



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 25 2011

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL 7009 1680 0000 7665 2438
RETURN RECEIPT REQUESTED

Mr. Michael Scanlon
Attorney at Law
Barnes and Thornburg LLC
11 South Meridian Street
Indianapolis, Indiana 46204

Re: Consent Agreement and Final Order
AIT Laboratories, Incorporated
EPA I.D. No.: INR000127217
Docket No.: RCRA-05-2011-0012

Dear Mr. Scanlon:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original CAFO was filed on ~~_____~~ JUL 25 2011 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$32,000 in the manner prescribed in paragraph 76 of the CAFO, and reference payment with the number BD 2751142R012 and Docket Number RCRA-05-2011-0012. Also enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

Mary S. Setnicar
Acting Chief, RCRA Branch
Land and Chemicals Division

Enclosures (2)

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction, Waiver of Right to Hearing and Certification

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006(b) and 3008 of RCRA, 42 U.S.C. §§ 6926(b) and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. §§ 260.1 – 279.82.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

13. Under Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any

violation of regulations promulgated under Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939(e)), or of any state provision authorized under Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation of RCRA, requiring compliance immediately or within a specified period of time, or both.

14. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Under the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring after March 15, 2004 through January 12, 2009, and a civil penalty of up to \$37,500 per day for each violation occurring or continuing after January 12, 2009.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

16. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3953 (January 31, 1986).

General Allegations

17. The Respondent is AIT Laboratories, Inc. (AIT Laboratories or Respondent), a company doing business in Indiana, located at 2265 Executive Drive, Indianapolis, Indiana 46241.

18. The Respondent is a "person," as defined by 329 IAC 3.1-4-1, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. At all times relevant to this Complaint, Respondent was the owner and operator of a facility located at 2265 Executive Drive, Indianapolis, Indiana 46241 (the Facility).

20. Respondent was at all times relevant to this Complaint a corporation incorporated under the laws of Indiana.

21. At all times relevant to this Complaint, Respondent generated wastes at the facility which were solid wastes, as defined in 329 IAC 3.1-6-1 and 2 (2) [40 C.F.R. § 261.2].

22. On or about September 8, 2009, the Facility was assigned U.S. EPA Identification Number INR000127217.

23. The Facility is regulated as a small quantity generator (SQG) of hazardous waste.

24. The Facility's status as a SQG is based on the amount of hazardous waste generated per month and the total amount of hazardous waste accumulated on-site at any one time.

25. SQG's produce at least 100 kilograms (2200 pounds) of hazardous waste per calendar month.

26. A small quantity generator may, for 180 days or less, accumulate and/or conduct treatment of hazardous waste that is generated on-site without an Indiana hazardous waste management permit, provided that the generator complies with the conditions of 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34].

27. On January 20, 2010, U.S. EPA conducted a compliance evaluation inspection (CEI) at the Facility.

28. During the CEI on January 20, 2010, Respondent allowed the U.S. EPA inspector to observe operations related to the handling of hazardous waste at the facility, ask questions of facility employees and review limited facility records.

29. During the CEI on January 20, 2010, the U.S. EPA inspector observed that the Respondent had not marked seventeen (17) satellite accumulation containers of hazardous waste in the "Certifying" Area with the words, "Hazardous Waste" or with other words that identified the contents.

30. During the CEI on January 20, 2010, the U.S. EPA inspector observed that the Respondent had not marked and made visible the date upon which accumulation began on one (1) container of hazardous waste in the "Garage" Hazardous Waste Storage Area, and three (3) containers of hazardous waste in the "Wash Room" Area.

31. During the CEI on January 20, 2010, the U.S. EPA inspector observed that the Respondent had not closed seventeen (17) satellite accumulation containers in the "Certifying" Area except when it was necessary to add or remove waste.

32. During the CEI on January 20, 2010, the U.S. EPA inspector noted that the Respondent had not made preparedness and prevention arrangements with local authorities.

33. During the CEI on January 20, 2010, the U.S. EPA inspector noted that the Respondent did not have a specified emergency coordinator(s) capable of responding to any emergencies that arise at the facility and capable of response within a short period of time.

34. During the CEI on January 20, 2010, the U.S. EPA inspector noted that the Respondent had not posted emergency information.

35. During the CEI on January 20, 2010, the U.S. EPA inspector noted that the Respondent had not ensured that employees were thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

36. A SQG which accumulates hazardous waste on-site for 180 days or less, and which does not meet the conditions for a hazardous waste permit exemption of 329 IAC § 3.1-7-1 [40 C.F.R § 262.34(d)], is an operator of a hazardous waste storage facility, and is required to obtain an Indiana hazardous waste storage permit. See 329 IAC §§ 3.1-13-1, 13-2(1)-(4), 13-3 to 3-17 [40 C.F.R. §§ 270.1(c), 270.10(a) and (d)].

