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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION 7
2012 SEP 21 AM/PM 3:23

IN THE MATTER OF:	
Boehringer Ingelheim Vetmedica, Inc. 2621 North Belt Highway, St. Joseph, MO 64506	**CONSENT AGREEMENT AND FINAL ORDER**
Belt Highway Facility RCRA ID: MOD007134091	RCRA-07-2012-0006
AND	
Central Warehouse Facility RCRA ID: MOR000536201	
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)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Boehringer Ingelheim Vetmedica, 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).

Jurisdiction

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 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

2. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

3. The Respondent, Boehringer Ingelheim Vetmedica, Inc. (hereinafter "BIV" or "Respondent"), is a corporation incorporated under the laws of the State of Delaware. BIV manufactures animal health products for livestock producers and veterinarians. BIV is authorized to do business in the state of Missouri. BIV is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

Statutory and Regulatory Framework

4. 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. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes 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).

5. 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 though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are now authorized.

General Factual Allegations

6. Respondent owns and operates two facilities in St. Joseph, Missouri: A production facility, located at 2621 North Belt Highway, St. Joseph, Missouri (Belt Highway Facility) and a warehouse facility, known as the "Central Warehouse", located at

5606 Corporate Drive, St. Joseph, Missouri (Central Warehouse Facility). Respondent's description, according to Respondent's website, is that it is the American veterinary division of "Boehringer Ingelheim Corporation [which] is an international corporation of 18 operative subsidiaries and four representative offices as well as local distributors in more than 50 countries around the globe. With its own research, production and distribution facilities, the Boehringer Ingelheim Corporation ranks among the top 20 pharmaceutical companies worldwide."

7. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261.

8. Respondent has been assigned a RCRA facility identification number of MOD007134091 for the Belt Highway Facility and MOR000536201 for the Central Warehouse Facility.

9. On or about May 25-28, 2010, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's Belt Highway Facility at 2621 North Belt Highway, St. Joseph, Missouri, and on or about May 27-28, 2010, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's Central Warehouse Facility at 5606 Corporate Drive, St. Joseph, Missouri (hereinafter, both are referred to as "the EPA inspection").

10. As part of its operations, Respondent generates enough hazardous waste each year at each facility for each facility to be classified as a Large Quantity Generator (LQG) pursuant to 10 C.S.R. 25-5.262. At the time of the EPA Inspections, Respondent was operating each as a LQG of hazardous wastes, pursuant to 10 C.S.R. 25-5.262.

Violations

11. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated there under, as follows:

Count 1
FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION

The allegations stated in paragraphs 1 through 11 are re-alleged and incorporated as if fully set forth herein.

Failure to Make a Hazardous Waste Determination

12. The regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11

require that a person who generates a solid waste must determine if that waste is a hazardous waste at the point it is generated.

13. At the time of the EPA inspection it was determined that the Respondent failed to make a hazardous waste determination of the following solid waste streams at the Belt Highway Facility in violation of the regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11:

a. One partially full 8-oz container of Methoxyethanol dated 5/17/10 located in the Building H "less than 90-day hazardous waste accumulation area";

b. One full 30-gallon drum of hydrogen peroxide dated 5/17/10 located in the Building H "less than 90-day hazardous waste accumulation area";

c. Autoclave lead indicator tape waste located throughout the facility;

d. Spent wipes used with Zep Brake Parts Cleaner located in the Mechanical Maintenance Shop in Building P;

e. Cooling Towers Bypass Filters - Building B;

f. Materials located in Mechanical Maintenance Cabinet of Building B (Three 4L containers of Toluene, two 4L containers of n-Pentane and three 4L containers of Kerosene)

g. One bottle of Henin located in Building H

h. Exhaust filters where mfg 2.5% Thimerosal.

Count 2
OPERATING AS A TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS

14. The allegations stated in paragraphs 1 through 13 are re-alleged and incorporated as if fully set forth herein.

15. Section 3005 of RCRA, 42 U.S.C. § 6925, R.S.Mo. 260.390.1(1), and the regulations at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

16. At the time of the EPA inspection Respondent did not have a permit or interim status for either the Belt Highway Facility or the Central Warehouse Facility.

