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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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

IN THE MATTER OF:)
)
)

University of Kansas Medical Center)
3901 Rainbow Blvd.)
Kansas City, Kansas 66160)

**CONSENT AGREEMENT
AND FINAL ORDER**

EPA ID No. KSD076274737)
)
)

Respondent.)
)
)

Docket No. RCRA-07-2006-0261

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

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 28, 2006, 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 the University of Kansas Medical Center ("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.), Parts 262 and 265, as well as the substantially equivalent Kansas state statutes and regulations found at Chapter 65, Article 34 of the Kansas Statutes and Title 28, Article 31 of the Kansas Administrative Regulations.

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 \$58,270 as set forth in paragraph 11 of the Final Order. Furthermore, Respondent shall perform the Supplemental Environmental Project ("SEP") set forth in paragraphs 18 through 21 of the Final Order. The projected total cost of the SEP is approximately \$168,912.
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 15 of the Final Order provides Respondent with written notice, in accordance with paragraph 40 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 \$58,270.

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-07-2006-0261, 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.

and to:

Regional Hearing Clerk
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. Submittals

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

Edwin G. Buckner, PE
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

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

Kevin G. Dirks
Director, Environment, Health & Safety
University of Kansas Medical Center
Mail Stop 3032
Kansas City, Kansas 66160

and to:

Michael P. Comodeca, Esq.
Spencer Fane Britt & Browne LLP
Suite 700, 40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210-2005.

C. Supplemental Environmental Project

17. In response to the violations of RCRA alleged in the Complaint and in settlement of this matter, although not required by RCRA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in paragraphs 18-21.

18. Respondent agrees to purchase, install and implement the Environment, Health and Safety ("EHS") Assist Software Program for its EHS Office and Laboratories in order to improve the on-campus management and accountability of hazardous materials. This Software Program

will enable the EHS Office and other Principal Investigators to enter and track hazardous materials inventory from purchase through disposal. Respondent agrees that this SEP will also include the following components:

- a. Purchase of the EHS Assist Software program;
- b. Annual EHS Assist Software program maintenance fees, for a period of four (4) years following the effective date of this Final Order;
- c. Data conversion fees associated with converting existing data to the new EHS Assist Software program database;
- d. Licensing fees associated with using the web-based applications of the computer software;
- e. Labor costs associated with entry of data into new database;
- f. Costs associated with developing training materials and holding training sessions for employees on the use of the EHS Assist Software program; and
- g. Annual EHS Assist Software program database maintenance costs, for a period of four (4) years following the effective date of this Final Order.

19. Respondent shall expend a minimum of \$168,912 in approvable costs to perform the SEP. Respondent agrees to perform this SEP for a period of four years from the effective date of this Final Order. These costs must include \$89,260 in one-time expenditures and \$19,913 per year in annual expenditures. Labor costs for items 18.e., f. and g. shall be calculated using an average cost of \$32 per hour. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. For the purposes of this Final Order, "one-time expenditures" include items 18.a., c., d., e., and f. "Annual expenditures" include items 18 b. and g.

20. Respondent shall submit SEP status reports to EPA every three (3) months during this time, beginning on or before October 31, 2007. Such reports shall provide the status of the project, along with any encountered problems and/or expected delays. Such reports shall also provide a reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved to date as a result of the project (i.e., quantify the amount of chemicals that are reused by other laboratories or locations within Respondent's facility or at other facilities; and/or quantify the amount of unused chemicals that are returned to the manufacturer, thereby avoiding unnecessary chemical purchases and/or waste disposals).

21. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a Final SEP Report. This report shall provide a detailed description of the SEP as implemented

and shall also include documentation of all approvable costs incurred during the implementation of the SEP. The report shall also provide a reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved over the duration of the project (i.e., quantify the amount of chemicals that are reused by other laboratories or locations within Respondent's facility or at other facilities; and/or quantify the amount of unused chemicals that are returned to the manufacturer, thereby avoiding unnecessary chemical purchases and/or waste disposals).

22. Respondent agrees that failure to submit the SEP status reports and the Final SEP Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraphs 28-32 below.

23. After receipt of the Final SEP Report described in paragraph 21 above, EPA will do one of the following:

a. notify Respondent in writing of any deficiencies in the Final SEP Report, in which case Respondent shall have an additional thirty (30) days to correct any deficiencies and resubmit the report;

b. inform Respondent that the project has been completed in accordance with the requirements of this Consent Agreement and Final Order; or

c. determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and seek stipulated penalties pursuant to paragraphs 28-32 below.

24. If Respondent receives notice that the Final SEP Report is deficient pursuant to paragraph 23.a. above, Respondent shall correct the deficiencies and resubmit the report within the thirty (30) day time period. If, upon resubmission, the deficiencies identified in the Final SEP Report have not been corrected, EPA reserves the right to determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and to seek stipulated penalties pursuant to paragraphs 28-32 below.

25. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

26. Respondent agrees that in any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Resource Conservation and Recovery Act.

27. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times, to monitor Respondent's implementation of the SEP. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

D. Stipulated Penalties

28. In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 18 through 21 above, then pursuant to the EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$150,248. If the SEP is not completed satisfactorily, but Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of the money required to be spent was expended on the SEP, then no stipulated penalty is necessary.

29. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least \$168,892 in approvable costs (\$89,260 in one-time expenditures and \$19,913 per year in annual expenditures) in performance of the SEP, stipulated penalties will be owed as follows:

a. if Respondent spends fifty (50) percent or less of \$168,892 in approvable costs, a stipulated penalty of \$75,124 shall be paid to EPA;

b. if Respondent spends between fifty-one (51) percent and seventy-five (75) percent of \$168,892 in approvable costs, a stipulated penalty of \$37,562 shall be paid to EPA;

c. if Respondent spends between seventy-five (75) and ninety (90) percent of \$168,892 in approvable costs, a stipulated penalty of \$15,025 shall be paid to EPA;

d. if Respondent spends at least ninety (90) percent of \$168,892 in approvable costs, no stipulated penalty is required.

30. In the event Respondent fails to timely submit the SEP status reports required by paragraph 20 above or the Final SEP Report required by paragraph 21 above, the Respondent shall pay a stipulated penalty of \$500 per day for each day after the report is due, until the report is finally submitted.

31. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

32. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of paragraph 12 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 13 of the Final Order.

E. Parties Bound

33. 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.

F. Reservation of Rights

34. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's September 28, 2006, Complaint, Docket No. RCRA-07-2006-0261. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

35. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms 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-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.

36. 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.

37. Except as expressly provided herein, including the provisions of Section E 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.

38. 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.

39. 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.

40. 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: 
Ed Phillips, MA
Vice Chancellor for Administration
University of Kansas Medical Center

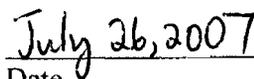
7-25-2007
Date

For the Complainant:

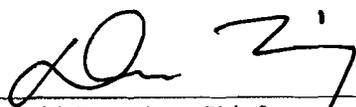
The United States Environmental Protection Agency



Alex Chen
Assistant Regional Counsel



Date



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



Date

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



Robert Patrick
Regional Judicial Office



Date

IN THE MATTER OF University of Kansas Medical Center
Docket No. RCRA-07-2006-0261

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:

Michael P. Comodeca
Spencer, Fane Britt & Browne LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, Kansas 66210-2005

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: July 26, 2007

Anne Roth for
Kathy Robinson
Hearing Clerk, Region 7