37. If the generator does not comply with the conditions of 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], then the generator must apply for an operating permit. See 329 IAC §§ 3.1-13-1, 13-2(1)-(4) and (6), 13-3 to 3-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

38. During the CEI on January 20, 2010, the U.S. EPA inspector noted that the Respondent did not have a hazardous waste storage permit issued by the State of Indiana or the U.S. EPA.

39. On March 16, 2010, U.S. EPA requested information from the Respondent relating to the generation and management of hazardous waste at the Facility.

40. The Respondent responded to U.S. EPA's March 16, 2010, request for information, on or about April 13, 2010, and April 23, 2010 (Responses).

41. During the review of the Responses, the U.S. EPA inspector noted that between January 19, 2007, and October 2, 2009, Respondent had prepared at least seventeen (17) manifests that did not include the required EPA identification number.

42. During the review of the Responses, the U.S. EPA inspector noted that between January 19, 2007, and September 8, 2009, the Respondent had offered hazardous waste for transportation on fifteen (15) different dates without having received an EPA identification number.

43. During the CEI on January 20, 2010, and during the review of Responses, the U.S. EPA inspector noted that the Respondent failed to retain copies of nine (9) manifests signed by the designated facility that receives the hazardous waste.

44. During the CEI on January 20, 2010, and during the review of Responses, the U.S. EPA inspector noted that the Respondent failed to keep records of any test results, waste analyses, or other determinations for at least three (3) years from the date the hazardous waste was sent off-site for treatment, storage or disposal.

45. During the CEI on January 20, 2010, and during the review of Responses, the U.S. EPA inspector noted that the Respondent failed to submit legible copies of thirteen (13) manifests to the Administrator within sixty (60) days of shipment with some indication that the generator had not received confirmation of delivery.

46. During the CEI on January 20, 2010, and during the review of Responses, the U.S. EPA inspector noted that the Respondent prepared at least seventeen (17) manifests that did not include a signed land disposal restriction form or notification that indicated that the

Respondent had determined that the waste was a hazardous waste for purposes of compliance with the land disposal restrictions.

47. On May 27, 2010, U.S. EPA issued a Notice of Violation (the NOV) to the Respondent. The NOV requested that the Respondent respond to the allegations in the NOV within 30 days of receipt of the NOV.

48. Respondent received the NOV on or about June 4, 2010.

49. Respondent submitted a response to the NOV on or about June 15, 2010.

50. On December 13, 2010, U.S. EPA sent a Pre-Filing Notice Letter to the Respondent.

51. Respondent received the Pre-Filing Notice Letter on or about December 16, 2010.

52. On January 31, 2011, U.S. EPA met with the Respondent to discuss the Pre-Filing Notice Letter. During this meeting, Respondent demonstrated that the violations identified herein were resolved.

53. Respondent submitted additional information including affidavits on or about February 28, 2011.

COUNT 1 – Storage of Hazardous Waste Without a Permit by Failing to Meet Generator Conditions

54. Complainant incorporates paragraphs 1 through 53 of this CAFO as though set forth in this paragraph.

55. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must ensure that the date, upon which each period of accumulation begins, is clearly marked and visible for inspection on each container of hazardous waste and while being accumulated on-site, each container of hazardous waste must be labeled or marked clearly with the words, “Hazardous Waste.”

56. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must close each container holding hazardous waste except when it is necessary to add or remove waste.

57. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must make preparedness and prevention arrangements with local authorities.

58. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must specify an emergency coordinator capable of responding to any emergencies that arise at the facility and capable of response within a short period of time.

59. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must post emergency information.

60. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must ensure that employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

61. As set forth above, Respondent did not comply with the conditions of 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste. Therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1 through 3.1-13-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

62. Respondent's violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1 through 3.1-13-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13] subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 2– Failure to Comply with Hazardous Waste Determination and Identification Number Requirements

63. Complainant incorporates paragraphs 1 through 53 of this CAFO as though set forth in this paragraph.

64. Under 329 IAC § 3.1-7-1 [40 C.F.R. §§ 262.11 and 262.40], a generator of hazardous waste must keep records of any test results, waste analyses, or other determinations for at least three years from the date that the waste was last sent off-site for treatment, storage or disposal.

65. Under 329 IAC §§ 3.1-7-1 and 3.1-10-1 [40 C.F.R. §§ 262.12 and 265.11], a generator of hazardous waste must not treat, store, dispose of, transport, or offer for transportation, any hazardous waste without having received an EPA identification number.

