

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

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901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

Missouri Western State University )  
4525 Downs Drive )  
St. Joseph, Missouri 64507 )

COMPLAINT, COMPLIANCE  
ORDER AND NOTICE OF  
OPPORTUNITY FOR HEARING

EPA ID No. MOR 000014803 )

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). )

Docket No. RCRA-07-2006-0267

**I. PRELIMINARY STATEMENT**

This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act (“SWDA”), 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), Title 40 Code of Federal Regulations (“C.F.R.”) Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency (“EPA”), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Missouri Western State University, a public education institution formed under the laws of the State of Missouri.

The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated May 11, 1994. This authority has been delegated to the Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated January 1, 1995, and further redelegated to the Chief of the RCRA Enforcement and State Programs Branch, by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

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The State of Missouri 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 Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (“C.S.R.”), Chapter 25 (“10 C.S.R. 25”). 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 Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997 and before March 15, 2004. Based upon the facts alleged in this Complaint 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, and attached hereto, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

## **II. COMPLAINT**

### **ALLEGATIONS COMMON TO ALL COUNTS**

1. Respondent is public education institution formed under the laws of and authorized to operate in the State of Missouri and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
2. Respondent is a state-supported educational institution located in St. Joseph, Missouri.

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3. Respondent has been in operation at this location since 1915, originally as St. Joseph Junior College. Since 1977, it has become a full member of the State of Missouri system.
4. Respondent currently employs approximately 550-600 employees.
5. On or about July 11, 2002, Respondent notified the Missouri Department of Natural Resources that it was a large quantity generator (more than 1000 kg/month) of hazardous waste.
6. Respondent has been assigned the facility identification number MOR000014803.
7. On October 1-2, 2003, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on a review of generation rates of hazardous waste and accumulation of acute hazardous waste at the facility, it was determined that Respondent was operating at that time as a large quantity generator of hazardous waste.
8. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

**COUNT 1**

**FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

9. Complainant hereby incorporates the allegations contained in paragraphs 1 through 8 above, as if fully set forth herein.
10. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), a generator of solid waste, as defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.
11. At the time of the October 2003 EPA inspection, Respondent was storing a container of unknown solid waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
12. At the time of the October 2003 EPA inspection, Respondent was storing a container of phosphoric acid waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.

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13. At the time of the October 2003 EPA inspection, Respondent was storing a container of nitric acid waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
14. At the time of the October 2003 EPA inspection, Respondent was storing a container of lead acetate waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
15. At the time of the October 2003 EPA inspection, Respondent was storing a container of phosphotungstic acid waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
16. At the time of the October 2003 EPA inspection, Respondent was storing an unknown organic solvent waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
17. At the time of the October 2003 EPA inspection, Respondent was storing an unknown cleaning solution waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
18. At the time of the October 2003 EPA inspection, Respondent was storing a bottle of unknown solid waste in its Hazardous Waste Storage Room on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
19. At the time of the October 2003 EPA inspection, Respondent had generated six rags that had been used to wipe off a stain that had been applied to some shelves in the Paint Shop on campus. Respondent had not conducted a hazardous waste determination on this waste at that time.
20. At the time of the October 2003 EPA inspection, Respondent was storing a container of waste xylene in the Fine Arts room on campus. Respondent had not conducted a hazardous waste determination on this waste.
21. Respondent's failure to make hazardous waste determinations on the waste streams noted in paragraphs 11 through 20 is a violation of 40 C.F.R. § 262.11.
22. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations above, it is proposed that a civil penalty of \$44,000 (which comprises a gravity-based amount of \$4,400 and a multiple occurrence amount of \$39,600) be assessed against Respondent for its failure to comply with 40 C.F.R. § 262.11.

