

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Shawnee Mission Medical Center, Inc.)
)
9100 West 74th Street)
Merriam, Kansas 66204)
)
RCRA I.D. No. KSD067962134)
)
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))
_____)

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2009-0004

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Shawnee Mission Medical Center, 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).

Section I

Jurisdiction

1. 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.

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

Section II

Parties

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

4. The Respondent is Shawnee Mission Medical Center, Inc. (SMMC), a company incorporated under the laws of Kansas and licensed to do business in the state of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas 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 Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). 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.

6. 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

7. Respondent is a Kansas corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 9100 West 74th Street Merriam, Kansas 66204, is a hospital engaged in the provision of healthcare. SMMC employs approximately 2,500 people and has been at its present location since the 1970s.

9. As part of its operations, Respondent generates waste, including xylene, spent solvent soaked rags, paint stripper, lead solder waste, and paint thinner. Respondent also generates used oil and universal waste.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference the regulations at 40 C.F.R. Parts 260 and 261. Each of the wastes listed in paragraph 9 is a “solid waste” and all of the wastes except the used oil and universal waste are also “hazardous wastes” within the meaning of these regulations.

11. Respondent filed a notification of hazardous waste activity on July 31, 2000, stating that SMMC was a “Kansas Generator” within the meaning of K.A.R. 28-31-2(d). The hazardous waste notification was last updated March 30, 2009.

12. On or about January 17-18, 2007, an EPA representative conducted a Compliance Evaluation Inspection at Respondent’s facility (hereinafter “the January 2007 inspection”).

13. During the inspection, the inspector observed that Respondent had generated and had in storage at the facility between 55 lbs and 2,200 lbs of hazardous waste. Therefore, at the time of the January 2007 inspection, Respondent was a “Kansas Generator” pursuant to K.A.R. 28-31-2(d).

Violations

14. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as follows:

Count 1

Failure to Perform An Adequate Hazardous Waste Determination

15. The allegations stated in paragraphs 7 through 13 are realleged and incorporated as if fully set forth herein.

16. K.A.R. 28-31-4(b) requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

17. At the time of the January 2007 inspection, Respondent had been generating multiple solid waste streams, including xylene, spent solvent-soaked rags, paint stripper residue, solder waste, ethyl alcohol still bottoms, xylene still bottoms, paint thinner, and multiple aerosol containers.

18. At the time of the January 2007 inspection, Respondent had not conducted a hazardous waste determination on the solid waste streams noted in paragraph 17.

19. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b).

Count 2

**Operation of a Hazardous Waste Treatment, Storage or Disposal Facility
Without a Permit**

20. The allegations stated in paragraphs 7 through 13 are realleged and incorporated as if fully set forth herein.

21. Section 3005 of RCRA and Section 65-3437 of the Kansas Statutes, Annotated (K.S.A.) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

Failure to Comply with Generator Requirements

22. The regulations at K.A.R. 28-31-4 (h) state that Kansas generators may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided certain conditions are met. These conditions include compliance with other hazardous waste regulatory requirements.

23. At the time of the January 2007 inspection, Respondent was not complying with the following regulatory requirements:

*Conduct and Document Weekly Inspections of Hazardous Waste
Container Storage Area*

24. K.A.R. 28-31-4(h)(2)(A) requires that Kansas generators of hazardous waste conduct weekly inspections of their hazardous waste containers storage areas.

25. Respondent failed to conduct weekly inspections of its hazardous waste container storage area from April 2006 through October 2006.

*Mark Waste Accumulation Containers with the Date
Accumulation Began*

26. The regulations at 40 C.F.R. § 262.34(a)(2) and KAR 28-31-4(h)(3) require that a Kansas generator must clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

27. At the time of the January 2007 inspection, Respondent had failed to mark the accumulation start date on several storage containers containing hazardous waste located in various locations of the facility, including a paint waste drum in the hazardous waste storage shed and two waste xylene containers in the Clinical Laboratory.

