

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

)
IN THE MATTER OF:)
)
University of Kansas Medical Center)
3901 Rainbow Blvd.)
Kansas City, Kansas 66160)
)
EPA ID No. KSD076274737)
)
Respondent.)
)
Proceeding under Section 3008 (a) and (g) of)
the Resource Conservation and Recovery Act)
as amended, 42 U.S.C. § 6928(a) and (g).)

**COMPLAINANT'S MOTION
FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

Docket No. RCRA-07-2006-0261

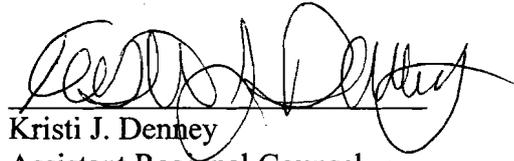
Complainant's Motion for Leave to File an Amended Complaint

Pursuant to Rules 22.14(c) and 22.16 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.14(c) and 22.16, Complainant, the United States Environmental Protection Agency, Region VII (EPA) seeks leave of the Court to amend the Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) filed by EPA on September 28, 2006. The proposed Amended Complaint is attached. In support of this Motion, Complainant provides the following:

1. In preparing for Prehearing Exchange, Complainant recognized minor inaccuracies in its original Complaint, filed September 28, 2006.
2. EPA seeks to amend Paragraph 11 of the Complaint to accurately reflect the locations and number of containers where EPA alleges Respondent failed to conduct a hazardous waste determination.

This motion to amend is submitted in good faith and will not cause prejudice to the Respondent. EPA has informed Respondent of the proposed changes to the Complaint. The attached Amended Complaint more accurately reflects the facts that Complainant intends to present in support of its case at hearing. Complainant requests that the Presiding Officer grant this Motion for Leave to File an Amended Complaint.

Respectfully Submitted,



Kristi J. Denney
Assistant Regional Counsel
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7294

ATTORNEY FOR COMPLAINANT

Attachments:

**Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing
Certificate of Service**

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)

) **AMENDED COMPLAINT,**
) **COMPLIANCE ORDER**
) **AND NOTICE OF OPPORTUNITY**
) **FOR HEARING**
)

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 Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA" or "the Act"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is the University of Kansas Medical Center ("KUMC"), a campus of the University of Kansas.

The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated May 11, 1994. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated June 14, 2005. The Director of the Air, RCRA and Toxics Division of EPA, Region VII, has delegated this authority to the Branch Chief of the RCRA

Enforcement and State Programs Branch, Region VII, by EPA Delegation No. R7-Div-8-9-A, dated June 15, 2005.

The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "KAR 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 23, 2003, and attached hereto, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

II. COMPLAINT

Allegations Common to All Counts

1. Respondent is a state institution of the state of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. Respondent operates a facility located at 3901 Rainbow Boulevard, Kansas City, Kansas (hereinafter the "Facility"); the basic functions of the facility include research, education, patient care, and community service in the medical field.
3. Respondent began operations at this facility in 1924 and the facility, including both the university and the hospital, employs approximately 5,800 persons.
4. Pursuant to Section 76-712 of the Kansas Statutes, Annotated ("K.S.A."), Respondent, a campus of the University of Kansas, is a state institution that is controlled by and operated and managed under the supervision of the Kansas Board of Regents.
5. On or about February 28, 2005, Respondent submitted a Notification of Regulated Waste Activity as a generator of 1000 kilograms per month or more of hazardous waste. Respondent first notified as a generator of 1000 kilograms per month or more of hazardous waste on April 2, 1990.
6. Respondent has been assigned the EPA Facility Identification Number KSD076274737.
7. On or about March 15-17, 2006, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") at KUMC.
8. Based on the facility's generation rates of hazardous waste before and during the EPA inspection, Respondent was operating at that time as an EPA generator of hazardous waste (defined in KAR 28-31-2 as any person who generates 1000 kilograms or more of hazardous waste per month). Respondent was therefore subject to regulation under KAR 28-31-4(g) applicable to EPA generators.

