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7 **UNITED STATES**
8 **ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

10 **IN THE MATTER OF:**

Docket No.
RCRA-09-2012-0012

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BIOSEARCH TECHNOLOGIES, INC.,

**CONSENT AGREEMENT
AND
FINAL ORDER
PURSUANT TO 40 CFR
SECTIONS 22.13 and 22.18**

Respondent.

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency, Region IX
("Complainant" or "EPA"), and Respondent, Biosearch Technologies, Inc. ("Respondent"), the
parties herein, having agreed that settlement of this matter is in the public interest and that entry
of this Consent Agreement and Final Order, pursuant to 40 CFR Sections 22.13 and 22.18,
("CA/FO"), without further litigation is the most appropriate means of resolving this matter;

Complainant and Respondent hereby agree as follows:

A. **PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)
of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
§ 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

1 ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States
2 Environmental Protection Agency, Region IX. Respondent is a corporation organized
3 under the laws of the State of California.

4 2. At the time of the violations alleged, Respondent was managing hazardous waste at a
5 facility located at 81 Digital Drive, Novato, California 94949, EPA Identification Number
6 CAD982411811 (hereinafter referred to as the "Facility").

7 3. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences
8 and concludes this proceeding, wherein EPA alleges that Respondent managed hazardous
9 waste in violation of the RCRA Hazardous Waste Management requirements, 42 U.S.C.
10 §§ 6921 - 6939c, the implementing regulations, and state regulations adopted pursuant to
11 the federally authorized California hazardous waste management program.

12 4. EPA is enforcing California hazardous waste management program requirements as
13 approved and authorized by the United States.

14 5. On August 1, 1992, the State of California received authorization to administer the
15 hazardous waste management program in lieu of the federal program pursuant to Section
16 3006 of RCRA, 42 U.S.C. § 6926, and 40 CFR Part 271. This authorization was updated
17 on September 26, 2001 (*see* 66 Fed. Reg. 49118, September 26, 2001) and October 7,
18 2011 (*see* 76 Fed. Reg. 62303, October 7, 2011). The authorized program is established
19 pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the
20 California Health and Safety Code ("H&SC"), and the regulations promulgated
21 thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 CCR
22 §§ 66001 *et seq.* The State of California has been authorized for all the regulations
23 referenced in this CA/FO. Citations in this CA/FO are to California hazardous waste
24 management program requirements, followed by the corresponding federal citations
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1 provided in brackets.¹

2 B. GENERAL ALLEGATIONS

3 6. Respondent is, and at all times referred to herein was, a "person" as defined in 22 CCR
4 § 66260.10 [*see also* 40 CFR § 260.10].

5 7. Respondent was the "owner" or "operator" of a "facility" as defined in 22 CCR
6 § 66260.10 [*see also* 40 CFR § 260.10] at the time of the violations alleged.

7 8. Respondent was a "generator" of "hazardous waste" as defined in 22 CCR § 66260.10
8 [*see also* 40 CFR § 260.10] at the time of the violations alleged.

9 9. Respondent was engaged in the "storage" of "hazardous waste" at the Facility as defined
10 in 22 CCR § 66260.10 [*see also* 40 CFR § 260.10] at the time of the violations alleged.

11 10. At the Facility, Respondent generated and accumulated; materials that are "wastes" as
12 defined in 22 CCR §§ 66260.10 and 66261.2 [*see also* 40 CFR §§ 260.10 and 261.2 for
13 definition of "solid waste"].

14 11. At the Facility, Respondent generated and accumulated; "hazardous waste" as defined in
15 H&SC § 25117 and 22 CCR §§ 66260.10 and 66261.3 [*see also* RCRA Section 1004(5),
16 42 U.S.C. 6903(5), and 40 CFR §§ 260.10 and 261.3].

17 12. Respondent generated and stored waste solvents (waste codes D001, F002, F003),
18 fluorescent lamps, and batteries at the Facility.

19 13. Respondent is a large quantity generator ("LQG") of hazardous waste.

20 14. 22 CCR § 66270.1(c) requires that owners and operators of a RCRA hazardous waste
21 treatment, storage or disposal facility must have a permit [*see also* 40 CFR § 270.1(c)].