66. Under 329 IAC § 3.1-12-1 [40 C.F.R. § 268.7], and 329 IAC § 3.1-7-1 [40 C.F.R. § 262.11(c)], a generator of hazardous waste must determine if the waste is a hazardous waste for purposes of compliance with the land disposal restrictions.

67. Respondent's violation of 329 IAC § 3.1-7-1 [40 C.F.R. §§ 262.11 and 262.40], 329 IAC §§ 3.1-7-1 and 3.1-10-1 [40 C.F.R. §§ 262.12 and 265.11], and 329 IAC § 3.1-12-1 [40 C.F.R. § 268.7], and 329 IAC § 3.1-7-1 [40 C.F.R. § 262.11(c)], subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 3– Failure to Comply with Manifest Requirements

68. Complainant incorporates paragraphs 1 through 53 of this CAFO as though set forth in this paragraph.

69. Under 329 IAC §§ 3.1-7-1, and 3.1-7-2(1), [40 C.F.R. § 262.20(a)(1)], a generator of hazardous waste who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest according to the instructions.

70. Under 329 IAC §§ 3.1-7-1, and 3.1-7-2(1), and [40 C.F.R § 262.23(a)(3)], and 329 IAC § 3.1-7-1 [40 C.F.R § 262.40(a)], a generator of hazardous waste must retain a copy of each manifest signed for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must also be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

71. Respondent's violation of 329 IAC §§ 3.1-7-1, and 3.1-7-2(1), [40 C.F.R § 262.20(a)(1)], 329 IAC §§ 3.1-7-1, and 3.1-7-2(1), [40 C.F.R § 262.23(a)(3)], and 329 IAC § 3.1-7-1 [40 C.F.R § 262.40(a)], subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT 4— Failure to Comply with Recordkeeping and Reporting Requirements

72. Complainant incorporates paragraphs 1 through 53 of this CAFO as though set forth in this paragraph.

73. Under 329 IAC §§ 3.1-7-1 and 3.1-7-2(3) [40 C.F.R § 262.42(b)], a generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery.

74. Respondent's violation of 329 IAC §§ 3.1-7-1 and 3.1-7-2(3) [40 C.F.R. § 262.42(b)], subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Civil Penalty

75. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$32,000. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

76. Within 30 days after the effective date of this CAFO, Respondent must pay a \$32,000 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

A copy of the check shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Joseph Williams
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

Diane Sharrow
RCRA Branch

Land and Chemicals Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard (LR-8J)
Chicago, Illinois 60604-3590

77. A transmittal letter identifying this CAFO shall accompany the remittance and the copy of the check. The letter and check must state the case name, the docket number of this CAFO and the billing document number.

78. This civil penalty is not deductible for federal tax purposes.

79. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 80 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

80. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

81. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

82. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

83. This CAFO does not affect Respondent's responsibility to comply with RCRA and

other applicable federal, state, local laws or permits. Except as provided in paragraph 81, above, compliance with this CAFO will not be a defense to any action subsequently commenced pursuant to federal laws administered by EPA.

84. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA Civil Penalty Policy, and U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

85. The terms of this CAFO bind Respondent, its successors, and assigns.

86. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

87. Each party agrees to bear its own costs and attorney’s fees in this action.

88. This CAFO constitutes the entire agreement between the parties.

In the Matter of: AIT Laboratories, Incorporated

AIT Laboratories, Incorporated, Respondent

June 23rd, 2011
Date

D. Scott Alexander
Name

In the Matter of: AIT Laboratories, Incorporated

United States Environmental Protection Agency, Complainant

7/20/11
Date

Michael D. Harris for MG
Margaret M. Guerriero
Director
Land and Chemicals Division

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-21-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency

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USEPA
REGION 5

7341903
COUNSEL

U.S. ENVIRONMENTAL
PROTECTION AGENCY

JUN 28 2011

OFFICE OF REGIONAL
COUNSEL

CASE NAME: AIT Laboratories, Inc.

DOCKET NO: RCRA RCRA-05-2011-0012

CERTIFICATE OF SERVICE

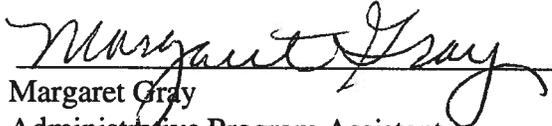
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Mr. Michael Scanlon
Attorney at Law
Barnes and Thornburg LLC
11 South Meridian Street
Indianapolis, IN 46204

Return Receipt # 7009 1689 0000 7665 2438

Dated: 7/25/11


Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division - RCRA Branch
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5028

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