**COUNT 2**

**DISPOSAL OF HAZARDOUS WASTE WITHOUT A PERMIT**

23. Complainant hereby incorporates the allegations contained in paragraphs 1 through 22 above, as if fully set forth herein.
24. Section 3005 of RCRA, 42 U.S.C. § 6925, and Revised Statutes of Missouri Section (“RSMo”) 260.390.1 prohibit the treatment, storage, or disposal of hazardous waste without a RCRA permit.
25. Pursuant to the Revised Statutes of Missouri Section (“RSMo”) 260.380.1(7), hazardous waste generators shall utilize for treatment, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to Missouri or federal statutes.
26. During November 2002, Respondent disposed of approximately three gallons of organic solvent hazardous waste when it was used to remove and wash off paint from windows of various buildings on Respondent’s campus. The waste rinsewater containing this organic solvent was washed into the ground.
27. By disposing of hazardous waste into the ground, Respondent was operating a hazardous waste disposal facility as that term is defined in RCRA and the regulations promulgated thereunder.
28. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a treatment, storage or disposal facility and therefore is in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo 260.390.1.
29. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that a civil penalty of \$10,203 (which comprises a gravity-based amount of \$7,150, and a multi-day amount of \$3,053) be assessed against Respondent for disposing of hazardous waste without a RCRA permit.

**COUNT 3**

**OPERATING AS A TREATMENT, STORAGE, OR DISPOSAL FACILITY  
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

30. Complainant hereby incorporates the allegations contained in paragraphs 1 through 29 above, as if fully set forth herein.

**A. Failure to meet generator requirements**

31. Respondent, as a hazardous waste generator, may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without having interim status, provided that certain conditions are met. Those conditions are listed in 40 C.F.R. § 262.34(a), as incorporated in 10 C.S.R. 25-5.262(1).

**Storage of Incompatible Wastes**

32. The regulations at 40 C.F.R. § 262.34(a)(1)(i) require that while being accumulated on-site, the hazardous waste is placed in containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of 40 C.F.R. Part 265.

33. The regulations at 40 C.F.R. § 265.177(c), as found in 40 C.F.R. Part 265 Subpart I, require that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

34. At the time of the October 2003 EPA inspection, Respondent was storing incompatible hazardous wastes in at least two tubs near each other in the Hazardous Waste Storage Room, without providing the separation or protection required in 40 C.F.R. § 265.177(c). Within the tubs, halogenated compounds and cyanides were stored near oxidizing agents.

**Contingency Plan**

35. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

36. The regulations at 40 C.F.R. § 265.51, as found in 40 C.F.R. Part 265 Subpart D, require that each owner or operator must have a contingency plan for his or her facility. The contingency plan must contain the elements described in 40 C.F.R. § 265.52.

37. At the time of the October 2003 EPA inspection, Respondent did not have a contingency plan containing all the elements required by 40 C.F.R. § 265.52. Specifically, Respondent's contingency plan did not: a) discuss arrangements made with the local hospital to coordinate emergency services, b) list the location of emergency equipment at the facility, c) describe signals used to begin evacuation, or d) list the home addresses for the emergency coordinators.

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38. The regulations at 40 C.F.R. § 265.53, as found in 40 C.F.R. Part 265 Subpart D, require that each owner or operator submit a copy of the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

39. At the time of the October 2003 EPA inspection, Respondent had not submitted a copy of its contingency plan to the local hospital or the police.

**Personnel Training**

40. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

41. The regulations at 40 C.F.R. § 265.16(d) require that Respondent must maintain documents and records on-site describing the job title of each employee engaged in hazardous waste management and the name of the employee filling each job, the specific written job description of each such employee (including the requisite qualifications and duties of the said employee), and a written description of the type and amount of introductory and continuing training to be given to employees engaged in hazardous waste management.

42. At the time of the October 2003 EPA inspection, Respondent's training documents and records on-site did not contain a description of the type and amount of introductory or continuing training to be given to the Emergency Management Coordinator.

43. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(a), which are alleged in paragraphs 31 through 42, subjects Respondent to the requirements of having a permit or interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, for its on-site storage of hazardous waste.

44. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo 260.390.1.

**B. Illegal Storage of Hazardous Waste**

45. The regulations at 40 C.F.R. § 262.34(b), as incorporated in 10 C.S.R. 25-5.262(1), state that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless he or she has been granted an extension to the 90 days.