COUNT 1
FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

9. Complainant hereby incorporates the allegations contained in paragraphs 1 through 8 above, as if fully set forth herein.
10. Pursuant to KAR 28-31-4(b) each person who generates a solid waste shall determine if that waste is a hazardous waste.
11. On or about March 15-17, 2006, Respondent was storing over 900 containers of solid waste in the following locations:
 - a. Building #25: 16 containers
 - b. Lied G010: 3 containers
 - c. Lied G023: 1 container
 - d. Lied 1007: 4 containers
 - e. Lied 3007: 2 containers
 - f. Lied 3025: 120 containers

- g. Wahl East 4022: 250 containers
- h. Wahl West 4003: 1 container
- i. Wahl East 4025: 65 containers
- j. Hixon 1000: 2 containers
- k. Hospital Maintenance
Storage Room: Contact and adhesive cleaners and rags
- l. Briedenthal 2015: 500 containers
- m. Briedenthal 2008: 4 containers
- n. Briedenthal 2030: 4 containers.

Respondent had not conducted a hazardous waste determination on these wastes at the time the wastes were generated.

12. Respondent's failure to make a hazardous waste determination on these wastes is a violation of KAR 28-31-4(b).

13. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations above, it is proposed that a civil penalty of \$158,871.00 be assessed against Respondent for its failure to comply with KAR 28-31-4(b).

COUNT 2
OPERATING AS A TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT
RCRA PERMIT OR RCRA INTERIM STATUS

14. Complainant hereby incorporates the allegations contained in paragraphs 1 through 13 above, as if fully set forth herein.

A. Storing Hazardous Waste Longer than 90 Days

15. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 65-3437 of the Kansas Statutes, Annotated (K.S.A.) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

16. However, the regulations at KAR 28-31-4(g), in pertinent part, state that an EPA generator may accumulate hazardous wastes on-site for 90 days or less without a permit or interim status, if the generator complies with conditions (1) thru (4).

17. On or about March 15-17, 2006, Respondent was storing a 55-gallon drum of F003 waste dated October 27, 2005, in the Hazardous Waste Storage Building. This container was stored on-site until March 24, 2006, for a total of 148 days, or greater than 90 days.

18. Respondent has not obtained a permit or interim status to operate a hazardous waste storage facility pursuant to Section 3005 of RCRA or K.S.A. 65-3437.

19. Respondent's storage of hazardous waste for over 90 days constitutes the operation of a hazardous waste storage facility without a permit or interim status, in violation of Section 3005 of RCRA and K.S.A. 65-3437.

B. Failure to Comply with the Generator Requirements

20. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 65-3437 of the Kansas Statutes, Annotated (K.S.A.) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

21. However, the regulations at KAR 28-31-4(g), in pertinent part, state that an EPA generator may accumulate hazardous wastes on-site for 90 days or less without a permit or interim status, if the generator complies with conditions (1) thru (4).

Labeling Hazardous Waste Containers

22. The regulations at KAR-28-31-4(g) state, in pertinent part, that an EPA generator must mark each container of hazardous waste with the words, "Hazardous Waste."

23. On or about March 15-17, 2006, in the facility's Hazardous Waste Storage Building (Building 25), Respondent was storing more than 66 containers of hazardous waste that did not bear the label "hazardous waste."

Accumulation Start Date

24. The regulations at KAR 28-31-4(g)(2) require each container of hazardous waste to be clearly marked and visible for inspection with the date upon which each period of accumulation began.

25. On or about March 15-17, 2006, Respondent was storing approximately fifty-four (54) containers of hazardous waste at the Facility in Building # 25 and the Hospital Flammable Storage Room 1604, that were not marked with an accumulation start date.

26. Respondent's failure to comply with the conditions set forth in KAR 28-31-4(g), which are alleged in paragraphs 20 through 25, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

27. Respondent has not obtained a permit or interim status to operate a hazardous waste storage facility pursuant to Section 3005 of RCRA or K.S.A. 65-3437.

28. Respondent's failure to comply with the conditions set forth in KAR 28-31-4(g) is in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437.

C. Failure to Comply with Satellite Accumulation Requirements

29. Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437, require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

30. However, the regulations at KAR 28-31-4(j) state that an EPA generator may accumulate as many as 55 gallons of each type of hazardous waste or one quart of acutely hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate without a permit or interim status if the generator complies with KAR 28-31-4(j)(1)(A) and (j)(1)(B).

31. The regulations at KAR 28-31-4(j)(1)(B) concerning satellite accumulation areas state, in pertinent part, that an EPA generator must mark each satellite accumulation container of hazardous waste with the words, "Hazardous Waste."

