

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2013 OCT 23 PM 1:06

IN THE MATTER OF:)
)
United States Department of Veterans Affairs)
Iowa City Veteran's Affairs Health Care System)
601 Highway 6 West)
Iowa City, IA 52246)
)
)
RCRA ID: IA6360010288)
)
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-07-2013-0028

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and The United States Department of Veterans Affairs, (VA or 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 (CA/FO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and the standards for the management of used oil (40 C.F.R. Part 279).

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, the Department of Veterans Affairs, is a department of the United States federal government. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

Statutory and Regulatory Framework

4. When 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(a) of RCRA, 42 U.S.C. § 6928(a).

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 authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through 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. Based upon the facts alleged in this Consent Agreement and Final Order 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, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Allegations

6. Respondent's facility, which is the subject of this action, is located at 601 Highway 6 West, Iowa City, IA (the Facility). The Facility is a full-service hospital, including a histology and pathology laboratory, pharmacy, dental clinic, research laboratories, and physical plant. Raw materials used by the Facility include solvents, pharmaceuticals, and other chemicals related to the operations of the laboratories and pharmacy. Approximately 1,600 people are employed at the Facility.

7. On April 17, 2012, EPA contractors conducted an official inspection of the Facility on behalf of EPA. In the course of their inspection the contractor documented several instances of mismanaged hazardous waste containers and used oil.

8. The Facility is a small quantity generator (SQG). Based on the inspector's review of documents and interviews conducted during the inspection and observations during the

inspection, the facility typically generates approximately 250 kilograms per month of hazardous waste. Hazardous waste generated by the facility consists primarily of laboratory waste (approximately 55 to 110 gallons per month) and pharmaceutical waste (approximately 220 gallons per month). The Facility ships its hazardous waste to Detroit, Michigan; Grafton, Ohio; Port Washington, Wisconsin; and Port Arthur, Texas, all of which are more than 200 miles from Iowa City.

9. Respondent has been assigned the following EPA ID Number: IA6360010288.

Violations

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

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

10. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 9 above, as if fully set forth herein.

11. The regulations at 40 C.F.R. § 262.34(d) state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided the conditions listed in 40 C.F.R. § 262.34(d)(1)-(5) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to conduct weekly hazardous waste inspections

12. The regulations at 40 C.F.R. § 262.34(d)(2) require that while hazardous waste is being accumulated on-site, the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

13. Pursuant to 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

14. At the time of the inspection, it was discovered that Respondent had not regularly conducted weekly inspections in the facility's hazardous waste accumulation area for the year preceding the inspection.

Failure to date hazardous waste accumulation containers

15. The regulations at 40 C.F.R. § 262.34(d)(4) require generators to comply with 40 C.F.R. § 262.34(a)(2), which requires generators to clearly mark the date upon which each period of accumulation began on each container.

16. At the time of the inspection, the pathology still accumulation cabinet contained 30 to 40 one gallon containers of hazardous waste solvent which were marked with the date upon which the hazardous waste accumulation began; in the central accumulation area, five of the twelve half gallon containers of hazardous waste were not marked with the date upon which the hazardous waste accumulation began; and in the central accumulation area, one of the ten pieces of spent mercury containing equipment were not marked with the date upon which the hazardous waste accumulation began.

Failure to label hazardous waste accumulation containers

17. The regulations at 40 C.F.R. § 262.34(d)(4) require generators to comply with 40 C.F.R. § 262.34(a)(3), which requires generators to label or mark each container of hazardous waste being stored on-site with the words, "Hazardous Waste".

18. At the time of the inspection, the pathology still accumulation cabinet contained 30 to 40 one gallon containers of hazardous waste solvent which were not labeled; and in the central accumulation area, three of the ten pieces of spent mercury containing equipment, a hazardous waste, were not labeled.

Failure to label hazardous waste satellite accumulation containers

19. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) require generators to label or mark each satellite accumulation container of hazardous waste being stored on-site with the words, "Hazardous Waste" or with other words that identify the contents of the containers..

20. At the time of the inspection, the satellite hazardous waste accumulation container in the Upper Research Lab was not labeled as a waste; and the satellite accumulation container in the Histology Lab was labeled as "alcohol", but not as "alcohol waste".