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46. At the time of the October 2003 EPA inspection, Respondent had been storing at least 70 containers of hazardous waste for more than 90 days in its Hazardous Waste Storage Room on campus.
47. By storing hazardous waste on-site for greater than 90 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265 and 270.
48. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo 260.390 and 260.395, it is a violation of RCRA to operate a hazardous waste treatment, storage or disposal facility without a permit or interim status.
49. Respondent does not have a RCRA Permit to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo 260.390.1.
50. Pursuant to Section 3008(g) of RCRA, U.S.C. § 6928(g), and based upon the allegations stated above, Complainant proposes that Respondent be assessed a civil penalty of \$104,830 (which comprises a gravity-based amount of \$7,150 and a multi-day amount of \$97,680) for operation of a RCRA storage facility without a RCRA permit or interim status.

### **III. COMPLIANCE ORDER**

IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$159,033. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the United States Environmental Protection Agency, Region VII, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Mr. Edwin G. Buckner, PE  
ARTD/RESP  
U.S. EPA Region VII  
901 North 5th St.  
Kansas City, KS 66101.

The check must reference the EPA Docket Number of this Complaint and Respondent by name.

IT IS FURTHER ORDERED that Respondent take the following actions within the time periods specified:



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- (A) Within sixty (60) days of receipt of this Order, Respondent shall submit a list of all solid waste streams managed at the facility to EPA. In addition, for each such solid waste stream generated at the facility, Respondent shall submit documentation to EPA, demonstrating that an accurate hazardous waste determination has been performed, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation will include, but is not limited to, the following information:
- i. a description of the waste stream, which includes a detailed description of the process or processes that generated the waste;
  - ii. a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
  - iii. a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
  - iv. a determination of whether or not the waste is identified in 40 C.F.R. Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and reasoning regarding the basis for this determination.
- (B) Within sixty (60) days of receipt of this Order, Respondent shall demonstrate to EPA, in writing, that all hazardous wastes on site have not been stored for more than the maximum time allowed by 40 C.F.R. § 262.34 (as appropriate to Respondent's current generator status).
- (C) Beginning on the date of receipt of this Order, and continuing for a period of one year on a semi-annual basis, Respondent shall provide EPA with copies of all manifests for the off-site disposal of all hazardous wastes generated during this time-frame.

All documents required to be submitted by this Complaint and Compliance Order shall be sent to the attention of:

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Mr. Edwin G. Buckner, PE  
ARTD/RESP  
U.S. EPA Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

**IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), this Complaint shall become final unless Respondent files a written answer and requests a public hearing in writing no later than thirty (30) days after service of this Complaint.

A written answer to this Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is enclosed hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Mr. Alex Chen, Office of Regional Counsel, at the same address.

Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

**V. SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Mr. Alex Chen, Office of Regional Counsel, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7962.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction

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will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, U.S. EPA Region VII.

If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

IT IS SO ISSUED AND ORDERED:

9/29/2006  
Date

Alex Chen  
Alex Chen  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

9-29-06  
Date

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

Attachments: Penalty Calculation Summary  
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  
RCRA Civil Penalty Policy (June 2003)  
Small Business Regulatory Enforcement Fairness Act (SBREFA) Fact Sheet  
Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

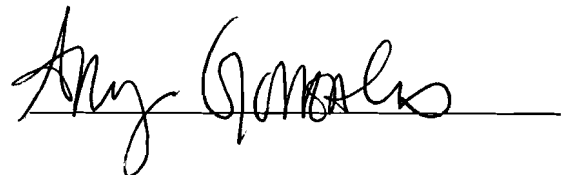
**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint, Compliance Order and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22); a copy of the RCRA Civil Penalty Policy (June 2003); and a copy of the Civil Penalty Calculation Summary to the registered agent of Missouri Western State University:

James Scanlon  
President  
Missouri Western State University  
4525 Downs Drive  
St. Joseph, Missouri 64507-2294

Dated this 29 day of September 2006.

A handwritten signature in cursive script, appearing to read "Amy Gonzalez", is written over a horizontal line.