

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

Missouri Southern State University )  
3950 East Newman Road )  
Joplin, Missouri 64801-1595 )

EPA ID No. MOD985772391 )

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). )

**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No. RCRA-07-2006-0181

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Missouri Southern State University (Respondent) have agreed to a settlement of the following alleged violations before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

**II. ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Part 22).

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2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated the regulations found at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. Part 262.11; 10 C.S.R. 25-11.279(1) incorporating 40 C.F.R. 279.22; and 10 C.S.R. 25-11.279(2)(C)(6).

### **Parties**

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of EPA, Region VII, pursuant to the following delegations: EPA Delegation No. 8-9-A, dated May 11, 1994; EPA Delegation No. R7-8-9-A, dated June 14, 2005; and EPA Delegation No. R7-Div-8-9-A, dated June 15, 2005.

4. The Respondent is Missouri Southern State University, a publicly supported state university under the laws of the State of Missouri.

### **Statutory and Regulatory Framework**

5. The State of Missouri 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 Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (C.S.R.), Chapter 25 (10 C.S.R. 25). 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 Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. 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 (Inflation Rule), 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997 and before March 15, 2004. Also pursuant to the Inflation Rule, penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur on or after March 15, 2004.

### **Factual Background**

7. Respondent, a publicly supported state university located in Joplin, Missouri, is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent has been in operation at this location since 1967, and currently employs approximately 510 full-time employees and 151 part-time employees.

9. On or about March 8, 1990, Respondent notified MDNR that it was a small quantity generator (100 to 1000 kg/month) of hazardous waste.

10. Respondent is a generator of hazardous waste, as that term is defined in 40 C.F.R. § 260.10.

11. Respondent has been assigned the facility identification number MOD985772391.

12. On February 25, 2004, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on a review of generation rates of identified hazardous waste at the facility during the inspection, it was determined that Respondent was operating at that time as a conditionally exempt small quantity generator of hazardous waste.

13. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

#### **Violations**

14. Complainant hereby incorporates the allegations contained in paragraphs 7 through 13 above, as if fully set forth herein.

#### **Count 1**

#### **FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION IN VIOLATION OF 10 C.S.R. 25-5.262(1), INCORPORATING 40 C.F.R. § 262.11**

15. Pursuant to 10 C.S.R. 25-4.261, incorporating 40 C.F.R. §§ 261.5(b) and (g), a conditionally exempt small quantity generator's hazardous waste is excluded from full regulation under 40 C.F.R. Parts 262 through 266, if the generator complies with the regulations of 10 C.S.R. § 25-2.262(1), incorporating 40 C.F.R. § 262.11.

16. Pursuant to 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

17. At the time of the February 2004 EPA inspection, Respondent was storing approximately 107 containers of waste chemicals in a storage bunker located in the Reynolds Science and Mathematics Building. The chemicals, which had been generated by the MSSU Biology Department, included Acetone, Acrylamide, Alcohol, Ammonia, Ammonia Hydroxide, Ammonium Sulfide, Benzene, Cyclohexane, Carbon Disulfide, Chloroform, Formaldehyde, Methanol, Nicotine, Nitric Acid, and Phenol. Respondent had not conducted a hazardous waste determination on these wastes.

18. At the time of the February 2004 EPA inspection, Respondent was storing 12 to 15 boxes or containers of discarded chemicals being stored in Room 250 of the Reynolds Science and Mathematics Building. The chemicals, which had been generated by the MSSU Chemistry Department, included Hydrazine, Lead Acetate, and Phosphoric Acid. Respondent had not conducted a hazardous waste determination on this waste before it was disposed of in the general trash.

19. At the time of the February 2004 EPA inspection, Respondent had been generating cleaning solvent waste in a 55-gallon drum stored outside the entrance to the paint shop in the MSSU Physical Plant. Respondent had not conducted a hazardous waste determination on this waste.

20. Respondent's failure to make hazardous waste determinations on the waste streams noted in paragraphs 17 through 19 is a violation of 10 C.S.R. Part 25-5.262(1), incorporating 40 C.F.R. Part 262.11.

