

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Pace Analytical Services, Inc.)
9608 Loiret Boulevard)
Lenexa, Kansas 66219)
RCRA I.D. No. KSD984972992)
Respondent.)
Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2007- 0012

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Pace Analytical Services, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"), and Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 262 and 265.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of the EPA, Region 7.

4. The Respondent is Pace Analytical Services, Inc. (Respondent), a company incorporated under the laws of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

Factual Background

7. Respondent is a Kansas corporation authorized to conduct business in the State of Kansas and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 9608 Loiret Boulevard, Lenexa, Johnson County, Kansas, is full service sampling and analytical testing company which processes more than 80,000 water, soil, paint filter, solvent and oil samples per year. Respondent employs approximately 30 full time employees and four temporary employees at its Lenexa facility. Respondent has operated at this location since approximately 1990.

9. Respondent generates hazardous waste, as that term is defined in 40 C.F.R. § 260.10, as a result of its sampling and analytical testing operations. Specifically, the hazardous waste generated by Respondent includes spent nitric acid, cadmium waste, and a rusted dioxin labeled can.

10. Each of the wastes listed in Paragraph 9 is a “solid waste” and also a “hazardous waste” within the meaning of K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference 40 C.F.R. Parts 260 and 261.

11. On or about March 11, 2005, Respondent notified the Kansas Department of Health and Environment (KDHE) that it is an EPA small quantity generator (Kansas generator) of hazardous waste. EPA small quantity generators generate between 100 and 1,000 kilograms of hazardous waste per month. Kansas generators generate between 25 and 1,000 kilograms of hazardous waste per month.

12. Respondent has been assigned the facility identification number KSD984972992.

13. On or about March 23-27, 2006, an EPA representative conducted a Compliance Evaluation Inspection at the Respondent’s facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violations

14. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 13 above, as if fully set forth herein.

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

15. Pursuant to K.A.R. 28-31-4(b) and 40 C.F.R § 262.11, a generator of a solid waste, as defined in 40 C.F.R. § 260.10, is required to determine if a solid waste is a hazardous waste.

16. At the time of the March 2006 inspection, Respondent was generating three solid waste streams: nitric acid, cadmium waste, and a rusted dioxin labeled can.

17. Respondent had not conducted a hazardous waste determination on the three solid waste streams at that time.

18. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of K.A.R. 28-31-4(b) and 40 C.F.R. §262.11.

COUNT 2
OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT A RCRA PERMIT/FAILURE TO COMPLY WITH APPLICABLE REGULATIONS

19. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18 above, as if fully set forth herein.

20. The regulation at K.A.R. 28-31-4(h) states that a Kansas generator may accumulate hazardous waste on-site without a permit, interim status, or time restrictions, and shall be exempt from all the requirements in 40 C.F.R. Part 265 subparts G and H, except for 265.111 and 265.114, if nine conditions are met. Respondent violated the following conditions:

Failure to mark accumulation start date

21. The regulations found at K.A.R. 28-31-4(h)(3) and 40 C.F.R. § 262.34(d)(4) require that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each hazardous waste container and tank.

22. At the time of the March 2006 inspection, Respondent failed to mark the accumulation start date on the following storage containers containing hazardous waste located in the disposal servicing area: 1) one plastic tub containing one hundred 4-ounce jars of hazardous waste; 2) sixteen boxes containing twenty-four 4-ounce vials per box; 3) one 750 milliliter (ml) container bearing a dioxin label; 4) one 5-gallon bucket containing two jars of 2-4-6-trichlorophene; 5) three Karts containing forty 1,000 ml container and ten boxes of 4-ounce jars; 6) one tub containing three 1-liter bottles of oily cartridges, one 1-liter jar of RCRA metals, and one 500ml jar; 7) two boxes and two tubs of expired standards and reagents; 8) one tub containing fifteen expired standards and reagents; 9) fifteen containers of expired reagents; and 10) two 2-liter containers of mercury waste. Respondent also failed to mark the accumulation start date on three 5-gallon containers of waste solvent in the organic preparation laboratory.