22 15. Respondent does not have a permit or grant of interim status to treat, store or dispose of
23 hazardous waste under 22 CCR § 66270.1(c) [*see also* 40 CFR § 270.1].

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25 ¹ All citations to the "CCR" refer to Division 4.5 of Title 22 of the current California
26 Code of Regulations. EPA is enforcing the California hazardous waste management program
27 requirements as approved and authorized by the United States. Citations to the federal
regulations are included for informational purposes.

- 1 16. 22 CCR§ 66262.34 [*see also* 40 CFR § 262.34] provides that generators of hazardous
2 waste may accumulate hazardous waste onsite for a limited period of time, without a
3 permit or grant of interim status, provided the generator complies with the requirements
4 which are set forth or referenced by 22 CCR § 66262.34 [*see also* 40 CFR § 262.34].
- 5 17. On February 17, 2011, EPA conducted a RCRA Compliance Evaluation Inspection
6 (“CEI”) at the Facility. Based upon the findings EPA made during the inspection and
7 additional information obtained subsequent to the inspection, EPA determined that
8 Respondent violated RCRA Hazardous Waste Management requirements, 42 U.S.C.
9 §§ 6921 – 6939e, and the implementing regulations, and the federally authorized
10 California hazardous waste management program, 22 CCR Division 4.5, and the
11 implementing regulations at the Facility.
- 12 18. EPA alleges that Respondent (1) failed to comply with personnel training requirements in
13 violation of 22 CCR § 66265.16 [*see also* 40 CFR § 265.16], (2) failed to maintain
14 adequate aisle space in violation of 22 CCR § 66265.35 [*see also* 40 CFR § 265.35],
15 (3) failed to comply with contingency plan requirements in violation of 22 CCR
16 § 66265.52(d and c) [*see also* 40 CFR § 265.52(d) and (e)], (4) failed to manage
17 hazardous waste in a container in good condition in violation of 22 CCR § 66265.171
18 [*see also* 40 CFR § 265.171], (5) failed to close hazardous waste containers in violation
19 of 22 CCR § 66265.173 [*see also* 40 CFR § 265.173], (6) stored hazardous waste without
20 a permit in violation of 22 CCR §§ 66262.34 and 66270.1 [*see also* 40 CFR §§ 262.34
21 and 270.1], and (7) failed to comply with air emissions standards for equipment leaks in
22 violation of 22 CCR §§66265.1050(c), 66265.1057, and 66265.1064(b)(1) [40 CFR
23 §§265.1050(c), 265.1057, and 265.1064(b)(1)] .
- 24 19. Under Section 3006 of RCRA, 42 U.S.C. § 6926, violations of the State of California’s
25 authorized RCRA Hazardous Waste Management Program are federally enforceable.
26 Respondent is therefore subject to the powers vested in the EPA Administrator by Section
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1 3008 of RCRA, 42 U.S.C. § 6928.

2 20. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue
3 orders assessing a civil penalty for any past or current violation, or requiring compliance
4 immediately or within a specified time for violation of any requirement of Subtitle C of
5 RCRA, Sections 3001 - 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e.

6 21. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of
7 Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of
8 RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to
9 issuing an order under Section 3008 of RCRA in that state. EPA notified the State of
10 California as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

11 22. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA
12 Regional Administrator for Region IX, who has redelegated this authority to the Director
13 of the Waste Management Division.

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15 C. ALLEGED VIOLATIONS

16 COUNT I

17 (Failure to Comply with Training Requirements)

18 23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were
19 set forth here in their entirety.

20 24. 22 CCR §66262.34 [*see also* 40 CFR §262.34] requires that generators who accumulate
21 hazardous waste onsite without a permit or grant of interim status comply with the
22 requirements of 22 CCR § 66265.16 [*see also* 40 CFR § 265.16].

23 25. 22 CCR § 66265.16(d) [*see also* 40 CFR § 265.16(d)] requires that the owner or operator
24 of a hazardous waste facility maintain documents and records concerning job titles for
25 positions at the facility related to hazardous waste management, the name of the
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1 employee, a written job description, a written description of the type and amount of
2 training, and confirmation that such training was completed.