Label Containers of Hazardous Waste with the Words "Hazardous Waste"

28. The regulations at 40 C.F.R. § 262.34(a)(3) and KAR 28-31-4(h)(4) require that while being accumulated on-site by a Kansas generator, each container and tank be marked clearly with the words, "Hazardous Waste."

29. At the time of the December 2007 inspection, Respondent failed to label several hazardous waste containers with the words "Hazardous Waste," including a paint waste drum in the hazardous waste storage shed and two waste xylene containers in the Clinical Laboratory.

Label Satellite Accumulation Containers with the Words "Hazardous Waste"

30. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) and KAR 28-31-4(j)(1)(B) require that a Kansas generator mark containers with the words "Hazardous Waste."

31. At the time of the December 2007 inspection, Respondent failed to label two hazardous waste satellite accumulation containers for spent alcohol with the words "Hazardous Waste."

Treatment, Storage or Disposal of Hazardous Waste Without a Permit

32. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a RCRA permit.

33. Pursuant to the Kansas Statutes Annotated, a permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in KAR 28-31-3.

34. At the time of the January 2007 inspection, Respondent had been allowing paint and solvents in containers and solvent-soaked rags to evaporate prior to disposal.

35. By allowing excess liquid to evaporate, Respondent was engaged in "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10.

36. Respondent has never obtained a permit to operate a hazardous waste treatment, storage, or disposal facility pursuant to Section 3005 of RCRA and KSA Section 65-3437.

37. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and KSA Section 65-3437.

38. Therefore, Respondent is in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437.

Count 3

Offering Hazardous Waste For Transport Without A Hazardous Waste Manifest

39. The allegations stated in paragraphs 7 through 13 are realleged and incorporated as if fully set forth herein.

40. 40 C.F.R. § 265.71(c), which is incorporated by reference at K.A.R. 28-31-1(a)(6), states that owners and operators of hazardous waste treatment, storage or disposal facilities must comply with the requirements of 40 C.F.R. Part 262.

41. 40 C.F.R. § 262.20 requires a generator who offers hazardous waste for transportation to an off-site treatment, storage or disposal facility to prepare a hazardous waste manifest.

42. At the time of the January 2007 inspection, Respondent was accumulating solvent-soaked rags (including some soaked with 100% acetone) and disposing of them in the general trash, which was collected and taken to the sanitary landfill.

43. Acetone-soaked rags are a hazardous waste bearing the waste code F003.

44. Respondent did not prepare a hazardous waste manifest for the disposal of the acetone-soaked rags in the general trash and transport to the sanitary landfill.

45. Respondent's failure to prepare a hazardous waste manifest when offering hazardous waste for transportation to an off-site disposal facility is a violation of K.A.R. 28-31-1(a)(6).

Count 4

Failure to Label Universal Waste and Used Oil Containers

46. The allegations stated in paragraphs 7 through 13 are realleged and incorporated as if fully set forth herein.

47. K.A.R. 28-31-16 requires owners/operators of facilities that store used oil to comply with 40 C.F.R. Part 279, including 40 C.F.R. § 279.22(c)(1), which is incorporated by reference at K.A.R. 28-31-1(9), and which requires that containers and aboveground tanks used to store used oil at generator facilities be labeled or marked clearly with the words "Used Oil."

48. K.A.R. 28-31-15 requires owners/operators of facilities that manage universal waste to comply with 40 C.F.R. Part 273, including 40 C.F.R. § 273.14(a), which is incorporated by reference at K.A.R. 28-31-1(8), and which requires that universal waste batteries (i.e., each

battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste -- Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

49. At the time of the January 2007 inspection, Respondent was storing three containers of used oil that were not labeled or marked clearly with the words "Used Oil."

50. At the time of the January 2007 inspection, Respondent was storing waste batteries on a cart. The batteries were not labeled with the appropriate language from the universal waste regulations.