A. STORAGE OF HAZARDOUS WASTE AT A NON-PERMITTED FACILITY BY RECEIVING HAZARDOUS WASTE FROM AN OFFSITE LOCATION

17. At the time of the EPA inspections of the Belt Highway Facility and the Central Warehouse Facility, it was discovered that each facility was regularly receiving D009 hazardous waste for storage from offsite locations.

18. R.S.Mo. 260.390.1(1) requires that each person operating a facility for the treatment, storage or disposal of hazardous waste have a permit to do so.

19. As stated above, at the time of the EPA inspection Respondent did not have a permit for the treatment, storage or disposal of hazardous waste or interim status for either the Belt Highway Facility or the Central Warehouse Facility, and Respondent was therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and R.S.Mo. 260.390.1(1).

B. FAILURE TO COMPLY WITH GENERATOR REQUIREMENTS

20. The regulations at 10 C.S.R. 25-5.262(1), which incorporate by reference 40 C.F.R. § 262.34(a), allow an LQG to accumulate hazardous waste in containers on-site for up to ninety days without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. These conditions include compliance with other hazardous waste regulatory requirements.

21. At the time of the inspection, Respondent was not complying with various hazardous waste regulatory requirements, described below. Therefore, Respondent did not meet the exception to the regulation that allows generators to store hazardous waste at their facility for up to ninety (90) days without a permit or interim status so long as they meet hazardous waste regulatory requirements.

Failure to close, date and label storage containers

22. The regulations at 10 C.S.R. 25-5.262(1) referencing 40 C.F.R. § 265.173(a); 10 C.S.R. 25-5.262(1) referencing 40 C.F.R. § 262.34(a)(2) and (3); and 10 C.S.R. 25-5.262(2)(C)1 require that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and be labeled with the words "Hazardous Waste" and that each container be closed.

23. At the time of the EPA inspection in the Environmental Management Facility of the Belt Highway Facility, it was documented that the following containers of hazardous waste

were not closed, dated or labeled as "Hazardous Waste":

a. 2, ~1/2 full 4L containers of ammonium hydroxide – D002 (open, not labeled HW or per DOT, no date)
b. 2, ~1/3 full 1Qt containers of ammonium hydroxide – D002 (not labeled HW or per DOT, no date)
c. 1, ~1/3 full small container of Indol Reagent-D002 (not labeled HW or per DOT, no date)
d. 1, ~1/3 full small container of Ethanol-D001(not labeled HW or per DOT, no date)
e. 1, full 55-gallon container of D009 Thimersol Waste dated 4/14/10 (not labeled per DOT)
f. 1, full 55-gallon container of D009 Thimersol Waste dated 4/29/10 (not labeled per DOT)
g. 1, full 55-gallon container of NaOH – D002 (not labeled HW or per DOT, no date)
h. 1, full 30-gallon container of NaOH – D002 (not labeled HW or per DOT and no date)
i. 1, 1/4 full 55-gallon container of NaOH – D002 (not labeled HW or per DOT, no date)
j. 1, full 55-gallon container of Thimerosol waste dated 5/4/10 (incomplete label and no DOT placard)
k. 1, 1/2 full 30-gallon container of D001 hydrogen peroxide (not labeled HW or per DOT)

24. Respondent violated the regulations at 10 C.S.R. 25-5.262(1) referencing 40 C.F.R. § 265.173(a); 10 C.S.R. 25-5.262(1) referencing 40 C.F.R. § 262.34(a)(2) and (3); and 10 C.S.R. 25-5.262(2)(C)1 by not properly labeling, dating or closing the above listed containers at the Belt Highway Facility.

Storing Incompatible Wastes

25. The regulations at 10 C.S.R. 25-5.262(1) incorporate by reference 40 C.F.R. § 265.177(c), which states as follows: "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."

26. At the time of the EPA Inspection at the Belt Highway Facility, in the hazardous waste storage area of Building H, the inspector observed an approximately ½ full 55-gallon drum of Recoil Descaler product stored near an approximately ¼ full 55-gallon drum of D002 waste

sodium hydroxide. According to the Material Base Safety Data Sheets for Recoil Descaler and sodium hydroxide, the two are incompatible. Recoil Descaler contains hydrofluoric acid and phosphoric acid and is incompatible with bases. Sodium Hydroxide is a caustic metallic base and is incompatible with strong acids. The two items were not separated or otherwise protected by means of a dike, berm, wall, or other device.

