

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: )

St. Louis Community College at Meramec )  
11333 Big Bend Road )  
Kirkwood, Missouri 63122 )

CONSENT AGREEMENT AND  
FINAL ORDER

EPA ID No. MOD124575564 )

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). )

Docket No. RCRA-07-2007-0004

**I. PRELIMINARY STATEMENT**

This administrative action is being conducted 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") 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 ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air, RCRA, and Toxics Division 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 St. Louis Community College at Meramec, a non-profit corporation formed under the laws of the State of Missouri.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 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.

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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).

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 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 Consent Agreement and Final Order and upon those factors which 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 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

## **II. FACTUAL ALLEGATIONS**

### **Jurisdiction, Statutory and Regulatory Requirements**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6925 and the regulations found at 40 C.F.R. § 262.11.
3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an

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order assessing a civil penalty for any past or current violation, require compliance, or both.

4. Respondent is a non-profit corporation organized in and authorized to operate in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

5. Respondent is a publicly supported community college located in Kirkwood, Missouri. It is part of the St. Louis Community College system.

6. Respondent has been in operation at this location since approximately 1962, and currently employs approximately 300 full-time and part-time employees.

7. On or about May 8, 1988, Respondent notified EPA that it was a small quantity generator (100 to 1000 kg/month) of hazardous waste.

8. Respondent has been assigned the facility identification number MOD124575564.

9. On June 18-19, 2003, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility.

10. Based on information obtained during the June 2003 inspection, Respondent was issued a Notice of Violation for failing to make a hazardous waste determination on a number of waste streams.

11. On January 10 and 11, 2006, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on a review of known hazardous waste accumulated on-site at the facility, it was determined that Respondent was operating at that time as a small quantity generator (100 to 1000 kg/month) of hazardous waste.

12. Based on information obtained during the January 2006 inspection, Respondent was issued a Notice of Violation for failing to make a hazardous waste determination on a number of waste streams.

**COUNT I**

**FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

13. Complainant hereby incorporates the allegations contained in paragraphs 1 through 12 above, as if fully set forth herein.

14. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), 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.
15. At the time of the January 2006 EPA inspection, Respondent had been generating spent solvent contaminated rags in the Physical Plant and the Power Plant. At that time, Respondent had not conducted a hazardous waste determination on either waste stream and was disposing of the Power Plant rags in the general trash.
16. At the time of the January 2006 EPA inspection, Respondent had been storing approximately 81 containers of spent chemical waste in the Science South ("SS") building, Room SS207. Respondent had not conducted a hazardous waste determination on these wastes.
17. At the time of the January 2006 EPA inspection, Respondent had been storing one 500-milliliter container of unknown chemical waste in Room SS207 and four aerosol cans of chemical (solvent, cleaner, spray paint and pesticide) waste, in the Science West ("SW") building, Room SW100. Respondent had not conducted a hazardous waste determination on these waste streams, which were later placed together in a lab pack and shipped off-site to a hazardous waste disposal facility.
18. At the time of the January 2006 EPA inspection, Respondent had been storing one container of mineral spirits in Room SW100 and approximately five containers of spent photography chemical wastes in the Physical Plant. Respondent had not conducted a hazardous waste determination on these waste streams, which were later placed together in a lab pack and shipped off-site to a hazardous waste disposal facility.
19. At the time of the January 2006 EPA inspection, Respondent had been storing approximately twelve containers of spent solvent-based paint in the Power Plant and one container of spent solvent in the Physical Plant. Respondent had not conducted a hazardous waste determination on these waste streams, which were later placed together in a lab pack and shipped off-site to a hazardous waste disposal facility.
20. At the time of the January 2006 EPA inspection, Respondent was storing one container of aqueous organic waste in Room SS207 and one container of waste insecticide in Room SW100. Respondent had not conducted a hazardous waste determination on these waste streams, which were later placed together in a lab pack and shipped off-site to a hazardous waste disposal facility.
21. At the time of the January 2006 EPA inspection, Respondent was storing a container of acid waste in Room SW100. Respondent had not conducted a hazardous waste determination on this waste.

22. At the time of the January 2006 EPA inspection, Respondent was storing a container of spent photography chemical waste in the Physical Plant. Respondent had not conducted a hazardous waste determination on this waste.
23. At the time of the January 2006 EPA inspection, Respondent was storing approximately four containers of photochemistry waste in the Physical Plant. Respondent had not conducted a hazardous waste determination on this waste stream, which was later placed in a lab pack and shipped off-site to a hazardous waste disposal facility.
24. At the time of the January 2006 EPA inspection, Respondent was storing a drum of various spent solvent-based degreasers, paints and other chemicals in the Physical Plant. Respondent had not conducted a hazardous waste determination on this waste.
25. Respondent's failure to make hazardous waste determinations on the waste streams noted in paragraphs 15 through 24 is a violation of 40 C.F.R. § 262.11.

### **III. CONSENT AGREEMENT**

26. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
27. 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 set forth below.
28. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
29. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order and agrees not to appeal the Final Order set forth below.
30. 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 agree to bear their respective costs and attorney's fees.
31. 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.

32. 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 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), and Subchapter III of RCRA (Hazardous Waste Management). 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.
33. Respondent agrees that, in settlement of the claims alleged in the Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of \$78,581 as set forth in paragraph 39 of the Final Order.
34. The effect of settlement described in paragraph 31 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in paragraph 32 above.
35. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.
36. 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.
37. This Consent Agreement and Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 52 of the Final Order, that all requirements hereunder have been satisfied.
38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

#### **IV. FINAL ORDER**

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

**A. Payment of Civil Penalty**

39. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$78,581.

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

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
c/o Mellon Bank  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2007-0004, on the check. A copy of the check shall also be mailed to:

Alex Chen  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, KS 66101.

41. 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.

42. 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**

43. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

- a. Within sixty (60) days of the effective date of the Final 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

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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, Respondent shall provide a detailed explanation and reasoning regarding the basis for this determination.

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

Kevin Snowden  
Air, RCRA and Toxics Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101.

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

Marcie Touchette  
St. Louis Community College at Meramec  
Joseph P. Cosand Community College Center  
300 South Broadway  
St. Louis, Missouri 63102-2810.



**C. Parties Bound**

46. This 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**

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

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

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**For the Respondent:**

By: Henry D. Shannon  
Printed Name: Henry D. Shannon  
Title: Chancellor

19 December 2006  
Date

**For the Complainant:**

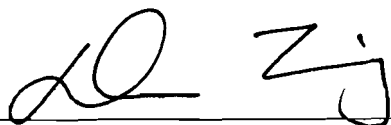
The United States Environmental Protection Agency



\_\_\_\_\_  
Alex Chen  
Assistant Regional Counsel

December 20, 2006

Date



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

12-20-06

Date



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CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:


Alex Chen  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

E. Lynn Suydam, President  
St. Louis Community College at Meramec  
11333 Big Bend Road  
Kirkwood, Missouri 63122-5799

Tina A. Odo, General Counsel  
St. Louis Community College at Meramec  
Joseph P. Cosand Community College Center  
300 South Broadway  
St. Louis, Missouri 63102-2810

Dated: 1/4/07

  
Kathy Robinson  
Hearing Clerk, Region 7