



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 31 2016

REPLY TO THE ATTENTION OF:

VIA EMAIL

Mr. Timothy J. Pramas
Senior Associate General Counsel
Office of the General Counsel
360 McNamara Alumni Center
200 Oak Street Southeast
Minneapolis, Minnesota 55455
Pram0001@umn.edu

Re: Consent Agreement and Final Order
University of Minnesota – Fay Thompson Center for Environmental Management,
Minneapolis, Minnesota
Docket No: **RCRA-05-2016-0009**

Dear Mr. Pramas:

Attached please find a copy of the signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on March 31, 2016, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$25,000 in the manner prescribed in paragraph 36 of the CAFO, and reference all checks with the docket number **RCRA-05-2016-0009**. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, attached is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Attachments

cc: John Elling, Minnesota Pollution Control Agency, w/attachments (john.elling@state.mn.us)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

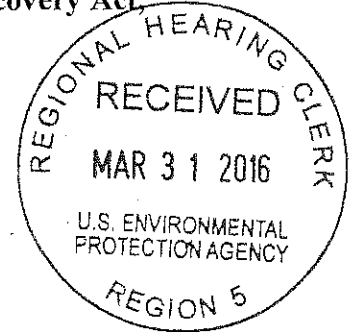
If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
University of Minnesota – Fay Thompson)
Center for Environmental Management)
Minneapolis, Minnesota)
U.S. EPA ID No. MN0 000 981 415)
Respondent.)
_____)

Docket No. RCRA-05-2016-0009

Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is a public university doing business in the State of Minnesota.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 – 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA,

42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective February 11, 1985. 50 Fed. Reg. 3756 (January 28, 1985).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by Minn R. 7045.0020, Subpart 66, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the "owner" or "operator," as those terms are defined under Minn R. 7045.0020, Subpart 66 and 40 C.F.R. § 260.10, of a facility located at 501 23rd Avenue Southeast, Minneapolis, Minnesota (Facility) that has a RCRA Part B hazardous waste storage

permit.

18. On July 24, 2014, U.S. EPA conducted an inspection at the Facility.

19. On October 9, 2014, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during U.S. EPA's July 24, 2014 inspection.

20. On October 30, 2014, December 3, 2014, December 30, 2014 and January 6, 2015, Respondent submitted to U.S. EPA written responses to the Notice of Violation.

21. On July 15, 2015, U.S. EPA conducted an inspection at the Facility.

22. On November 25, 2015, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during U.S. EPA's July 15, 2015 inspection.

23. On December 22, 2015, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

24. The Facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

25. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Minnesota regulations as part of the applicable state hazardous waste management program for the state of Minnesota, or both.

Count 1

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

27. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires that the storage of any hazardous waste is prohibited except in accordance with a permit.

28. Under 40 C.F.R. § 268.50, the owner or operator of a hazardous waste storage facility "may store such wastes beyond one year; however, the owner/operator bears the burden

of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.”

29. Part XI (C)(4) of Respondent’s RCRA Part B permit states that restricted wastes may be stored beyond one year “provided that the Permittee proves that such storage was solely for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.”

30. At the time of U.S. EPA’s July 24, 2014 inspection, weekly inspection logs for the permitted hazardous waste storage areas for the years 2012 and 2013 indicated that numerous containers of hazardous waste had been stored for over 1 year. Subsequent email correspondence with staff at the Facility indicated that Respondent had stored nineteen containers or cylinders containing hazardous waste for over 1 year prior to U.S. EPA’s July 24, 2014 inspection.

31. At the time of U.S. EPA’s July 15, 2015 inspection, the inspector identified at least one container of hazardous waste in Room 118 that had been stored for over 1 year prior to U.S. EPA’s July 15, 2015 inspection.

32. The hazardous wastes stored in the containers identified on the inspection logs and in Room 118 were restricted wastes pursuant to 40 CFR Part 268.

33. At all times relevant to this complaint, Respondent did not store the wastes identified in Paragraphs 30 through 32 “solely for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.”

34. Respondent’s storage of hazardous waste for over 1 year violated Respondent’s RCRA Part B permit, which constitutes a violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and violates 40 C.F.R. § 268.50.

Civil Penalty

35. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$25,000. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,000 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state the title of this matter (In the matter of University of Minnesota-Fay Thompson Center for Environmental Management) and the docket number of this CAFO.

37. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sheila Burrus (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Josh Zaharoff (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

41. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail

at the following valid e-mail addresses: zaharoff.josh@epa.gov (for Complainant), and pram0001@umn.edu (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

43. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

44. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

45. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

46. The terms of this CAFO bind Respondent, its successors, and assigns.

47. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

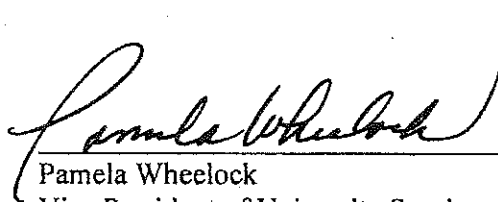
48. Each party agrees to bear its own costs and attorney's fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

**University of Minnesota – Fay Thompson Center for Environmental Management,
Respondent**

2/25/16

Date



Pamela Wheelock
Vice President of University Services
University of Minnesota

United States Environmental Protection Agency, Complainant

3/08/2016

Date



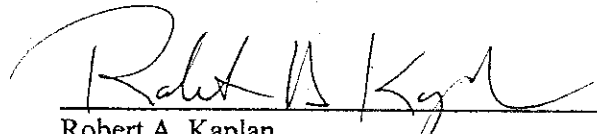
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
University of Minnesota – Fay Thompson Center for Environmental Management
Docket No. RCRA-05-2016-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/10/14
Date



Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: University of Minnesota – Fay Thompson Center for Environmental
Management
Docket Number: **RCRA-05-2016-0009**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number RCRA-05-2016-0009, which was filed on March 31, 2016, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent: Timothy J. Pramas
pram0001@umn.edu

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: March 31, 2016 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5