

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
The George Washington University	:	U.S. EPA Docket No. RCRA-03-2020-0071
1918 F Street, NW	:	
Washington, DC 20052	:	
	:	
Respondent.	:	Proceeding under Section 3008(a) and
	:	(g) of the Resource Conservation and
The George Washington University	:	Recovery Act, as amended, 42 U.S.C.
800 22 <sup>nd</sup> t Street, NW	:	Section 6928(a) and (g)
Washington, DC 20052	:	
	:	
Facility.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and The George Washington University, (“Respondent”) (collectively the “Parties”), pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. 42 U.S.C. Section 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant’s civil penalty claims against Respondent under RCRA (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

## JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. On March 25, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), and 40 C.F.R. Part 271, Subpart A, the District of Columbia was granted authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of the District of Columbia's revised authorized hazardous waste management program, through the 1985 final authorization, became requirements of RCRA Subtitle C, enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). The provisions of the District of Columbia's authorized program were published in the District of Columbia Register on September 28, 1984, and were set forth at Chapter 20 of the District of Columbia Municipal Regulations ("DCMR"), Section 4000 et seq. These hazardous waste management regulations incorporated by reference the provisions of 40 C.F.R. Parts 260-265 (July 1, 1982 ed.) and 40 C.F.R. Parts 270 (July 1, 1983 ed.) with certain amendments thereto set forth in 20 DCMR Section 4001. At the time of the 1985 final authorization the District of Columbia was not granted authorization to administer its authorized program in lieu of certain provisions of Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. L. No. 98-616), which amended Subtitle C of RCRA. These provisions remained exclusively enforceable by EPA in the District of Columbia pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
5. On November 9, 2001, the District of Columbia was granted authorization to administer its revised hazardous waste management program ("DC Hazardous Waste Regulations"), effective November 9, 2001 (66 Fed. Reg. 46961). The revised program was published in the District of Columbia Register on January 5, 2001 and was set forth at 20 DCMR §§ 4000 et seq. A subsequent revision of the DC Hazardous Waste Regulations was authorized by EPA on August 20, 2018 (83 Fed. Reg. 42036). The provisions of the District of Columbia's 2004 authorized hazardous waste management regulations, through the 2018 authorization, have become requirements of RCRA Subtitle C enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). The DC Hazardous Waste Regulations includes authority to implement some, but not all, HSWA provisions. To the extent that the District of Columbia's revised program does not include such HSWA authorities, EPA has exclusive authority to enforce such provisions.

6. When EPA last approved the DC Hazardous Waste Regulations on August 20, 2018, EPA approved the District of Columbia's incorporation by reference of the then current federal regulations which were in effect as of July 1, 2004. As a result, 40 C.F.R. § 262.34 (2004) is the currently enforceable version of that RCRA regulation in the District of Columbia. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein are to the 2004 Federal regulations in effect at the time of the DC Hazardous Waste Regulations were approved.
7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment if a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
8. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, and certain provisions of the DC Hazardous Waste Regulations, set forth at 20 DCMR §§ 4000 et seq. at its facility. Respondent's facility, known as The George Washington University, is located at 800 22<sup>nd</sup> Street, NW, Washington, DC 20052 ("Facility") and is further described below.
9. Factual allegations or legal conclusions in this Consent Agreement that are based on provisions of federally-authorized DCMR requirements cite those respective provisions as the authority for such allegations or conclusions.
10. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated September 9, 2019, EPA notified the District of Columbia Department of the Environment ("DDOE") of EPA's intent to commence this administrative action against Respondent in response to the alleged violations of RCRA Subtitle C and the DC Hazardous Waste Regulations that are set forth herein.