**Count 2**

**FAILURE TO MEET THE REQUIREMENTS FOR USED OIL STORAGE  
BY A USED OIL GENERATOR IN VIOLATION OF  
10 C.S.R. 25-11.279(1), INCORPORATING 40 C.F.R. § 279.22, AND  
10 C.S.R. 25-11.279(2)(C)(6)**

21. Pursuant to 10 C.S.R. 25-11.279(1), incorporating 40 C.F.R. § 279.22(b)(1), containers and aboveground tanks used to store used oil at generator facilities must be in good condition and must have no visible leaks.

22. Pursuant to 10 C.S.R. 25-11.279(1), incorporating 40 C.F.R. § 279.22(c)(1), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

23. Pursuant to 10 C.S.R. 25-11.279(1), incorporating 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials, and, if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

24. Pursuant to 10 C.S.R. 25-11.279(2)(C)(6), a used oil generator must keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

25. At the time of the February 2004 EPA inspection, Respondent was storing approximately twenty (20) containers of used oil (eighteen (18) 5-gallon buckets, one (1) 30-gallon drum, and one (1) 55-gallon drum) outside the MSSU Physical Plant. None of the containers were labeled

“Used Oil.” The 30-gallon drum was not securely closed, and showed signs of recent spillage/leakage to the environment. At least one (1) 5-gallon bucket was not securely closed, and showed signs of recent spillage/leakage to the environment.

26. At the time of the February 2004 EPA inspection, Respondent was storing one (1) 55-gallon drum of waste oil in the MSSU Physical Plant. The 55-gallon drum was filled to capacity and overflowing, and there was significant spillage that had not been cleaned. In addition, the used oil drum was not labeled “Used Oil.”

27. Respondent’s failures to ensure that the containers used to store used oil were properly maintained, sealed and labeled and that releases of used oil were properly addressed as noted in paragraphs 25 and 26 are violations of 10 C.S.R. 25-11.279(1), incorporating 40 C.F.R. § 279.22, and of 10 C.S.R. 25-11.279(2)(C)(6).

### **CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order. The terms of the Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and waives its right to appeal the Final Order set forth below.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney’s fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent’s knowledge and after thorough investigation, it is presently in compliance with all requirements of 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. Part 262.11, and Subchapter III of RCRA (Hazardous Waste Management), as well as all requirements of 10 C.S.R. 25-11.279(1), incorporating 40 C.F.R. Part 279.22 (Used Oil Storage), and of 10 C.S.R.

25-11.279(2)(C)(6). Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$31,763 to be paid within thirty (30) days of the effective date of the Final Order, as set forth in the Final Order. Payment of this civil penalty and the performance of the Compliance Actions specified in the Final Order below shall resolve all civil and administrative claims the EPA alleged in the Consent Agreement and Final Order.

9. The effect of settlement described in paragraph 8 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 7 above of the Consent Agreement portion of this Consent Agreement and Final Order.

10. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

12. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 17 of the Final Order, that all requirements hereunder have been satisfied.

### **FINAL ORDER**

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

#### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of Thirty-One Thousand Seven Hundred and Sixty-Three Dollars (\$31,763).

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

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

The payment shall identify the Respondent by name and reference the Docket Number (RCRA-07-2006-0181) on the check. Copies of the check shall also be mailed to:

Marc Matthews  
ARTD/RESP  
U.S. EPA Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

And

Regional Hearing Clerk  
U.S. EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

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

#### **B. Compliance Actions**

5. Respondent shall take the following actions within the specified time periods, and according to the terms and conditions, specified in the paragraphs below.

6. Within sixty (60) days of receipt of this Order, Respondent shall make a hazardous waste determination in accordance with 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. 262.11, on all solid wastes generated in the Biology Lab, the Chemistry Lab, and the Physical Plant at the Respondent's facility. In addition, within fourteen (14) days of making such a determination, Respondent shall submit to EPA documentation demonstrating that the determination has been performed on each waste stream. Each determination shall include documentation of the following:

- a. a description of the process that generated the waste;
- b. a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. Part 261;



- c. a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
- d. a determination of whether or not the waste is identified in 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 the process used. If knowledge of the process is used, Respondent shall provide a detailed explanation regarding the basis for this knowledge and Respondent's reasoning.