51. Respondent's failure to label or mark clearly its used oil storage containers with the words "Used Oil" and its failure to appropriately label its universal waste batteries are violations of K.A.R. 28-31-16 and 28-31-15, respectively.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

2. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

4. 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 the CA/FO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

6. This CA/FO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

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

9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of Eighty Three Thousand Four Hundred and Eighty Eight Dollars and No Cents (\$83,488.00) as set forth in Paragraph 1 of the Final Order.

10. 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.

11. This CA/FO 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.

12. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 19 of the Consent Agreement, that all requirements hereunder have been satisfied.

13. 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 CA/FO.

Reservation of Rights

14. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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 Thirty-seven Thousand Five Hundred Dollars (\$37,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

15. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

16. 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.

17. Notwithstanding any other provisions of the CA/FO, 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.

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

19. The provisions of this CA/FO 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 CA/FO, 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 Eighty Three Thousand Four Hundred and Eighty Eight Dollars and No Cents (\$83,488.00). 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, New York 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 6 below, and to:

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

and to:

Chris Dudding, CNSL/REGE
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

5. 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.

B. Compliance Actions

6. Within thirty (30) days of the effective date of the Final Order, Respondent shall inventory all solid waste streams generated by its facility and then provide to the EPA contact listed in Paragraph 8 below documentation that it has made a hazardous waste determination for each solid waste stream at its facility.

7. Within thirty (30) days of the effective date of the Final Order Respondent shall provide to the EPA contact listed in Paragraph 8 below copies of RCRA notifications to emergency authorities issued pursuant to K.A.R. 28-31-4(h) and 40 C.F.R. § 265.37(a)(1).

8. On a quarterly basis for a period of one year, beginning no later than ninety (90) days after the effective date of this order, Respondent shall:

- (i) Demonstrate, via photographic documentation, to the EPA contact listed below that all hazardous waste containers, used oil containers, and universal waste containers at the facility have been properly closed, labeled, and dated;
- (ii) Provide documentation to the EPA contact listed below of weekly inspections performed on its hazardous waste container storage areas during that quarter; and

(iii) Provide documentation, such as copies of manifests or invoices, which demonstrate that Respondent is either disposing of its hazardous wastes at a permitted hazardous waste disposal facility, or that Respondent is shipping the hazardous waste using a hazardous waste manifest or is managing hazardous waste in another manner compliant with RCRA.

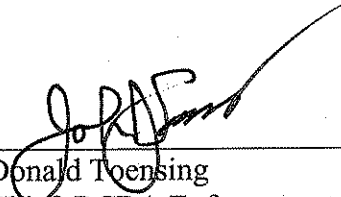
Such documentation shall be sent to:

Edwin G. Buckner, PE
Environmental Engineer
U.S. EPA Region 7, AWMD/RESP
901 N. 5th Street
Kansas City, Kansas 66101.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/17/09

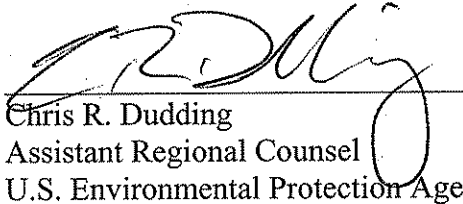
Date

for 

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

5/8/09

Date



Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT
SHAWNEE MISSION MEDICAL CENTER, INC.

04 May 2009
Date

Signature 

Printed Name Samuel H. Turner, Sr.

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

May 13, 2009
Date

Robert Patrick
Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Shawnee Mission Medical Center, Inc., Respondent
Docket No. RCRA-07-2009-0004

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Chris R. Dudding
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mark Sappington, Attorney
Kutak Rock
1010 Grand Boulevard, Suite 500
Kansas City, Missouri 64106-2220

Dated: 5/13/09


Kathy Robinson
Hearing Clerk, Region 7