3 26. On February 17, 2011, Respondent had no records or document showing job titles and
4 employees for positions, type and amount of training, or confirmation of training
5 completed, related to hazardous waste management at the Facility.

6 27. Respondent failed to comply with 22 CCR § 66265.16(d) [*see also* 40 CFR § 265.16(d)].

7 COUNT II

8 (Failure to Maintain Adequate Aisle Space)

9 28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were
10 set forth here in their entirety.

11 29. 22 CCR §66262.34 [*see also* 40 CFR §262.34] requires that generators who accumulate
12 hazardous waste onsite without a permit or grant of interim status comply with the
13 preparedness and prevention requirements of 22 CCR §§ 66265.30 - 66265.37 [*see also*
14 40 CFR §§ 265.30 - 265.37].

15 30. 22 CCR § 66265.35 [*see also* 40 CFR §265.35] requires that the owner or operator
16 maintain adequate aisle space for the unobstructed movement of personnel, fire protection
17 equipment, spill control equipment, and decontamination equipment.

18 31. On February 17, 2011, the EPA inspector observed that aisle space in the 90-Day
19 Hazardous Waste Storage Area at the Facility was inadequate to provide Respondent with
20 access to certain containers as required by 22 CCR § 66265.35 [*see also* 40 CFR
21 §265.35].

22 32. Respondent's failure to provide adequate aisle space violated 22 CCR § 66265.35 [*see*
23 *also* 40 CFR §265.35].
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1 COUNT III

2 (Failure to Comply with Contingency Plan Requirements)

3 33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were
4 set forth here in their entirety.

5 34. 22 CCR §66262.34 [see also 40 CFR §262.34] requires that generators who accumulate
6 hazardous waste onsite without a permit or grant of interim status comply with the
7 contingency plan and emergency procedure requirements of 22 CCR §§ 66265.50 -
8 66265.56 [see also 40 CFR §§ 265.50 - 265.56].

9 35. 22 CCR § 66265.52(d) and (e) [see also 40 CFR § 265.52(d) and (e)] requires that
10 owners and operators of hazardous waste facilities have a contingency plan that contains
11 a list of names and contact information for all persons qualified to act as emergency
12 coordinator at the Facility, and a list, description and location of all emergency and
13 decontamination equipment at the Facility..

14 36. On February 17, 2011, the EPA inspector observed that the contingency plan for the
15 Facility did not contain a list of names and contact information for the emergency
16 coordinator(s) and did not contain a list, description or location of all emergency and
17 decontamination equipment at the Facility.

18 37. Respondent failed to have all the information required for the Facility contingency plan in
19 violation of 22 CCR § 66265.52(d) and (e) [see also 40 CFR § 265.52(d) and (e)].
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21 COUNT IV

22 (Failure to Manage Hazardous Waste in Container in Good Condition)

23 38. Paragraphs 1 through 37 above are incorporated herein by this reference as if they were
24 set forth here in their entirety.

25 39. 22 CCR §66262.34 [see also 40 CFR §262.34] requires that generators who accumulate
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1 hazardous waste onsite without a permit or grant of interim status comply with the
2 requirements of 22 CCR § 66265.171 [*see also* 40 CFR § 265.171].

3 40. Owners and operators of hazardous waste facilities are required to manage hazardous
4 waste in containers that are in good condition, e.g., no apparent structural defects. 22
5 CCR § 66265.171 [*see also* 40 CFR § 265.171].

6 41. On February 17, 2011, the EPA inspector observed a severely dented container of
7 hazardous waste in the 90-Day Storage Area at the Facility.

8 42. Respondent was holding hazardous waste in a container that was not in good condition, in
9 violation of 22 CCR § 66265.171 [*see also* 40 CFR § 265.171].

10 COUNT V

11 (Failure to Close Containers of Hazardous Waste)

12 43. Paragraphs 1 through 42 above are incorporated herein by this reference as if they were
13 set forth here in their entirety.