27. Respondent's failure to separate or protect the D002 hazardous waste from the Recoil Descaler is a violation of 40 C.F.R. § 265.177(c), as incorporated by reference at 10 C.S.R. 25-5.262(1).

Undated/incorrectly dated satellite accumulation containers

28. The regulations at 10 C.S.R. 25-5.262(2)(C)3, and by incorporation 40 C.F.R. § 262.34(a)(2), require that satellite accumulation containers be labeled with the beginning date of satellite storage. At the time of the EPA inspection, the inspector observed in Building D of the Belt Highway Facility, Room D223, two satellite accumulation containers of hazardous waste which were not dated.

29. Respondent violated 10 C.S.R. 25-5.262(2)(C)3, and by incorporation 40 C.F.R. § 262.34(a)(2), when it failed to accurately date its satellite accumulation containers at the Belt Highway Facility.

Contingency Plan

30. The regulations at 10 C.S.R. 25-7.265(1) incorporate by reference 40 C.F.R. § 265, including 40 C.F.R. §§ 265.50-56 (Subpart D). 40 C.F.R. § 265.52(d) requires, among other things, that: "the contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date." In addition, 40 C.F.R. § 265.52(e) requires that the plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. The plan must also include the location and a physical description of each item on the list, and a brief outline of its capabilities.

31. At the time of the EPA inspection, the inspector reviewed the BIV's contingency plan for the Facilities dated February 2009 and observed that the alternate emergency coordinators' home addresses were not included as required by 40 C.F.R. § 265.52(d). Additionally, according to the inspector, the location and description of the emergency equipment did not include specific information, as required by 40 C.F.R. § 265.52(e).

32. Failure to include the information described in paragraph 31 above in the contingency plan is a violation of the regulations at 10 C.S.R. 25-7.265(1), which incorporate by

reference 40 C.F.R. § 265, including 40 C.F.R. §§ 265.50-56 (Subpart D).

Training Plan

33. The regulations at 10 C.S.R. 25-5.262(1), and by incorporation 40 C.F.R. § 265.16(d)(3), require Respondent maintain a written description of the type and amount of both introductory and continuing training being provided to any/all person(s) filling a position related to hazardous waste management and maintain records that document that the proper training or job experience required has been given to, and completed by, facility personnel.

34. At the time of the EPA inspection, the inspector reviewed BIV's training records and found that they did not describe the type of training given to each person holding a position related to hazardous waste management.

35. Failure to describe and record the type of training for each person holding a position related to hazardous waste management is a violation of 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 265.16(d)(3).

Count 3
ARRANGING FOR THE TRANSPORT OF HAZARDOUS WASTE TO A FACILITY OTHER THAN AN AUTHORIZED TSD FACILITY

36. The allegations stated in paragraphs 1 through 35 are re-alleged and incorporated as if fully set forth herein.

37. BIV began leasing the Central Warehouse Facility in February 2010. At the time of the EPA Inspection, the inspector discovered that BIV had been sending hazardous waste from its Belt Highway Facility to the Central Warehouse Facility and from the Central Warehouse Facility to the Belt Highway Facility on numerous occasions. The Central Warehouse was also receiving hazardous waste from other locations.

38. Between February 2010 and the present, neither the Central Warehouse Facility nor the Belt Highway Facility have ever been authorized by any agency of the state of Missouri or the United States to treat, store or dispose of hazardous waste.

39. The Revised Statutes of Missouri (R.S.Mo.) § 260.380.1(7) requires that hazardous waste generators in Missouri utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to sections 260.350 to 260.430 or RCRA, or a state hazardous waste management program authorized pursuant to RCRA, or any facility exempted from the permit required pursuant to section 260.395.

40. By arranging for the transport of hazardous waste to facilities not legally authorized to receive such waste, BIV violated R.S.Mo. § 260.380.1(7).

Count 4
CAUSING HAZARDOUS WASTE TO BE TRANSPORTED WITHOUT A HAZARDOUS WASTE TRANSPORTER LICENSE AND WITHOUT A MANIFEST

41. The allegations stated in paragraphs 1 through 40 are realleged and incorporated as if fully set forth herein.

42. BIV began leasing the Central Warehouse Facility in February 2010. At the time of the EPA Inspection, the inspector discovered that BIV had been transporting hazardous waste between its Belt Highway Facility and the Central Warehouse Facility on numerous occasions.