32. On or about March 15-17, 2006, approximately 24 of Respondent's satellite accumulation containers were not labeled "Hazardous Waste" as required by KAR 28-31-4(j)(1)(B). These containers were located in:

- a. Lied Building, Rooms G025, G005, and 2003;
- b. Wahl East, Rooms 1012, 1028, 2013, 4022, and 5023;
- c. Wahl West, Room 4031;
- d. Hospital Cancer Center Pharmacy;
- e. Hospital Cytology Lab;
- f. Briedenthal Building, Rooms 2030, 2008, 1009, 1014, and G012.

33. Respondent's failure to comply with the conditions set forth in KAR 28-31-4 (j), which are alleged in paragraphs 29 through 32, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

34. Respondent has not obtained a permit or interim status to operate a hazardous waste storage facility pursuant to Section 3005 of RCRA or K.S.A. 65-3437.

35. Respondent's failure to comply with the conditions set forth in KAR 28-31-4 (j) is in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437.

36. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that a civil penalty of \$147,523.00 be assessed against

Respondent for its failure to comply with Section 3005 of RCRA, K.S.A. 65-3437, and the regulations as described above.

III. COMPLIANCE ORDER

IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$306,394. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Regional Hearing Clerk
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Kristi Denney
Assistant Regional Counsel
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

The check must reference the EPA Docket Number of this Complaint and Respondent by name.

IT IS FURTHER ORDERED that Respondent take the following actions:

A. Within 180 days of receipt of this Order, Respondent shall submit a list of all solid waste streams managed at the facility to EPA. In addition, for each such solid waste stream generated at the facility, Respondent shall submit documentation to EPA, demonstrating that an accurate hazardous waste determination has been performed, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation will include, but is not limited to, the following information:

- i. a description of the waste stream, which includes a detailed description of the process or processes that generated the waste;
- ii. a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;

- iii. a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
- iv. a determination of whether or not the waste is identified in 40 C.F.R. Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and reasoning regarding the basis for this determination.

B. Beginning upon receipt of this Order, and continuing for a period of one year on a semi-annual basis, Respondent shall provide EPA with copies of all manifests for the off-site disposal of all hazardous wastes generated during this time frame.

All documents required to be submitted by this Complaint and Compliance Order shall be sent to the attention of:

Edwin G. Buckner, PE
RCRA Enforcement and State Programs Branch
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Compliance Order shall become final unless Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of the Complaint.

A written answer to the Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is enclosed hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Kristi Denney, Office of Regional Counsel, at the same address.

Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, and may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty. In accordance with the RCRA Civil Penalty Policy, EPA prepared a penalty calculation summary explaining the reasoning behind the penalty proposed for the violation(s) alleged herein.

V. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Kristi Denney, Office of Regional Counsel, U.S. EPA, Region VII, 901 N. 5th St., Kansas City, Kansas 66101, (913) 551-7294.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order which may be issued by the Regional Judicial Officer, EPA Region VII.

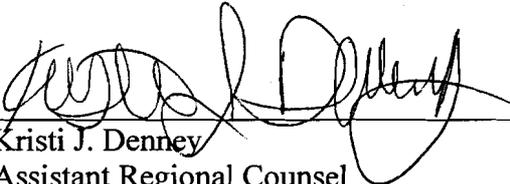
If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

VI. TERMINATION

This Order shall only be terminated upon receipt of written notice from EPA that all requirements herein have been satisfied.

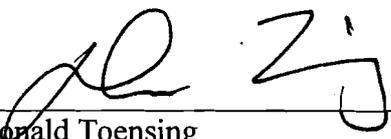
IT IS SO ISSUED AND ORDERED:

4/12/07
Date



Kristi J. Denney
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

4-12-07
Date



Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
U.S. Environmental Protection Agency
Region VII

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of Complainant's Motion for Leave to File an Amended Complaint and the Amended Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date below I sent a true and correct copy of Complainant's Motion for Leave to File an Amended Complaint and the Amended Complaint, Compliance Order and Notice of Opportunity for Hearing via facsimile and certified mail, return receipt requested to:

The Honorable Susan L. Biro
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L / Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, D.C. 20460
Fax (202) 565-0044

and

Michael P. Comodeca
Spencer Fane Britt & Browne LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, KS 66210-2005
Fax (913) 345-0736

Dated this 12th day of April, 2007.

Signature