14 44. 22 CCR §66262.34 [*see also* 40 CFR §262.34] requires that generators who accumulate
15 hazardous waste onsite without a permit or grant of interim status comply with the
16 requirements of 22 CCR § 66265.173 [*see also* 40 CFR § 265.173].

17 45. 22 CCR §66265.173(a) [*see also* 40 CFR §265.173(a)] requires that containers holding
18 hazardous waste shall always be closed during transfer and storage, except when it is
19 necessary to add or remove waste.

20 46. On February 17, 2011, the EPA inspector observed containers of hazardous waste that
21 were open at a time when waste was neither being added nor removed from the
22 containers.

23 47. Respondent's failure to close the containers of hazardous waste violated 22 CCR
24 § 66265.173 (a) [*see also* 40 CFR § 265.173(a)].

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COUNT VI

(Storage of Hazardous Waste Without a Permit)

48. Paragraphs 1 through 47 above are incorporated herein by this reference as if they were set forth here in their entirety.

49. 22 CCR § 66262.34(a) and (f) [*see also* 40 CFR §262.34(a)] requires that generators who accumulate hazardous waste onsite without a permit or grant of interim status shall place hazardous waste in containers, label each container of hazardous waste with the accumulation period start date, and mark or label each container with the words "Hazardous Waste".

50. On February 17, 2011, the EPA inspector observed that at the Facility Respondent had containers of hazardous waste that were not marked with either the appropriate accumulation start dates or with the words "Hazardous Waste," or both.

51. On February 17, 2011, the EPA inspector observed that Respondent had waste fluorescent light tubes that were not in a container.

52. Generators who fail to comply with the requirements of 22 CCR §66262.34(a) [*see also* 40 CFR §262.34(a)] are subject to the permitting requirements of 22 CCR §66270.1(c) [*see also* 40 CFR §270.1].

53. Respondent's storage of hazardous waste without proper container, marking or labeling violated the requirements of 22 CCR §66262.34(a) and (f) [*see also* 40 CFR §262.34(a)]. Therefore, Respondent violated 22 CCR §§ 66270.1 [*see also* 40 CFR § 270.1]

COUNT VII

(Failure to Meet Air Emissions Standards for Equipment Leaks)

54. Paragraphs 1 through 53 above are incorporated herein by this reference as if they were set forth here in their entirety.

55. At the Facility, at the time of the violations alleged, Respondent operated hazardous

1 waste management equipment designed to control solvent air emissions that was subject
2 to 22 CCR, Division 4.5, Chapter 15, Article 28 (Air Emission Standards for Equipment
3 Leaks) [*see also* 40 CFR Part 265, Subpart BB (Air Emission Standards for Equipment
4 Leaks)].

5 56. 22 CCR § 66265.1050(c) [*see also* 40 CFR § 265.1050(c)] requires that each piece of
6 equipment (i.e., pumps, connections, flanges, valves, etc.) to which the Air Emission
7 Standards for Equipment Leaks applies shall be marked in such a manner that it can be
8 distinguished readily from other pieces of equipment.

9 57. On February 17, 2011, during the EPA inspection, none of the equipment subject to the
10 Air Emission Standards for Equipment Leaks at the Facility was marked as required, in
11 violation of 22 CCR § 66265.1050(c) [*see also* 40 CFR § 265.1050(c)].

12 58. 22 CCR § 66265.1057 [*see also* 40 CFR § 265.1057] requires regular monitoring of
13 valves to detect leaks. 22 CCR § 66265.1057(a) [*see also* 40 CFR § 265.1057(a)]
14 requires monthly monitoring. 22 CCR § 66265.1057(c)(1) [*see also* 40 CFR
15 § 265.1057(c)(1)] provides that where no leak is detected for two successive months,
16 monitoring shall take place on the first month of every succeeding quarter, unless a leak is
17 detected.

18 59. On February 17, 2011, during the EPA inspection, Respondent had valves subject to the
19 requirements of 22 CCR § 66265.1057 [*see also* 40 CFR § 265.1057].

