

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:)
)
 United States Department of Agriculture)
 Agricultural Research Service)
 National Animal Disease Center)
)
 2300 North Dayton Road)
 Ames, Iowa 50010)
)
 EPA ID# IA8123490007)
)
 Respondent.)
)
)

Docket No. RCRA-07-2006-0153

**CONSENT AGREEMENT
AND FINAL ORDER**

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about March 29, 2006, when the United States Environmental Protection Agency, Region 7 (Complainant or EPA) issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to the National Animal Disease Center in Ames, Iowa, which is part of the Agricultural Research Service within the United States Department of Agriculture (NADC or Respondent), owner and operator of an animal disease research facility. The Complaint was based on the findings of a Compliance Evaluation Inspection conducted by EPA at NADC on July 15 through 17, 2003. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant

sought civil penalties for alleged violations of Section 3005 of RCRA. The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves the liability of Respondent for matters alleged in the Complaint. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 Code of Federal Regulations (C.F.R.) Part 22 (Consolidated Rules of Practice).

II. CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of the Consent Agreement portion 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. The terms of this Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint 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.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and its right to appeal the Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order resolves the civil administrative liability of Respondent for the matters arising out of the July 2003 Compliance Evaluation Inspection and which are also alleged in the Complaint. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other provision of RCRA or other applicable law.

7. 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.

8. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$ 20,000.00 as set forth in Section III.A. of the Final Order.

9. 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.

10. This Consent Agreement and Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 14 of the Final Order provides Respondent with written notice, in accordance with Paragraph 23 of the Final Order, that all requirements

hereunder have been satisfied.

11. Respondent understands that failure to comply with the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$ 32,500 per day of non-compliance.

12. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

III. 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

13. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a civil penalty of \$ 20,000.00.

14. 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. EPA Region VII
c/o Mellon Bank
PO Box 371099M
Pittsburgh, PA 15251.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Belinda Holmes
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and to:

Kevin Snowden ARTD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

15. Nothing in this Consent Agreement and Final Order shall be construed as limiting the ability of EPA to seek any available remedies or sanctions, including an action to collect any penalties due and owing, in the event Respondent fails to perform.

B. Parties Bound

16. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Complainant and Respondent and any agency that is a successor to Respondent. 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

17. 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 an action under Section 3008 of RCRA, 42 U.S.C.

§ 6928, or to seek any other remedy allowed by law.

18. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.

19. 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.

20. 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.

21. 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.

22. Nothing in this Consent Agreement and Final Order shall be construed to require Respondent to obligate funds in any fiscal year in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

D. Termination


23. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written notification to Respondent by Complainant's representative identified in Paragraph 14 that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

United States Environmental Protection Agency


10-5-06

Date


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

10/4/06

Date


Belinda Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
United States Department of Agriculture
Agricultural Research Service

9/27/06
Date

Edward B. Knipling
Edward B. Knipling, Administrator
Agricultural Research Service
United States Department of Agriculture

IT IS SO ORDERED. This Final Order shall become effective immediately.

A handwritten signature in blue ink, appearing to read "Robert Patrick", is written over a horizontal line.

Robert Patrick
Regional Judicial Officer

Date October 6, 2006

IN THE MATTER OF USDA/ARS/NADC, Respondent
Docket No. RCRA-07-2006-0153

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:

Belinda Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

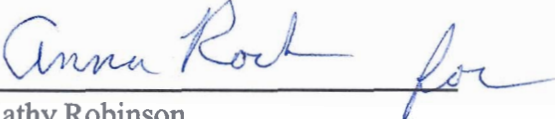
Copy by Certified Mail Return Receipt to:

Edward B. Knipling, Administrator
Agricultural Research Service
1400 Independence Avenue, S.W.
Room 302A
Jamie Whitten Federal Building
Washington, DC 20250

and to:

Ronald L. Horst, Acting Director
National Animal Disease Center
2300 Dayton Avenue, Room 104
Ames, Iowa 50010-0070

10/6/06
Dated


Kathy Robinson
Hearing Clerk, Region 7