43. R.S.Mo. § 260.380.1(5) requires that generators of hazardous waste utilize only hazardous waste transporters holding a license pursuant to Missouri law for the removal of all hazardous wastes from the premises where they were generated.

44. R.S.Mo. § 260.385.1(3) requires that hazardous waste transporters in Missouri shall accept only shipments of hazardous waste that are accompanied by a manifest, provided by the generator, that has been completed and signed by the generator in accordance with the rules and regulations adopted under R.S.Mo. Sections 260.350 to 260.430.

45. None of the shipments of hazardous waste that BIV transported between its Belt Highway Facility and its Central Warehouse Facility were transported by a licensed hazardous waste hauler, as required by R.S.Mo. § 260.380.1(5), nor were they accompanied by a hazardous waste manifest as required by R.S.Mo. § 260.385.1(3).

46. By transporting hazardous waste from its point of generation without utilizing a licensed hazardous waste transporter and without a hazardous waste manifest, BIV violated R.S.Mo. § 260.380.1(5) and R.S.Mo. § 260.385.1(3).

Count 5
FAILURE TO COMPLY WITH UNIVERSAL WASTE LAMP REQUIREMENTS

47. The allegations stated in paragraphs 1 through 46 are realleged and incorporated as if fully set forth herein.

48. 10 C.S.R. 25-16.273(1)(A) defines "Universal Waste" to include lamps as described in 40 C.F.R. § 273.5. At the time of the EPA Inspections, the Belt Highway Facility had lamps that met this definition.

49. With regards to the lamps described in paragraph 48 above, the Belt Highway Facility is a "small quantity handler" of Universal Waste, as defined by 10 C.S.R. 25-16.273(1), incorporating by reference 40 C.F.R. § 273.9.

50. Section 3005 of RCRA, 42 U.S.C. § 6925, R.S.Mo.. 260.370, and the regulations at 10 C.S.R. 25-16.273(1), incorporating by reference 40 C.F.R. §§§ 273.13(d)(1), 273.14(e), and 273.15(c), require that containers in which such lamps are contained must be structurally sound and closed; must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s), or "Used Lamp(s)"; and the handler of such lamps must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste.

51. At the time of the EPA inspection it was documented that at the Belt Highway Facility there were various containers of spent fluorescent lamps which were either not closed or labeled, and the handler could not demonstrate the length of time that the lamps had been accumulated from the date they became waste in violation of 10 C.S.R. 25-16.273(1) and, through incorporation, 40 C.F.R. §§§ 273.13(d), 273.14(e) and 273.15(c).

Count 6
FAILURE TO COMPLY WITH RECYCLED USED OIL MANAGEMENT STANDARDS

52. The allegations stated in paragraphs 1 through 51 are realleged and incorporated as if fully set forth herein.

53. The regulations found at 10 C.S.R. 25-11.279, which incorporate 40 C.F.R. Part 279, in part, set forth the requirements for managing used oil. At the time of the EPA Inspection, Respondent managed used oil produced at the Belt Highway Facility and used oil it received from at least one other facility it owned.

54. The regulations at 10 C.S.R. 25-11.279(2)(D)2 require that "Aggregate Points", as that term is defined by 40 C.F.R. § 279.32, must notify the solid waste district in which they operate, or the Missouri Department of Natural Resources' (MDNR) Technical Assistance Program, of their used oil collection activity.

55. At the time of the EPA Inspection The Belt Highway Facility met the definition of "Aggregate Point", as defined at 40 C.F.R. § 279.32, and was regularly receiving used oil from another facility owned and operated by Respondent, but had not given the required notification to either the solid waste district in which it operates or to MDNR, in violation of 10 C.S.R. 25-11.279(2)(D)2.

III. CONSENT AGREEMENT

56. Respondent and EPA agree to the terms of this CAFO. This CAFO and its Attachments shall constitute the complete agreement between the parties respecting the subject matter hereof.

57. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO.

58. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

59. 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 this CAFO.

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

61. This CAFO addresses and resolves all civil claims for the RCRA violations and facts alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

62. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

63. Respondent certifies that, to the best of its knowledge, Respondent's two facilities, which are the subject of this CAFO, are in compliance with RCRA, 42 U.S.C. 6901 et seq. and all regulations promulgated thereunder.

64. The effect of settlement is conditioned upon the accuracy of the Respondent's representations to EPA set forth in Paragraph 63 above.