23. Respondent's failure to mark the accumulation start date on the storage containers is a violation of K.A.R. 28-31-4(h)(3) and 40 C.F.R. § 262.34(d)(4), citing 40 C.F.R. § 262.34(a)(2).

Failure to properly label hazardous waste containers

24. The regulations found at K.A.R. 28-31-4(h)(4) and 40 C.F.R § 262.34(d)(4) require that while being accumulated on-site, each hazardous waste container be labeled or clearly marked with the words “Hazardous Waste”.

25. At the time of the March 2006 inspection, Respondent failed to label or clearly mark the following storage containers containing hazardous waste in the disposal servicing area with the words “Hazardous Waste”: 1) one plastic tub containing one hundred 4-ounce jars of hazardous waste; 2) sixteen boxes containing twenty-four 4-ounce vials per box; 3) one 750 ml container bearing a dioxin label; 4) three Karts containing forty 1,000 ml containers and ten boxes of 4-ounce jars containing hazardous waste; 5) one tub containing three 1-liter bottles of oily cartridges, one 1-liter jar of RCRA metals, and one 500ml jar; 6) two boxes and two tubs of expired standards and reagents; 7) one tub containing fifteen expired standards and reagents; and 8) fifteen containers of expired reagents. Respondent also failed to label or clearly mark three 5-gallon containers of waste solvent in the organic preparation lab with the words “Hazardous Waste”.

26. Respondent’s failure to label or clearly mark the storage containers with the words “Hazardous Waste” is a violation of K.A.R. 28-31-4(h)(4) and 40 C.F.R. § 262.34(d)(4) citing 40 C.F.R. § 262.34(a)(3).

Failure to properly close hazardous waste containers

27. The regulations at K.A.R. 28-31-4(h)(2)(A) and 40 C.F.R. §265.173(a) state that hazardous waste must be placed in containers and the container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

28. At the time of the March 2006 inspection, two 2-liter containers containing broken thermometers and mercury waste located in the disposal servicing area were not closed.

29. Respondent’s failure to close the storage containers containing broken thermometers and mercury waste is a violation of K.A.R. 28-31-4(h)(2)(A) and 40 C.F.R. 265.173(a).

Failure to properly label and close satellite accumulation containers

30. The regulation at K.A.R. 28-31-4(j)(1)(B) states that any Kansas generator may accumulate as many as 55 gallons of each type of hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate, and that is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsections (g) and (h) of this section if the generator complies with the requirements found at 40 C.F.R. §§ 265.171, 265.172, and 265.173(a); and marks the containers with the words “Hazardous Waste”. The requirement at 40 C.F.R. § 265.173(a) requires that a

container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

31. During the March 2006 inspection a 2-liter satellite accumulation container in the organic preparation laboratory holding approximately 500 ml of hazardous waste was open.

32. During the March 2006 inspection, the following satellite accumulation containers were not marked with the words "Hazardous Waste": 1) one 5-gallon plastic container containing waste methanol in the volatile laboratory; 2) one 2-liter container containing waste solvent in the metal preparation laboratory; 3) one 2-liter container in the organic preparation laboratory; and 4) one 2-liter bottle of TKN waste in the web laboratory.

33. Respondent's failure to close the satellite accumulation container is a violation of K.A.R. 28-31-4(j)(1)(A), 40 C.F.R. § 265.173(a), and 40 C.F.R. § 262.34(c)(1)(i). Respondent's failure to label the satellite accumulation containers with the words "Hazardous Waste" is a violation of K.A.R. 28-31-4(j)(1)(B) and 40 C.F.R. § 262.34(c)(1)(ii).

Failure to conduct weekly inspections

34. The regulations at K.A.R. 28-31-4(h)(2)(A) and 40 C.F.R. § 265.174 require that the owner or operator inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. The regulation at K.A.R. 28-31-4(k) requires the generator to document these weekly inspections.