20 60. On February 17, 2011, during the EPA inspection, there were no visible leaks at the
21 Facility in or around the valves subject to the requirements of 22 CCR § 66265.1057 [*see*
22 *also* 40 CFR § 265.1057].

23 61. EPA's investigation revealed that none of the monitoring required by 22 CCR
24 § 66265.1057) [*see also* 40 CFR § 265.1057] had been conducted at the Facility.

25 62. 22 CCR § 66265.1064(b)(1) [*see also* 40 CFR § 265.1064(b)(1)] requires that for each
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1 piece of equipment subject to the Air Emission Standards for Equipment Leaks, owners
2 and operators must record (A) the equipment identification number and hazardous waste
3 management unit ("HWMU") identification; (B) the approximate locations within the
4 facility (e.g., identify the HWMU on a facility plot plan); (C) the type of equipment (e.g.,
5 a pump or pipeline valve); (D) the percent-by-weight of total organics in the hazardous
6 waste stream at the equipment; (E) the hazardous waste state at the equipment (e.g.,
7 gas/vapor or liquid); and (F) the method of compliance with the standard (e.g., "monthly
8 leak detection and repair" or "equipped with dual mechanical seals").

9 63. EPA's investigation revealed that, as of February 17, 2011, at the Facility, Respondent
10 had not complied with any of the recordkeeping requirements of 22 CCR
11 § 66265.1064(b)(1) [*see also* 40 CFR § 265.1064(b)(1)].

12 64. EPA alleges that Respondent violated 22 CCR §§ 66265.1050(c), 66265.1057, and
13 66265.1064(b)(1) [*see also* 40 CFR §§ 265.1050(c), 265.1057, and 265.1064(b)(1)].

14
15 D. CIVIL PENALTY

16 65. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection
17 Improvement Act of 1996, 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-
18 SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$37,500) per day for each
19 violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq.

20 66. Based upon the facts alleged herein and upon those factors which EPA must consider
21 pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil
22 Penalty Policy, including the seriousness of the violations, any good faith efforts by
23 Respondents to comply with applicable requirements, and any economic benefit accruing
24 to Respondents, as well as such other matters as justice may require, EPA proposes that
25 Respondents be assessed **THIRTY-ONE THOUSAND AND FIVE HUNDRED**

1 **DOLLARS (\$31,500)** as the civil penalty for the violations alleged herein. The proposed
2 penalty is consistent with the "RCRA Civil Penalty Policy," dated June 2003, as adjusted
3 by the Debt Collection Improvement Act.
4

5 E. ADMISSIONS AND WAIVERS

6 67. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations
7 set forth in Sections A and B of this CA/FO. Respondent consents to and agrees not to
8 contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce
9 its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel
10 compliance with this CA/FO in any enforcement proceedings, either administrative or
11 judicial, or to impose sanctions for violations of this CA/FO.

12 68. Respondent neither admits nor denies any allegations of fact or law set forth in Section C
13 of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the
14 allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing
15 on any issue relating to the factual allegations or legal conclusions set forth in this
16 CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42
17 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without
18 adjudication. In addition, Respondent hereby waives any rights Respondent may have to
19 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.
20

21 F. PARTIES BOUND

22 69. This CA/FO shall apply to and be binding upon Respondent and its agents, successors
23 and assigns and upon all persons acting under or for Respondent, until such time as the
24 civil penalty required under Section D has been paid in accordance with Section G, all
25 compliance tasks have been completed, and any delays in performance and/or stipulated
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1 penalties have been resolved. At such time as those matters are concluded, this CA/FO
2 shall terminate and constitute full settlement of the civil violations alleged herein.

3 70. No change in ownership or corporate, partnership or legal status relating to the Facility
4 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

5 71. The undersigned representative of Respondent hereby certifies that he is fully authorized
6 by Respondent to enter into this CA/FO, to execute and to legally bind Respondent.