7. Beginning immediately upon Respondent's receipt of this Order, and continuing for a period of one year on a quarterly basis, Respondent shall provide EPA with copies of all manifests for the disposal of all hazardous wastes from its facilities in the previous quarter.

8. Within thirty (30) days of the effective date of this Final Order, Respondent will determine whether any unaddressed releases of used oil to soil remain at its facility.

- a. If Respondent determines that no unaddressed releases of used oil are in evidence at its facility, then within seven (7) days of its determination, it will provide to EPA documentation to that effect, including sampling results confirming that soil at all suspected release sites is free from contamination with used oil.
- b. If Respondent determines that unaddressed releases of used oil are in evidence at its facility, then within sixty (60) days of the effective date of this Final Order, Respondent shall clean up and manage properly any remaining releases of used oil and oil-contaminated soil at the facility in accordance with 40 C.F.R. § 279.45(h) and all applicable federal and state law, including law regulating disposal of solid and/or hazardous wastes. Respondent shall provide to EPA within seven (7) days of completion of clean up of remaining releases documentation that all waste generated during the cleanup was shipped off-site for proper disposal or treatment. Such documentation may include shipping papers, bills of lading, and/or manifests.
- c. Within thirty (30) days of completion of any cleanup and disposal activities performed pursuant to Paragraph 8b above, Respondent shall provide EPA with:
  - i. diagrams or maps indicating the location of the release area or areas;
  - ii. clear, color photographs of the used oil release areas after the releases were cleaned up; and
  - iii. copies of follow-up sampling results confirming that the used oil releases were cleaned up and that no contamination remains.

9. All notices and submissions required under this Final Order shall be submitted to:

Marc Matthews

ARTD/RESP  
U.S. EPA Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

10. All references to "days" shall mean calendar days for the purposes of this Order.

### **C. Parties Bound**

11. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

### **D. Reservation of Rights**

12. Notwithstanding any other provision of this Consent Agreement and Final Order, Complainant reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

13. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

14. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

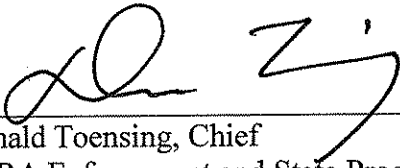
15. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

16. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

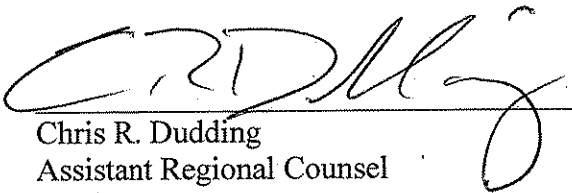
17. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-26-06  
Date

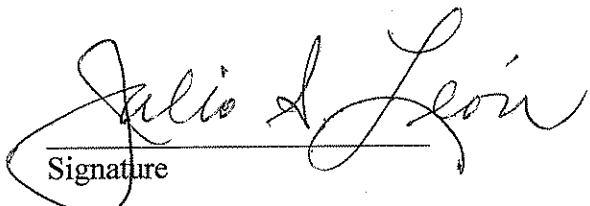
  
Donald Toensing, Chief  
RCRA Enforcement and State Programs Branch  
Air, RCRA, and Toxics Division

9/26/06  
Date

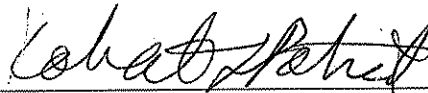
  
Chris R. Dudding  
Assistant Regional Counsel

RESPONDENT:  
MISSOURI SOUTHERN STATE UNIVERSITY

9-25-06  
Date

  
Signature  
JULIO S. LEON  
Printed Name  
PRESIDENT  
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick  
Regional Judicial Officer

Date September 26, 2006

IN THE MATTER OF Missouri Southern State University, Respondent  
Docket No. RCRA-07-2006-0181

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Chris R. Dudding  
Assistant Regional Counsel  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Julio S. Leon, President  
Missouri Southern State University  
3950 East Newman Road  
Joplin, Missouri 64801-1595

9/26/06

Dated



Hearing Clerk, Region 7