35. At the time of the March 2006 inspection, Respondent was not conducting or documenting weekly inspections of the disposal servicing area where the following hazardous waste storage containers were located: 1) one plastic tub containing one hundred 4-ounce jars of hazardous waste; 2) sixteen boxes containing twenty-four 4-ounce vials of hazardous waste per box; 3) one 750 ml container bearing a dioxin label; 4) one 5-gallon bucket containing two jars of 2-4-6-trichlorophene; 5) three Karts containing forty 1,000 ml container and ten boxes of 4-ounce jars; 6) one tub containing three 1-liter bottles of oily cartridges, one 1-liter jar of RCRA metals, and one 500ml jar; 7) two boxes and two tubs of expired standards and reagents; 8) one tub containing fifteen expired standards and reagents; 9) fifteen containers of expired reagents; and 10) two 2-liter containers of waste mercury.

36. Respondent's failure to conduct and document weekly inspections is a violation of K.A.R. 28-31-4(h)(2)(A), K.A.R. 28-31-4(k), and 40 C.F.R. § 265.174.

Failure to post the location of fire extinguishers and spill control material

37. The regulations found at K.A.R. 28-31-4(h)(7)(B) and 40 C.F.R. § 262.34(d)(5)(ii)(B) require that the location of fire extinguishers and spill control material, and if present, fire alarms, be posted next to at least one telephone that is accessible by employees during an emergency.

38. At the time of the March 2006 inspection, the location of fire extinguishers, spill control materials, and fire alarms were not posted next to a telephone accessible by employees during an emergency.

39. Respondent's failure to post the location of fire extinguishers, spill control materials, and fire alarms is a violation of K.A.R. 28-31-4(h)(7)(B) and 40 C.F.R. § 262.34(d)(5)(ii)(B).

III. CONSENT AGREEMENT

40. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

41. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

42. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

43. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

44. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

45. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

46. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

48. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Thirty-Eight Thousand Five Hundred Eighty-Four Dollars and Ninety Cents (\$ 38,584.90) as set forth in Paragraph 1 of the Final Order.

49. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

50. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

51. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 10 of the Final Order, that all requirements hereunder have been satisfied.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of Thirty-Eight Thousand Five Hundred Eighty-Four Dollars and Ninety Cents (\$ 38,584.90).

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2007-0012 on the check. A copy of the check shall also be mailed to:

Kelley Hickman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. Reservation of Rights

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Two Thousand Five Hundred Dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

7. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), 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 Respondent's facility.

8. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

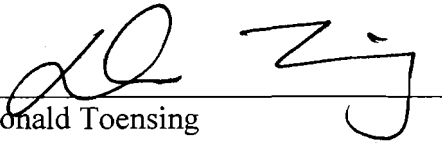
9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

10. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Complainant:


The United States Environmental Protection Agency

9-20-07
Date



Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

Date



Kelley Hickman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

For Respondent:
Pace Analytical Services, Inc.

Sept 19, 2007
Date

John P. Dullaghan
Signature

John P. Dullaghan
Printed Name

Chief Operating Officer
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

September 20, 2007
Date

Robert Patrick
Robert Patrick
Regional Judicial Office

IN THE MATTER OF Pace Analytical Services, Inc., Respondent
Docket No. RCRA-07-2007-0012

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kelley Hickman
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

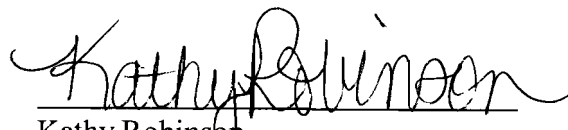
Copy by Certified Mail Return Receipt to:

Joseph G. Maternowski
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4129

David Neal
Pace Analytical Services, Inc.
9608 Loiret Boulevard
Lenexa, Kansas 66219

Mr. Jack Dullaghan
Pace Analytical Services, Inc.
1700 Elm Street, Suite 200
Minneapolis, Minnesota 55414

Dated: 9/21/07


Kathy Robinson
Hearing Clerk, Region 7