### **GENERAL PROVISIONS**

11. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
12. Except as provided in Paragraph 11, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
13. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

14. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
15. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
16. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
18. EPA has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).
19. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
20. Respondent is and was at the time of the violations alleged herein, a corporation chartered by an Act of Congress and doing business in the District of Columbia.
21. Respondent is, and at the time of the violations alleged herein, a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.
22. Respondent is, and at the time of the violations alleged herein has been, the "owner" and "operator" of a "facility," described in Paragraph 15, below, as the terms "facility", "owner" and "operator" are defined in 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.
23. The Facility referred to in Paragraph 22, above, including all of its associated equipment and structures, is an educational institution located at 800 22<sup>nd</sup> Street, NW, Washington, DC 20052.
24. Respondent is assigned EPA RCRA ID No. DCD981940083.
25. Respondent is and, at all times relevant to this Consent Agreement and Final Order has been, a "generator" of, and has engaged in the "storage" in "containers" at the Facility of material as described below that are "solid wastes" and "hazardous wastes" as those terms are defined by 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10.

26. On March 27, 2019, representatives of EPA conducted an EPA Compliance Evaluation Inspection (EPA CEI) at Respondent's Facility.
27. Respondent generates solvent waste at the Facility which is a hazardous waste (EPA Hazardous Waste No. D001) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.21 because it exhibits the characteristic of ignitability.
28. Respondent generates waste material at the Facility of which lead is one of the constituents which is a hazardous waste (EPA Hazardous Waste No. D008) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.24 because it exhibits the characteristic of toxicity.
29. Respondent generates waste material at the Facility of which selenium is one of the constituents which is a hazardous waste (EPA Hazardous Waste No. D008) within the meaning of 20 DCMR § 4261.1, which incorporates by reference 40 C.F.R. § 261.24 because it exhibits the characteristic of toxicity.

**COUNT I**  
**(Operating a Treatment, Storage, and Disposal  
Facility without a Permit or Interim Status)**

30. The preceding paragraphs are incorporated by reference.
31. 20 DCMR § 4270.1 which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
32. Respondent does not have a hazardous waste treatment or storage permit or interim status pursuant to 20 DCMR § 4270, which incorporates by reference 40 C.F.R. § 270.1(b), for the treatment or storage of hazardous waste at the Facility.
33. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(2), a large quantity generator may accumulate hazardous waste on-site for 90 days or less in containers without a permit or without having interim status provided that among other things, while being accumulated on site, each container is properly labeled with the date upon which each period of accumulation began.
34. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(3), provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site in containers for 90 days or less without a permit or without having interim status provided that, among other things, while being accumulated on-site, each tank is labeled or marked clearly with the words, "Hazardous Waste."

35. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), and by further reference the container management requirements of 40 C.F.R. § 265.171, provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site in containers for 90 days or less without a permit or without having interim status provided that, among other things, the generator transfers hazardous waste from a container in bad condition to a container in good condition or manage the waste in some other way that complies with the requirements of 40 C.F.R. § 265.171.
36. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), and by further reference the container management requirements of 40 C.F.R. § 265.172, provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, among other things, the generator uses a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.
37. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), and by further reference the container management requirements of 40 C.F.R. § 265.173, provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site in containers for 90 days or less without a permit or without having interim status provided that, among other things, the generator keeps containers of hazardous waste closed except when adding or removing waste.
38. At the time of the CEI, Respondent had failed to mark the following hazardous waste storage containers with the start accumulation date as required by 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(2):
  - a. Two 6-gallon plastic lined red metal step cans containing solvent contaminated wipes in Smith Hall, Room 401, at the Facility;
  - b. A 55-gallon container filled with small glass jars of hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility;
  - c. A white plastic bag filled with material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility; and,
  - d. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility
39. At the time of the EPA CEI, Respondent failed to mark the following hazardous waste storage containers with the words "Hazardous Waste" as required by 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(3):
  - a. Two 6-gallon plastic lined red metal step cans containing solvent contaminated wipes located in Smith Hall, Room 401, at the Facility;