7
8 **G. PAYMENT OF CIVIL PENALTY**

9 72. Respondent hereby consents to the assessment of a civil penalty in the amount of
10 **THIRTY-ONE THOUSAND AND FIVE HUNDRED DOLLARS (\$31,500)** in
11 settlement of the civil penalty claims of the United States for the violations of the
12 federally authorized California hazardous waste management program established
13 pursuant to the California Hazardous Waste Control Law, Chapter 6.5 of Division 20 of
14 the California H&SC, and 22 CCR § 66265.16 [*see also* 40 CFR § 265.16], 22 CCR
15 § 66265.35 [*see also* 40 CFR § 265.35], 22 CCR § 66265.52(d and e) [*see also* 40 CFR
16 § 265.52(d) and (e)], 22 CCR § 66265.171 [*see also* 40 CFR § 265.171], 22 CCR
17 § 66265.173 [*see also* 40 CFR § 265.173], 22 CCR § 66270.1 [*see also* 40 CFR
18 § 270.1], and 22 CCR §§66265.1050(c), 66265.1057, and 66265.1064(b)(1) [40 CFR
19 §§265.1050(c), 265.1057, and 265.1064(b)(1)], as alleged in Section C above.

20 73. Respondent shall submit payment of the civil penalty of **THIRTY-ONE THOUSAND**
21 **AND FIVE HUNDRED DOLLARS (\$31,500)** within thirty (30) calendar days of the
22 Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final
23 Order contained in this CA/FO, having been approved and issued by either the Regional
24 Judicial Officer or Regional Administrator, is filed.

25 74. Respondent shall submit the payment due under this CA/FO in accordance with one of
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1 the options set forth below, and shall reference the Respondent's name and the docket
2 number of this matter:

3 a. A check sent by regular U.S. Postal Service mail should be made payable to the
4 "Treasurer, United States of America" and addressed to:

5 US Environmental Protection Agency
6 Fines and Penalties
7 Cincinnati Finance Center
8 PO Box 979077
9 St. Louis, MO 63197-9000

10 b. Wire transfers should be directed to the Federal Reserve Bank of New York as
11 follows:

12 Federal Reserve Bank of New York
13 ABA: 021030004
14 Account Number: 68010727
15 SWIFT address: FRNYUS33
16 33 Liberty Street
17 New York NY 10045
18 Field Tag 4200 of the Fedwire message should read:
19 "D 68010727 Environmental Protection Agency".

20 c. A check sent by overnight mail should be payable to the "Treasurer, United States
21 of America" and addressed to:

22 U.S. Bank
23 1005 Convention Plaza
24 Mail Station SL-MO-C2GL
25 St. Louis, MO 63101
26 Contact: Natalie Pearson, 314-418-4087

27 d. An On Line Payment Option for payments directly from your bank account or by
28 credit/debit card is available through the U.S. Department of Treasury. To use
this payment option, access www.pay.gov, enter "sfo 1.1" in the Public Forms
search field, open the form, and complete the required fields.

See also, http://www.epa.gov/ocfo/finservices/payment_instructions.htm.

75. At the time payment is so made, a copy of the transmittal form shall be sent to:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX

1 75 Hawthorne Street
2 San Francisco, CA 94105

3 and

4 Daniel Fernandez (WST-3)
5 Waste Management Division
6 U.S. Environmental Protection Agency - Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105

- 9 76. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM
10 6-8000), the payment must be received within thirty (30) calendar days of the effective
11 date of this CA/FO to avoid additional charges. If payment is not received within thirty
12 (30) calendar days, interest will accrue from the effective date of this CA/FO at the
13 current rate published by the United States Treasury as described at 40 CFR §13.11(a).
14 Additionally, administrative costs for collecting the overdue debt will be assessed
15 monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any
16 principal amount not paid within ninety (90) calendar days of the due date. See 40 CFR
17 §13.11(b) and (c). Furthermore, Respondent will be liable for stipulated penalties as set
18 forth below for any payment not received by its due date.
- 19 77. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and
20 shall not be deducted by Respondent or any other person or entity for federal, state or
21 local taxation purposes.

22 H. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 23 78. In addition to the interest and per annum penalties described above, in the event that
24 Respondent fails to pay the full amount of the penalty within the time specified in
25 Section G, Respondent agrees to pay Complainant a stipulated penalty in the amount of
26 up to **TEN THOUSAND DOLLARS (\$10,000.00)** for each day the default continues.
- 27 79. All penalties shall begin to accrue on the date that performance is due or a violation
28 occurs, and shall continue to accrue through the final day of correction of the

1 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
2 penalties for separate violations.