65. The undersigned representative of Respondent certifies that she or he is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

66. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated civil penalty of Sixty-Eight Thousand Four Hundred Seventy-Five Dollars ($68,475), as set forth in Paragraph 1 of the Final Order below, and shall perform

a Supplemental Environmental Project ("SEP") as set forth in this CAFO. The projected cost of the SEP is Three Hundred Thousand Dollars ($300,000).

67. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

Supplemental Environmental Project (SEP)

68. In response to the violations of RCRA alleged in this CAFO and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in this CAFO, which the parties agree is intended to secure significant environmental or public health protection and improvement.

69. Respondent shall complete the following SEP:

> The construction of an expansion to the existing industrial waste building on the facility property located at 2621 North Belt Highway, St. Joseph, MO 64506. This construction is being done exclusively for the purpose of improving the storage of hazardous waste at the Belt Highway site from a public safety and regulatory standpoint. The building is intended to serve in this capacity for the foreseeable future.

This SEP shall be performed in accordance with the requirements of this CAFO and the SEP Work Plan that is attached to this document and incorporated by reference.

70. Within 20 months of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall conform to the requirements of this CAFO and shall contain the following information:

a. A detailed description of the SEP as implemented, including itemized costs;

b. A description of any problems encountered in implementation of the project and the solution thereto;

c. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

d. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

71. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this

Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

72. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

73. The SEP Completion Report shall be submitted on or before the due date specified in Paragraph 70 to:

> Nicole Moran, AWMD/WEMM
> Environmental Protection Agency
> Region 7
> 901 North 5th Street
> Kansas City, Kansas 66101.

74. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

> This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et. seq.*

75. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP described in this CAFO by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

76. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

77. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

78. Respondent agrees to the payment of stipulated penalties as follows:

a. In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(1) Except as provided in Subparagraph b. immediately below, if the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Two Hundred Seventy Thousand Dollars ($270,000).

(2) If the SEP is satisfactorily completed, but the Respondent spends less than Two Hundred Seventy Thousand Dollars ($270,000) on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Fifty Thousand Dollars ($50,000).

b. If the SEP identified in this CAFO is not completed satisfactorily, but EPA determines that Respondent: (1) has made good faith and timely efforts to complete the SEPs; and (2) has certified, with supporting documentation, that Respondent spent at least Two Hundred Seventy Thousand Dollars ($270,000) on the SEP, Respondent shall not be liable for payment of a stipulated penalty.

c. If Respondent fails to timely and completely submit the SEP Completion Report required by this CAFO, Respondent shall be liable for and shall pay a stipulated penalty in the amount of Five Hundred Dollars ($500.00) for each day after the due date until a complete report is submitted.

d. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP.

e. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other resolution under this CAFO.

f. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Section "A" of the Final Order portion of this CAFO, below.

79. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

80. 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.

Effective Date

81. This CAFO 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.

Reservation of Rights

82. Except as expressly provided in this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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 Twenty-Five Thousand Dollars ($25,000) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of Subchapter III of RCRA (Hazardous Waste

Management), for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to $37,500 per day are authorized for violations of Subchapter III of RCRA that occur after January 12, 2009.

83. Complainant reserves the right to take enforcement actions against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO. Respondent reserves all defenses it may have to any such enforcement action.

84. Except as expressly provided herein, nothing in this CA/FO 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.

85. Notwithstanding any other provisions of the CAFO, 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.

86. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

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

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 CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of Sixty-Eight Thousand Four Hundred Seventy-Five Dollars ($68,475). The payment must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the

"due date"). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

3. A copy of the payment documentation shall also be mailed to EPA's representative identified in paragraph 8 below, and to:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to:

Raymond C. Bosch
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66106.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. Respondent shall complete the Supplemental Environmental Project in

accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

B. Compliance Actions

6. Within 90 days of the effective date of this CAFO, Respondent shall provide to Complainant:

a) A Standard Operating Procedure (SOP) for assuring that hazardous wastes are no longer being transported between any of the BIV facilities;

b) An SOP for making hazardous waste determinations at the Belt Highway facility and the Central Warehouse facility;

c) An updated Contingency Plan which includes the description of all emergency equipment capabilities.