- b. A 55-gallon container filled with small glass jars of hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall, at the Facility;
  - c. A white plastic bag filled with material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility; and,
  - d. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility.
- 40. At the time of the EPA CEI, Respondent failed to transfer hazardous waste from a container in poor condition to a container in good condition as required by 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), with reference to the container management requirements of 40 C.F.R. § 265.171, as noted below:
  - a. A ripped and tattered white plastic bag filled with hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall, at the Facility; and,
  - b. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall, at the Facility.
- 41. At the time of the EPA CEI, Respondent failed to utilize a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired, specifically, Respondent stored hazardous waste material:
  - a. In a white plastic bag filled with material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility, was ripped and tattered; and,
  - b. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility was broken, did not have a lid, and selenium had spilled onto another container and onto the floor.
- 42. At the time of the CEI, the following containers were open, and waste was not being removed or placed into these containers in contravention of the requirements of 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), and by further reference the container management requirements of 40 C.F.R. § 265.173:
  - a. A 55-gallon container filled with small glass jars of hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room at Smith Hall at the Facility;

- b. A tattered, torn and open white plastic bag filled with hazardous waste material of which lead was one of the constituents of said material, located in a shed on the roof-top patio outside the Ceramics Room located in Smith Hall at the Facility; and,
- c. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility.
43. At the time of the EPA CEI, Respondent failed to qualify for the “less than 90-day” generator accumulation exemption of 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.34(a) with exceptions not relevant herein, by failing to satisfy the conditions for such exemptions referred to in Paragraphs 33 - 37, above, and as described in Paragraphs 38 - 42, above.
44. At the time of the EPA CEI, Respondent’s Facility was a hazardous waste treatment, storage or disposal “facility” as that term is defined in 20 DCMR § 4260.1, which incorporates by reference 40 C.F.R. § 260.10 with respect to the storage of hazardous waste as described above.
45. At the time of the EPA CEI, Respondent was required by 20 DCMR § 4270.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the hazardous waste storage activities described in this count and failed to obtain such permit.
46. In failing to comply with 20 DCMR § 4270.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count II**  
**Failure to Make Hazardous Waste Determinations**

47. The preceding paragraphs are incorporated by reference.
48. 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following methods:
- (a) The person should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.
- (b) The person must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.
- (c) For purposes of compliance with 40 C.F.R. Part 268, or if the waste is not listed in subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in subpart C of 40 C.F.R. Part 261 by either:

- (1) Testing the waste according to the methods set forth in subpart C of 40 C.F.R. Part 261, or according to an equivalent method approved by the Administrator under 40 C.F.R. § 260.21; or
  - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
49. At the time of the CEI, Respondent had not made hazardous waste determinations for:
- a. A 55-gallon container filled with small glass jars of hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility;
  - b. A white plastic bag filled with hazardous waste material of which lead was one of the constituents of said material, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility; and,
  - c. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility.
50. The waste material described in Paragraph 49 (a) – (c), above, above are “solid wastes” within the meaning of 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.11.
51. At the time of the EPA CEI, Respondent violated 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.11, by failing to make hazardous waste determinations for solid waste at the Facility.
52. In failing to comply with 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.11, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count III**  
**Failure to Properly Prepare a Hazardous Waste Manifest**

53. The preceding paragraphs are incorporated by reference.
54. 20 DCMR § 4262.1 which incorporates by reference 40 C.F.R. § 262.20(a)(1) requires that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility (TSDF) who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A, according to the instructions included in the appendix to 40 C.F.R. Part 262.

55. At the time of the CEI, hazardous waste manifest 009840199FLE prepared by Respondent was missing hazardous waste codes for the shipment of spent acetone and was missing the RCRA ID number for the destination TSDF.
56. At the time of the CEI, a hazardous waste manifest 011494655FLE prepared by Respondent did not have a RCRA ID number for the destination TSDF.
57. In failing to comply with 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.20(a)(1), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count IV**  
**Failure to Properly Prepare a Hazardous Waste Manifest**

