-gallon and 11 5-gallon containers were incorrectly labeled “Waste Oil,” not “Used Oil.”

Disclosure # UW-002; 40 C.F.R. § 273.13 – The BOP disclosed that FCI Marianna was storing approximately twelve fluorescent lamp in a trailer, with the lamps exposed to breaking, and that three fluorescent lamps in the trailer were broken on the floor.

Additionally, the EPA finds that the following disclosures by the BOP for FCI Marianna are not federally enforceable violations:

Clean Air Act, 42 U.S.C. §§ 7401 to 7671q:

Disclosure # AE-001; 40 C.F.R. 82.154(a) – The BOP disclosed that an excess air conditioner at FCI Marianna had not been purged of coolant. The EPA determined it is not a CAA violation to store an air conditioning unit that contains coolant or refrigerant, and that because the coolant was not purged to the surrounding atmosphere, the institution did not disclose a federal CAA violation.

Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 to 1387:

Disclosure # WQ-002; 40 C.F.R. §§ 122.1 & 122.2 – The BOP disclosed that the drain beneath the hydro-sieve at FCI Marianna caused a leak of liquid sewage to the ground. The EPA determined that because the spill did not exceed Florida's reporting threshold, the institution did not disclose a federal CWA violation.

Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k:

Disclosure # HW-003; 40 C.F.R. §§ 261.1(c)(8), 261.4(22), 262.11, 262.34 & 261.39 – The BOP disclosed that FCI Marianna personnel could not demonstrate that cathode ray tubes (CRTs) were not being speculatively accumulated. The EPA determined that because the facility was able to document that the volume of CRTs shipped offsite for recycling exceeded the amount necessary to avoid speculative accumulation, the institution did not disclose a federal RCRA violation.

Disclosure # OHS-001; 40 C.F.R. § 279.22(d)(2) – The BOP disclosed that the lint collection system at FCI Marianna discharged oily water to the ground behind a building, staining approximately 2 square feet beneath the lint collection system. The EPA determined that because the stain was caused by wax used in steam irons rather than an oil-based discharge, the institution did not disclose a federal RCRA violation.

Finally, the EPA finds that the following disclosures by the BOP for FCI Marianna are not covered by the Audit Policy or Audit Agreement, and are therefore not covered by this Notice of Determination:

Disclosure # HM-001 – The BOP disclosed that various compressed gas bottles at FCI Marianna were stored with flammable and combustible liquids, and cited the finding as a potential violation of 26 C.F.R. §§ 1910.101(b) and 1910.106(e)(6)(i), which is not implemented by the EPA.


Disclosure # MED-001 – The BOP disclosed that there are no records that FCI Marianna had applied for a Biomedical Waste Generator permit after generating more than 50 pounds of infectious waste in a single month, and cited Florida Administrative Code § 64E-16.011, which is not implemented by the EPA.

Disclosure # WQ-001 – The BOP indicated that vacuum breakers at FCI Marianna were not installed on the hose bibs, creating potential cross connections, and cited Florida Administrative Code § 62-555.360(3), which is not implemented by the EPA.

DETERMINATION

Pursuant to the Audit Policy and Audit Agreement, and based on the findings of fact above, the EPA has determined that the BOP violated the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 to 11050; the Clean Water Act, 33 U.S.C. §§ 1251 to 1387; and, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k. However, the self-disclosure met the conditions of the Audit Policy, as modified by the Audit Agreement, for 100 percent elimination of the gravity-based penalties for these violations. Thus, the EPA will not seek gravity-based penalties for these violations. In addition, since any economic benefit associated with the federally enforceable violations is insignificant, for purposes of the disclosure, the EPA will not seek the economic benefit portion of the penalties.

Consistent with the purposes of the Audit Policy, and the Audit Agreement, the EPA expects the BOP to institute, on a continuing basis, the internal policies and procedures necessary to prevent recurrence of violations of environmental requirements.



Mary J. Wilkes, Regional Counsel and Director
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4

9/8/14

Date