

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Western Iowa Tech Community College)
4647 Stone Avenue)
Sioux City, Iowa 51102)

CONSENT AGREEMENT AND
FINAL ORDER

EPA ID No. IAD 072907165)

Respondent.)

Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. § 6928(a) and (g).)

Docket No. RCRA-07-2005-0391

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 30, 2005, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Western Iowa Tech Community College ("Respondent"). Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Part 262.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. 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. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$50,000 as set forth in Paragraph 11 of the Final Order and Respondent shall complete the Compliance Actions set forth in Paragraph 15 of this Consent Agreement and Final Order.
8. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
9. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 16 of the Final Order provides Respondent with written notice, in accordance with Paragraph 25 of the Final Order, that all requirements hereunder have been satisfied.
10. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

11. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$50,000.

12. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2005-0391, on the check. A copy of the check shall also be mailed to:

Alex Chen
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

13. 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 rate of five percent (5%) per annum.

14. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

15. No later than May 1, 2006, Respondent shall submit a list of all solid waste streams being generated between February 15 and March 1, 2006 at Respondent's facility to EPA. For each such solid waste, Respondent shall submit documentation to EPA, demonstrating that an accurate hazardous waste determination has been performed in accordance with the requirements of 40 C.F.R. § 262.11. This documentation shall include, but is not limited to, the following information:

- (A) a description of the waste stream, including a detailed description of the process or processes that generated the waste and the generation rate of the waste;
- (B) a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
- (C) a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
- (D) a determination of whether or not the waste is identified in Subpart C of 40 C.F.R. Part 261. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedures set forth in Subpart C, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and the basis to support this determination.

16. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Deborah Finger
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

17. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Robert Dunker
President
Western Iowa Tech Community College
4647 Stone Avenue
Sioux City, Iowa 51102-5199

and

Jane B. McAllister, Esq.
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231.

C. Parties Bound

18. This Final Order shall apply to and be binding upon EPA 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 Consent Agreement and Final Order.

D. Reservation of Rights

19. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's September 30, 2005 Complaint, Docket No. RCRA-07-2005-0391. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

20. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the 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-two thousand five hundred dollars (\$32,500) 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.

21. 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.

22. Except as expressly provided herein, including the provisions of Section C of this Consent Agreement and Final Order, 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,

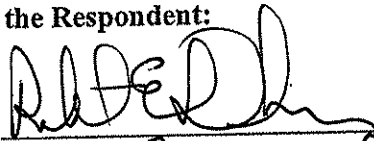
hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

23. 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.

24. 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.

25. 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 to EPA's satisfaction.

For the Respondent:

By: 
Printed Name: ROBERT E. DUNKER
Title: PRESIDENT

1/9/06
Date

For the Complainant:
The United States Environmental Protection Agency

Alex Chen

Alex Chen
Assistant Regional Counsel

January 11, 2006

Date

Don Toensing

Don Toensing, Chief
RCRA Enforcement and State Programs Branch
Air, RCRA and Toxics Division

1-11-06

Date

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

Robert Patrick

Robert Patrick
Regional Judicial Officer

Jan. 11, 2006

Date

CERTIFICATE OF SERVICE

I certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the Consent Agreement and Final Order to the following representative for Western Iowa Tech Community College:

Robert Dunker
President
Western Iowa Tech Community College
4647 Stone Avenue
Sioux City, Iowa 51102-5199

and Jane B. McAllister, Esq.
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231.

Dated this 9th day of JAN., 2006.



IN THE MATTER OF Western Iowa Tech Community College, Respondent
Docket No. RCRA-07-2005-0391

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:

Alex Chen
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:

Robert Dunker
President
Western Iowa Tech Community College
4647 Stone Avenue
Sioux City, Iowa 51102-5199

Jane B. McAllister, Esq.
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

4/11/06
Dated

Anna Rook for
Kathy Robinson
Regional Hearing Clerk