58. The preceding paragraphs are incorporated by reference.
59. 20 DCMR 4262.1 which incorporates by reference 40 C.F.R. § 262.40 (a) requires that a generator must keep a copy of each manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
60. At the time of the CEI, Respondent was unable to locate records at the Facility of the signed return copies of eleven (11) hazardous waste manifests. The specific manifests are as follows:
 

<ul style="list-style-type: none"> <li>• 009840199FLE (12/15/16)</li> <li>• 009840097FLE (12/16/16)</li> <li>• 009839029FLE (02/17/17)</li> <li>• 007882421FLE (03/17/17)</li> <li>• 009838583FLE (02/27/18)</li> <li>• 011494656FLE (06/04/18)</li> </ul>	<ul style="list-style-type: none"> <li>• 011494847FLE (04/14/18)</li> <li>• 011494674FLE (08/24/18)</li> <li>• 011494673FLE (08/29/18)</li> <li>• 012021902FLE (10/30/18)</li> <li>• 013199264FLE (01/23/19)</li> </ul>
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61. On December 12, 2019, Respondent was able to produce copies to EPA of the signed manifests that had been obtained from the TSDF to which the hazardous waste had been sent.
62. In failing to comply with 20 DCMR § 4262.1, which incorporates by reference 40 C.F.R. § 262.20(a)(1), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count V**  
**Failure to Maintain and Operate a Facility to Minimize the Possibility of a Fire, Explosion or any Unplanned Sudden or Non-Sudden Release of Hazardous Waste**

63. The preceding paragraphs are incorporated by reference.
64. 20 DCMR 4264.1, which incorporates by reference 40 C.F.R. § 264.31, requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
65. At the time of the EPA CEI Respondent did not operate its Facility in a manner which would minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. Specifically, at the time of the EPA CEI:
- a. A six-gallon plastic lined red metal step can of solvent contaminated wipes located in Smith Hall, Room 401 at the Facility was observed to be full beyond its capacity and solvent-contaminated rags were protruding from under the lid of the container;
  - b. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility was broken, did not have a lid, and selenium had spilled onto another container and onto the floor. The bucket was not closed was not in good condition; and
  - c. A white plastic bag filled with hazardous waste material of which lead was one of the constituents of said material, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility was not compatible with the waste it held, was not closed, was not in good condition.
66. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.31, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count VI**  
**Failure to Maintain All Required Elements of a Contingency Plan**

67. The preceding paragraphs are incorporated by reference.
68. 20 DCMR § 4264.1 incorporates by reference 40 C.F.R. § 264.52(d)(e) and (f), which requires facilities *inter-alia*, to maintain at the facility a contingency plan that lists the names, addresses and phone numbers of all persons qualified to act as emergency coordinator, lists all emergency equipment at the facility and the location of such equipment, and the contingency plan includes an evacuation plan for facility personnel where there is a possibility that evacuation would be necessary.
69. At the time of the EPA CEI, Respondent's Contingency Plan did not: 1) list the names, addresses and phone numbers of all persons qualified to act as emergency coordinator; 2) list all emergency equipment at the facility and the location of such equipment; and, (3) did not include an evacuation plan for facility personnel where there is a possibility that evacuation would be necessary.

70. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.52(d)(e), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **Count VII**

#### **Failure to Transfer Hazardous Waste from a Container in Poor Condition to a Container in Good Condition**

71. The preceding paragraphs are incorporated by reference.
72. 20 DCMR § 4264.1 incorporates by reference the container management requirements of 40 C.F.R. § 264.171, which requires that a facility transfer hazardous waste from a container in bad condition to a container in good condition or manage the waste in some other way that complies with the requirements of 40 C.F.R. § 264.171.
73. At the time of the EPA CEI, Respondent failed to transfer hazardous waste from a container in poor condition to a container in good condition as noted below:
- a. A white plastic bag filled with material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility, was ripped and tattered; and,
  - b. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility was broken, did not have a lid, and selenium had spilled onto another container and onto the floor.
74. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.171, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **Count VIII**