Failure to close hazardous waste satellite accumulation containers

21. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) require a generator to comply with the regulations at 40 C.F.R. § 265.173(a), which requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

22. At the time of the inspection, the hazardous waste satellite accumulation container in the Upper Research Lab was open with a funnel in the neck; and the satellite accumulation container for P-listed pharmaceutical waste in the Out-patient pharmacy was open.

23. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 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 or interim status for such activities. As stated in paragraphs 10 through 23 above, the Respondent failed to meet the requirements of 40 C.F.R. § 262.34(d)(1)-(5), and therefore, would not have an exemption from the permitting requirement.

24. Respondent's failure to obtain a hazardous waste storage permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 2
Failure to Comply with Used Oil Regulations

Complainant hereby incorporates the allegations contained in Paragraphs 1 through 24 above, as if fully set forth herein.

Failure to properly label used oil containers

25. The regulations at 40 C.F.R. § 279.22(c)(1) require used oil generators to label or clearly mark containers and above ground tanks used to store used oil at generator facilities with the words "Used Oil."

26. At the time of the inspection, the inspector observed a 55-gallon container of used oil filters and absorbent soaked with used oil. The container was labeled only as "oil soa[k]ed m[a]teria[1]," but not labeled with the words "used oil."

27. Respondent's failure to properly label the containers of used oil described above is a violation of 40 C.F.R. § 279.22(c)(1).

CONSENT AGREEMENT

28. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

29. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order 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 Consent Agreement and Final Order set forth below.

30. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

31. 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

Consent Agreement and Final Order.

32. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

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

34. This Consent Agreement and Final Order 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.

35. The effect of settlement described in the Consent Agreement and Final Order is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 36 below.

36. Respondent certifies that by signing this Consent Agreement and Final order that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

38. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Four Thousand Six Hundred Dollars (\$4,600) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order below. This amount represents a significant reduction from the penalty originally assessed in this matter, with the reduction being based upon documentation of Respondent's lack of ability to pay the penalty as originally assessed.

39. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA.

40. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in the preceding paragraphs.

41. 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

attorney 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).

Effective Date

42. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

43. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order 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 (\$37,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

44. 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 Consent Agreement and Final Order.

45. Except as expressly provided herein, nothing in this Consent Agreement and Final Order 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.

46. Notwithstanding any other provisions of the Consent Agreement and Final Order, 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.

47. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

48. The provisions of this Consent Agreement and Final Order 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) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of Four Thousand Six Hundred Dollars (\$4,600).
2. The payment described in the preceding paragraph shall be made by way of the Intra-Governmental Payment and Collection (IPAC) System, which is administered by the United States Department of the Treasury. Such payment shall be directed to Agency Location Code 68010727, and shall identify Respondent by name and shall include the docket number of this CAFO.
3. A copy of the payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

B. Compliance Actions

4. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.
5. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, and monthly for a period of one year thereafter, Respondent shall submit to the EPA a report that includes photographs demonstrating that hazardous waste and used oil containers are properly stored, labeled, dated, and closed. The report shall also include information showing the monthly generation rate of hazardous waste and copies of all hazardous waste manifests.
6. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraph 5 of this Final Order to the following address:

Edwin G. Buckner, PE
AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

C. Parties Bound

7. The Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon 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 Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9-23-13

Date



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

September 20, 2013

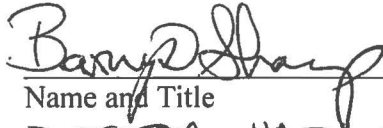
Date



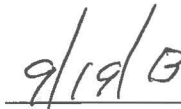
Raymond C. Bosch
Office of Regional Counsel

FOR RESPONDENT:

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS



Name and Title
DIRECTOR, VA IOWA CITY HCS



Date

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

10/23/13
Date

Karina Borroneo
Karina Borroneo
Regional Judicial Officer

IN THE MATTER OF United States Department of Veterans Affairs, Iowa City Veteran's
Affairs Health Care System, Respondent
Docket No. RCRA-07-2013-0028

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 by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Randall E. Millers, CHFM (138)
Safety Manager/Supervisory Safety Engineer
Iowa City VA Medical Center
601 Hwy 6 West
Iowa City, Iowa 52246

Dated: 10/23/13


Kathy Robinson
Hearing Clerk, Region 7