

**Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
And  
Wheelabrator Environmental Systems  
100 Arboretum Drive Suite 310  
Portsmouth, NH 03801  
OFCCP NO. R00301799**

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated Wheelabrator Environmental Systems (hereinafter Contractor) establishment located at 100 Arboretum Drive Suite 310, Portsmouth, NH 03801-7833, beginning on April 13, 2020. OFCCP found that Contractor failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503).

OFCCP notified Contractor of the specific violation(s) and the corrective actions required in a Notice of Violation issued on January 8, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Contractor enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

**II. General Terms and Conditions**

1. In exchange for Contractor's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Contractor violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Contractor's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Contractor will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Contractor of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or

other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Contractor and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Contractor agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Contractor submits its final progress report required in Section IV, below unless OFCCP notifies Contractor in writing before the expiration date that Contractor has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Contractor has met all of its obligations under the Agreement.
11. If Contractor violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-741.63 will govern:
    - i. OFCCP will send Contractor a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. The Contractor shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - iii. If Contractor is unable to demonstrate that it has not violated the Agreement, or if OFCCP's alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.



- iv. In the event of a breach of this Agreement by the contractor, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
  - b. Contractor may be subject to the sanctions set forth in Section 209 of 41 C.F.R. 60-741.66 and/or other appropriate relief for violating this Agreement.
12. Contractor neither admits nor denies any violation of Section 503, nor has there been an adjudication on the merits regarding any such violation.
  13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
  14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
  15. Each party shall bear its own fees and expenses with respect to this matter.
  16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
  17. All references to “days” in this Agreement, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

### **III. Technical Violations and Remedies.**

1. **VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Contractor failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review in violation of 41 CFR 60-741.44(f). Specifically, Contractor did not conduct effective targeted and positive outreach recruitment to attract qualified individuals with disabilities to its workforce.

**REMEDY:** Contractor will undertake appropriate external outreach and positive recruitment activities that are reasonably designated to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2). Contractor will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). Contractor will document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-741.44(f)(4).

2. **VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Contractor failed to implement an effective audit and reporting system which measured the effectiveness of its affirmative action program, indicated the need for remedial action, determined the degree to which the its objectives have been attained and measured its compliance with the affirmative action program's specific obligations. Specifically, Contractor did not follow up in a timely manner and take corrective action with respect to results from its audit and reporting system which indicated ineffective outreach and recruitment, as noted in Violation 1. 41 CFR 60-741.44 (h)(1) and (2).

**REMEDY:** Contractor will continue to implement an audit and reporting system which measures the effectiveness of its affirmative action program, indicates the need for remedial action, determines the degree to which its objectives have been attained and measures its compliance with the affirmative action programs specific obligations. Contractor will continue to make good faith efforts to remove identified barriers and expand employment opportunities for qualified individuals with disabilities. Contractor will undertake, in a timely fashion, any necessary action to bring outreach and recruitment, similar to that noted in violation 1, into compliance where the affirmative action program is found to be deficient. Contractor will preserve all documentation it makes or keeps in either electronic or hard copy format to audit the progress of its AAPs. Contractor will continue to incorporate these analyses and determinations into its now-current AAPs. Contractor will continue to update their audit and reporting system annually and incorporate them into its future AAPs. 41 CFR 60-741.44 (h) (1) and (2).

#### **IV. OFCCP Monitoring Period**

1. **Recordkeeping.** Contractor agrees to retain all records relevant to the violations cited in, Sections III above, and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Contractor will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**

**Schedule and Instructions.** Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Contractor will submit two progress reports. The **first** progress report shall be due on October 31, 2021 and will cover the 6-month period from April 1, 2021 to September 30, 2021. The **second** progress report shall be due on April 30, 2022 and will cover the subsequent 6-month period from October 1, 2021 to March 31, 2022.



Contractor will submit the following progress reports.

The *first report* shall contain the following:

- a. A copy of Contractor's Audit and Reporting Section from its 2021 Section 503 AAP developed pursuant to 41 CFR 60-741.44(h)(1) and (2).
- b. A description and documentation of each outreach activity/effort targeted to recruit individuals with disabilities taken by Contractor during the reporting period. This may include a variety of activities and efforts, such as creating internship programs for students with disabilities from local and colleges and universities; using the Workforce Recruitment Program for students and graduates with disabilities to identify qualified temporary and permanent job candidates; participating in job fairs targeting qualified individuals with disabilities; using local disability service organizations or other resources to recruit qualified temporary and permanent job candidates; and identifying and recruiting students with disabilities studying in science, engineering, mathematics, computer science, and some fields of business for internships using the American Association for the Advancement of Science as an entry Point.

The *second report* shall consist of the following:

- a. A copy of Contractor's Audit and Reporting Section from its 2022 Section 503 AAP, developed pursuant to 41 CFR 60-741.44(h)(1) and (2).
- b. A description and documentation of each outreach activity/effort targeted to recruit individuals with disabilities taken by Contractor during the reporting period. This may include a variety of activities and efforts, such as creating internship programs for students with disabilities from local and colleges and universities; using the Workforce Recruitment Program for students and graduates with disabilities to identify qualified temporary and permanent job candidates; participating in job fairs targeting qualified individuals with disabilities; using local disability service organizations or other resources to recruit qualified temporary and permanent job candidates; and identifying and recruiting students with disabilities studying in science, engineering, mathematics, computer science, and some fields of business for internships using the American Association for the Advancement of Science as an entry Point.

Contractor will submit reports to:

Rhonda Aubin-Smith  
District Director  
OFCCP Boston District Office  
JFK Federal Building  
15 New Sudbury Street, Room E-235  
Boston, MA 02203

Contractor and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent, any of the reports Contractor provides in accordance with this Agreement are customarily kept private or closely held, and Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor will provide such reports to OFCCP marked as "Confidential." In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Contractor's final progress report as set forth in Section II, Paragraph 10 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

#### **V. SIGNATURES**

The person signing this Agreement on behalf of Contractor personally warrants that he or she is fully authorized to do so, Contractor has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Contractor.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Wheelabrator Environmental Systems, 100 Arboretum Drive Suite 310, Portsmouth, NH 03801-7833.

(b) (6), (b) (7)(C)

Robert Boucher  
President and CEO  
Wheelabrator Environmental Systems

DATE: 4-20-21

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(E)  
Compliance Officer  
Boston District Office  
Northeast Region

DATE: 04/19/2021

(b) (6), (b) (7)(C)

Adriana Lopez  
Assistant District Director  
Boston District Office  
Northeast Region

DATE: 04/19/2021

(b) (6), (b) (7)(C)

Rhonda Aubin-Smith  
District Director  
Boston District Office  
Northeast Region

DATE: 04/20/2021