#### **Failure to Store Hazardous Waste in a Compatible Container**

75. The preceding paragraphs are incorporated by reference.
76. 20 DCMR § 4264.1 incorporates by reference the container management requirements of 40 C.F.R. § 264.172, which requires facilities to use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.
77. At the time of the EPA CEI, Respondent did not store hazardous waste in a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired. Specifically, Respondent:

- a. stored hazardous waste material (of which lead was one of the constituents), in an open, torn, tattered white plastic bag at the Facility; and
  - b. used a broken plastic bucket container to store hazardous waste selenium located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility.
78. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.172, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count IX**

**Failure to Keep Containers Holding Hazardous Waste Closed Except when Adding or Removing Waste**

79. The preceding paragraphs are incorporated by reference.
80. 20 DCMR § 4264.1 incorporates by reference the container management requirements of 40 C.F.R. § 265.173, which require facilities to keep containers of hazardous waste closed except when adding or removing waste.
81. At the time of the EPA CEI, the following containers were open, and waste was not being removed or placed into these containers:
- a. A 55-gallon container filled with small glass jars of hazardous waste material (of which lead was one of the constituents), in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility;
  - b. A white plastic bag filled with hazardous waste material (of which lead was one of the constituents), located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility, and,
  - c. A broken white plastic bucket container filled with selenium waste, located in a shed on the roof-top patio outside the Ceramics Room in Smith Hall at the Facility
82. In failing to comply with 20 DCMR § 4264.1, which incorporates by reference 40 C.F.R. § 264.173, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count X**

**Failure to Keep Universal Waste Lamps in a Closed Container.**

83. The preceding paragraphs are incorporated by reference.
84. Respondent is a small quantity handler of universal waste.

85. 20 DCMR 4273.1 incorporates by reference 40 C.F.R. § 273.13(d) which requires that “[a] small quantity handler of universal waste lamps must manage lamps in a way that prevents releases of any universal waste or component of universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
86. At the time of the EPA CEI, two universal waste lamps were not in a container in Duqués Hall in the universal waste accumulation area at the Facility.
87. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.13(d), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count XI**  
**Failure to Keep Containers of Universal Waste Batteries Closed.**

88. The preceding paragraphs are incorporated by reference.
89. 20 DCMR 4273.1 incorporates by reference 40 C.F.R. § 273.13(a) which requires that a small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
90. At the time of the EPA CEI, Respondent stored universal waste batteries in two battery collection containers which had non-closable openings: one in Phillips Hall in the EHS office at the Facility, and the second in the lobby area of the Science and Engineering Hall at the Facility.
91. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.13(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count XII**  
**Failure to Properly Label Universal Waste Batteries**

92. The preceding paragraphs are incorporated by reference.

93. 20 DCMR 4273.1 incorporates by reference 40 C.F.R. § 273.14(a) which requires a small quantity handler of universal waste must label or mark clearly universal waste batteries (*i.e.*, each battery), or a container in which the batteries are contained with any one of the following phrases: “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
94. At the time of the CEI, Respondent stored universal waste batteries in two battery collection containers located in the EHS office in Phillips Hall and in the lobby area of the Science and Engineering Hall at the Facility that were not marked with the words “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
95. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.14(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

### Count XIII

#### **Failure to Demonstrate Length of Time Universal Waste Batteries had been Accumulating.**

96. The preceding paragraphs are incorporated by reference.
97. 20 DCMR 4273.1 incorporates by reference 40 C.F.R. § 273.15(c) which requires that a small quantity handler of universal waste who accumulates universal waste be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
- (1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - (2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
  - (3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
  - (4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - (5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received;
  - (6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
98. At the time of the CEI, Respondent stored universal waste batteries in two battery collection containers located in the EHS office in Phillips Hall and in the lobby area of the Science and Engineering Hall at the Facility that were not marked with the accumulation start date, and Respondent could not demonstrate how long the batteries had been accumulating in containers.