7. Within 90 days of the effective date of this CAFO, Respondent shall provide to Complainant photographic documentation that provides an accurate representation of the condition of hazardous waste and universal waste accumulation areas, as well as representative photographic documentation (i.e., 4-5 photographs) that storage containers are closed, labeled, dated and managed according to the regulations. Respondent shall continue to provide this to Complainant every 90 days for a period of one year after the effective date of this CAFO.

C. Submittals

8. All documents required to be submitted to EPA pursuant to this Final Order shall be sent to:

Nicole Moran, AWMD/WEMM
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
E-mail: moran.nicole@epa.gov

D. Parties Bound

9. This Final Order portion of this CAFO shall apply to and be binding upon Complainant and 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 CAFO.

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9-20-12
Date

Donald Toensing
Chief
Waste Enforcement and
Materials Management Branch
Air and Waste Management Division

9-20-12
Date

Raymond C. Bosch
Assistant Regional Counsel

FOR RESPONDENT:

FOR BOEHRINGER INGELHEIM VETMEDICA, INC.:

Date: Sep 18, 2012

DR. ALBRECHT KISSEL
President and Chief Executive Officer
Boehringer Ingelheim Vetmedica, Inc.
2621 N. Belt Hwy
St. Joseph, MO 64506

Date: 9/18/2012

R. Michael Herrman
Assistant Secretary
Boehringer Ingelheim Vetmedica, Inc.
2621 N. Belt Hwy
St. Joseph, MO 64506

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

Sept 21, 2012
Date

Robert Patrick
Regional Judicial Officer

Exhibit 1

Supplemental Environmental Project Work Plan:
Improved Industrial Waste Handling/Storage Facilities
Boehringer Ingelheim Vetmedica Inc. (BIVI), North Belt Manufacturing Location
2621 North Belt Highway, St. Joseph, MO 64506

Background

Hazardous and non-hazardous waste storage needs at BIVI/North Belt location have outgrown the capacity and capabilities of the current hazardous waste building at the BIVI/North Belt location. An upgrade is needed to improve the safety, efficiency and logistics of storing, handling and transporting hazardous and non-hazardous wastes.

Scope

This project involves the construction of an expansion to the existing industrial waste building on the facility property located at 2621 North Belt Highway, St. Joseph, MO 64506. New Capabilities of the facility will include:

- Dock access for a semi truck and a straight truck with dock levelers and locks.
- Paved entrance to dock.
- Secondary containment as part of the foundation for internal storage and containment capabilities for the loading/unloading area.
- Level or ramp-up entrance into dock area from the storage floor.
- Enhanced heating and cooling of storage areas in building.
- Designated storage areas for drum storage, labpacks, pallets, universal wastes and incompatibles.
- Installation of enhanced access control and surveillance of the waste storage facility.

Considerations for the facility include:

- "Green" aspects in construction of facility, i.e., energy efficient equipment, green roof, recycled construction materials, will be incorporated as appropriate into the design.

Project Benefits

Several benefits will be derived from the improvement of the industrial waste handling facilities at BIVI including:

1. Improved spill prevention and safer handling of containers.
2. Less need for non-hazardous shipments to other locations, i.e., less chance of vehicular accident.
3. Improved heating and cooling to improve occupancy conditions.
4. More storage resulting in full truckloads, i.e., fewer shipments on the road.
5. Improved organization of waste storage.
6. Improved ergonomic safety for workers.
7. Improved security for waste storage.

Project Costs

The preliminary costs for the project are estimated at $300,000 to $450,000 based on similar types of buildings recently constructed. As part of the SEP, BIVI will spend more than $300,000 in documented costs for design and construction of the new waste handling/storage building.

Project Schedule

Preliminary milestone dates for the project are as follows:

- Completion of Engineering – December 31, 2012
- Bidding/Selection of Contractor – February 28, 2013
- Commence Construction – March 31, 2013
- Complete Construction – November 30, 2013
- Final Move-in and Occupancy – December 31, 2013

Actual milestone dates could be adjusted slightly based upon weather conditions and will be dependent upon timely receipt of construction and occupancy permits.

IN THE MATTER OF Boehringer Ingelheim Vetmedica, Inc., Respondent
Docket No. RCRA-07-2012-0006

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by FEDEX to:

Wendy Kiefer
Boehringer Ingelheim Vetmedica, Inc
3902 Gene Field Road
St. Joseph, Missouri 64506

Dated: 9/21/12

Kathy Robinson
Hearing Clerk, Region 7