3 80. All penalties owed to EPA under this Section shall be due within thirty (30) days of
4 receipt of a notification of noncompliance. Such notification shall describe the
5 noncompliance and shall indicate the amount of penalties due. Interest at the current rate
6 published by the United States Treasury, as described at 40 CFR § 13.11, shall begin to
7 accrue on the unpaid balance at the end of the thirty-day period.

8 81. All penalties under this Section shall be made payable by certified or cashier's check to
9 "Treasurer of the United States" and shall be remitted to:

10 US Environmental Protection Agency
11 Fines and Penalties
12 Cincinnati Finance Center
13 PO Box 979077
14 St. Louis, MO 63197-9000

15 82. All payments shall indicate the name of the Facility, any EPA identification number of
16 the Facility, Respondent's name and address, and the EPA docket number of this action.
17 At the time payment is made, Respondent shall send a copy of the payment transmittal to:

18 Daniel Fernandez (WST-3)
19 Waste Management Division
20 U.S. Environmental Protection Agency - Region IX
21 75 Hawthorne Street
22 San Francisco, CA 94105

23 83. The payment of stipulated penalties shall not alter in any way Respondent's obligation to
24 complete the performance required hereunder.

25 84. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
26 other remedies or sanctions which may be available to EPA by reason of Respondent's
27 failure to comply with any of the requirements of this CA/FO.

28 I. CERTIFICATION OF COMPLIANCE

85. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the

1 Respondent has fully complied with the requirements of the federally authorized
2 California hazardous waste management program, including 22 CCR § 66265.16 [*see*
3 *also* 40 CFR § 265.16], 22 CCR § 66265.35 [*see also* 40 CFR § 265.35], 22 CCR
4 § 66265.52(d and e) [*see also* 40 CFR § 265.52(d) and (e)], 22 CCR § 66265.171 [*see*
5 *also* 40 CFR § 265.171], 22 CCR § 66265.173 [*see also* 40 CFR § 265.173], 22 CCR
6 §§ 66262.34 and 66270.1 [*see also* 40 CFR §§ 262.34 and 270.1], and 22 CCR
7 §§66265.1050(c), 66265.1057, and 66265.1064(b)(1) [40 CFR §§265.1050(c), 265.1057,
8 and 265.1064(b)(1)], that formed the basis for the violations alleged in this CA/FO.

- 9 86. This certification of compliance is based upon true, accurate and complete information,
10 which the signatory can verify personally or regarding which the signatory has inquired of
11 the person or persons directly responsible for gathering the information.

12
13 J. RESERVATION OF RIGHTS

- 14 87. EPA expressly reserves all rights and defenses that it may have.

- 15 88. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
16 remedies, both legal and equitable, including the right to require that Respondent perform
17 tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory
18 and regulatory powers, authorities, rights and remedies, both legal and equitable, which
19 may pertain to Respondent's failure to comply with any of the requirements of this
20 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)
21 of RCRA, 42 U.S.C. § 6928(c).

- 22 89. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation
23 of any rights, remedies, powers or authorities, civil or criminal, which EPA has under
24 RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of
25 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law
26 enforcement authority of the United States.

- 27 90. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of
28

1 its obligations to comply with any applicable local, state, or federal laws and regulations.

2 91. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
3 preclude EPA from taking additional enforcement actions should EPA determine that
4 such actions are warranted except as they relate to Respondent's liability for federal civil
5 penalties for the specific alleged violation and facts as set forth in Section C of this
6 CA/FO.

7 92. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
8 not relieve Respondent of any obligation to obtain and comply with any local, state, or
9 federal permits. Compliance by Respondent with the terms of this CA/FO shall not
10 relieve Respondent of any obligations to comply with RCRA or any other applicable
11 local, state, or federal laws and regulations.