99. In failing to comply with 20 DCMR § 4273.1, which incorporates by reference 40 C.F.R. § 273.15(c), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

### CIVIL PENALTY

100. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of THIRTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$35, 840.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
101. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy") which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
102. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2020-0071;
  - b. All checks shall be made payable to the "United States Treasury";
  - c. All payments made by check and sent by regular mail shall be addressed and mailed to:  
  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000
  - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. EPA, Region III (3RC40)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
howell.joyce@epa.gov

- 103. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 104. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a). Within thirty (30) days of such receipt, in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty, Respondent must pay the civil penalty.
- 105. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
- 106. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

107. **LATE PAYMENT PENALTY:** A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
108. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), performance of the requirements in Section III is restitution or required to come into compliance with law.

### **GENERAL SETTLEMENT CONDITIONS**

109. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
110. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

111. Respondent certifies to EPA, by its signature below, after Respondent's personal investigation and to the best of its knowledge and belief, that it is in compliance with regard to the violations alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

112. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

113. This Consent Agreement and Final Order resolves only EPA's claims against Respondent for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

### **EXECUTION /PARTIES BOUND**

114. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

### **EFFECTIVE DATE**

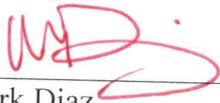
115. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

### **ENTIRE AGREEMENT**

116. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: THE GEORGE WASHINGTON UNIVERSITY

Date: 02/21/2020

By:   
Mark Diaz  
Executive Vice President and CFO  
The George Washington University

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 03/30/2020

By: *Karen Melvin*  
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: *March 6, 2020*

By: *Joyce A. Howell*  
Joyce A. Howell  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III

IMO The George Washington University  
RCRA-03-2020-0071

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:
	: <b>U.S. EPA Docket No.</b>
<b>The George Washington University</b>	: <b>RCRA-03-2020-0071</b>
<b>1918 F Street, NW</b>	:
<b>Washington, DC 20052</b>	:
	:
<b>Respondent.</b>	:
	:
<b>The George Washington University</b>	: <b>Proceeding Under Section 3008a of the</b>
<b>800 22nd Street, NW</b>	: <b>Resource Conservation and Recovery</b>
<b>Washington, DC 20052</b>	: <b>Act, as amended, 42 U.S.C. Section</b>
	: <b>6928(a)</b>
	:
<b>Facility.</b>	:

**FINAL ORDER**

Complainant, the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, The George Washington University, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6928(a) and (g) (“RCRA”), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **THIRTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$35,840.00)**, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of this Consent Agreement and Final Order is the date on which such Final Order is filed with the Regional Hearing Clerk.

April 1, 2020

Date:

\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III

In re The George Washington University  
RCRA-03-2020-0071

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
<b>The George Washington University</b>	:	<b>U.S. EPA Docket No. RCRA-03-2020-0071</b>
<b>1918 F. St., NW</b>	:	
<b>Washington, DC 20052</b>	:	
	:	
<b>Respondent.</b>	:	<b>Proceeding under Section 3008(a) and</b>
	:	<b>(g) of the Resource Conservation and</b>
	:	<b>Recovery Act, as amended, 42 U.S.C.</b>
	:	<b>Section 6928(a) and (g)</b>
	:	
<b>The George Washington University</b>	:	
<b>800 21<sup>st</sup> St., NE</b>	:	
<b>Washington, DC 20002,</b>	:	
	:	
<b>Facility.</b>	:	

**CERTIFICATE OF SERVICE**

I certify that on April 1, 2020, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Electronic Mail:

Charles Barber, Esq.  
Office of the General Counsel  
George Washington University  
2100 Pennsylvania Avenue, NW, Ste 305  
Washington, DC 20002  
[cbarber@gwu.edu](mailto:cbarber@gwu.edu)

Joyce A. Howell  
Senior Assistant Regional Counsel  
ORC – 3RC40  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
[howell.joyce@epa.gov](mailto:howell.joyce@epa.gov)

Dated: April 1, 2020

\_\_\_\_\_  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III