12 93. EPA reserves its right to seek reimbursement from Respondent for any additional costs
13 incurred by the United States which may result or arise from the alleged counts set forth
14 in Section C. Notwithstanding compliance with the terms of this CA/FO, Respondent is
15 not released from liability, if any, for the costs of any response actions taken by EPA.
16

17 K. OTHER CLAIMS

18 94. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
19 cause of action or demand in law or equity by or against any person, firm, partnership,
20 entity or corporation for any liability it may have arising out of or relating in any way to
21 the generation, storage, treatment, handling, transportation, release, or disposal of any
22 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
23 contaminants found at, taken to, or taken from the Facility.
24

25 L. MISCELLANEOUS

26 95. This CA/FO may be amended or modified only by written agreement executed by both
27 EPA and Respondent.
28

1 96. The headings in this CA/FO are for convenience of reference only and shall not affect
2 interpretation of this CA/FO.

3 97. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
4 proceeding.


5
6 M. EFFECTIVE DATE

7 98. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
8 the date that the Final Order contained in this CA/FO, having been approved and issued
9 by either the Regional Judicial Officer or Regional Administrator, is filed.

10
11 **IT IS SO AGREED,**

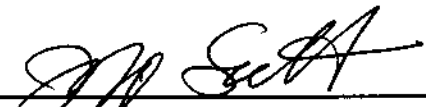
12
13 For Respondent **BIOSEARCH TECHNOLOGIES, INC.**

14
15 Aug 20, 2012
16 Date

15 
16
17 Ron Cook
18 Chief Executive Officer and President
19 Biosearch Technologies, Inc.

20
21 For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

22
23 9/11/12
24 Date

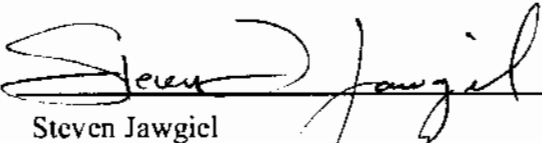
23 
24
25 Jeff Scott
26 Director
27 Waste Management Division
28 United States Environmental Protection Agency,
Region IX

1
2 **FINAL ORDER**
3

4 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ((U.S. EPA Docket
5 No. RCRA-09-2012-0012) be entered and that Respondent pay a civil penalty in the amount of
6 **THIRTY-ONE THOUSAND AND FIVE HUNDRED DOLLARS (\$31,500)** by wire transfer
7 to the account of the U.S. Treasury at the Federal Reserve Bank of New York, within thirty (30)
8 days after the Effective Date of this Consent Agreement and Final Order. A copy of the wire
9 transfer form shall be sent to the EPA Region IX addresses specified in Section G of this Consent
10 Agreement and Final Order within such 30-day period.
11

12 **This Final Order shall be effective upon filing.**
13
14

15
16 09/13/12
17 Date

15
16 
17 Steven Jawgiel
18 Regional Judicial Officer
19 United States Environmental Protection Agency,
20 Region IX
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22
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27
28

CERTIFICATE OF SERVICE

I hereby certify that the original of the fully executed Consent Agreement and Final Order in the matter of BIOSEARCH TECHNOLOGIES (Docket #: RCRA-09-2012-0012) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

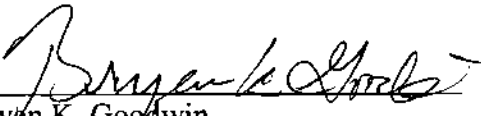
A copy was mailed via CERTIFIED MAIL to:

Ronald M. Cook, PhD.
Biosearch Technologies
81 Digital Drive
Novato, CA 94929

CERTIFIED MAIL NUMBER: 7000 0520 0021 6108 1896

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Letitia Moore
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/13/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105**

Phone: (415) 972-3000

<http://www.epa.gov/region9>

**CERTIFIED MAIL NO. 7000 0520 0021 6108 1896
RETURN RECEIPT REQUESTED**

SEP 18 2012

Ronald M. Cook, PhD
Biosearch Technologies
81 Digital Drive
Novato, CA 94929

Re: In the matter of Biosearch Technologies, Inc.

Dear Mr. Cook:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Letitia Moore at (415) 972-3928.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosure