

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Department of Veterans Affairs Eastern Kansas
Health Care System, including:

Dwight D. Eisenhower Veterans
Medical Center
4101 South 4th Street Trafficway
Leavenworth, Kansas
RCRA ID No. KS3360090002

and

Colmery O'Neil Veterans Medical Center
2200 Gage Boulevard
Topeka, Kansas
RCRA ID No. KS0360010722

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)

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

Docket No. RCRA-07-2008-0013

A. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as RCRA), 42 U.S.C. Sections 6928(a) and (g), in accordance with the United States Environmental Protection Agency's Consolidated Rules

of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, found at 40 Code of Federal Regulations (C.F.R.) Part 22. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch, Air and Waste Management Division, United States Environmental Protection Agency, Region 7 (EPA or Complainant). The Respondent is the Department of Veterans Affairs Eastern Kansas Health Care System, including: Dwight D. Eisenhower Veterans Medical Center, 4101 South 4th Street Trafficway, Leavenworth, Kansas and Colmery O'Neil Veterans Medical Center, 2200 Gage Boulevard, Topeka, Kansas (V.A. or Respondent).

2. The authority to execute this Complaint, Compliance Order, and Notice of Opportunity for Hearing is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA, and Toxic Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Division Director has further delegated this authority to the Chief of the RCRA Enforcement and State Programs Branch by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

3. 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. 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 (K.A.R. 28-31). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When 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.

4. Section 3008(g) of RCRA, 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 \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997, and penalties up to \$32,500 per day for violations occurring 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 on October 26, 1990, the Complainant proposes that Respondent be assessed a civil penalty of \$281,203.00, pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. These factors include 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 proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

B. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

5. The Respondent, the Department of Veterans Affairs, is a department of the United States federal government. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

6. Respondent's facilities are located at 4101 South 4th Street Trafficway, Leavenworth, Leavenworth County, Kansas (VA Leavenworth), and at 2200 Gage Boulevard, Topeka, Shawnee County, Kansas (VA Topeka). The facilities provide health care to veterans, including inpatient medical and psychiatric care, nursing home facilities and outpatient care. VA Leavenworth employs approximately 600 people and VA Topeka employs approximately 900 people.

7. Respondent generates solid and hazardous waste as a result of its operations. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in paragraph 10 below.

8. The wastes generated and/or handled by Respondent at VA Leavenworth, along with their wastes codes are: ethyl acetate (U112, U125, D001), methyl chloride (U080), furfural (U125, D001), petroleum ether (D001), sodium azide (P105), sodium hydroxide (D002), Chlamydia Trachomatis (U154, D001), sulfuric acid (D002), paint sludge (D001) and paint booth skimmings (D001).

9. Wastes generated and/or handled by Respondent at VA Topeka, along with their waste codes, are: waste or spent mineral spirits and paint thinner containing mineral spirits

(D001, D007, D008 and D0035), coil cleaner (D002), Diversol CX (D002), CIP Corrosive (D002), United 417 (D002), sulfuric acid drain cleaner (D002), Oakite Enpox 714 Corrosive sodium hydroxide (D002), Oakite 32 Corrosive (D002), paint stain (D001, D007, D008, D035) paint stripper (D002), asphalt remover (D001), solvent spotter (D001, D007, D008 and D035), outdated neutralime (D002), Thoroclear (U228), spent aerosol cans (D001), United 555 (D002), Envirozyme drain cleaner (D002), Primer Sealer (F003, F005, D007 and D008), muriatic acid (D002), and one partially filled drum of unlabeled, unknown material, later determined to be D002 waste.

10. Each of the wastes listed in paragraphs 8 and 9 is a "solid waste" within the meaning of K.A.R. 28-31-1(a)(2) and (3), which incorporates by reference 40 C.F.R. Parts 260 and 261. These wastes are also "hazardous waste" pursuant to those regulations.

11. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations referenced in paragraph 10.

12. VA Leavenworth filed a notification of hazardous waste activity on July 19, 1983, which was updated on August 11, 2005, February 8, 2006, May 15, 2007 and again on June 9, 2008, stating that the facility was a "Kansas generator" of hazardous waste pursuant to K.A.R. 28-31-2(d), (a small quantity generator under federal regulations). VA Topeka filed a notification of hazardous waste activity on February 26, 1991, which was updated on April 30, 2003, August 2, 2005, March 6, 2006, May 18, 2007, and again on January 17, 2008 stating that the facility was a "Kansas generator" of hazardous waste pursuant to K.A.R. 28-31-2(d), which is a conditionally exempt small quantity generator of hazardous waste under federal regulations. However, it was determined during the inspection that VA Topeka had accumulated sufficient

quantities of acute hazardous waste to be classified as "EPA generator" of acute hazardous waste, which is a large quantity generator of acute hazardous waste under federal regulations. No further waste notifications have been filed.

13. On January 18 and 19, 2006, EPA representatives conducted an inspection of VA Leavenworth (hereinafter the "VA Leavenworth inspection"). On April 11 and 12, 2006, EPA representatives conducted an inspection of VA Topeka (hereinafter the "VA Topeka inspection"). Violations of RCRA were noted during both inspections.

COUNT I
FAILURE TO PERFORM HAZARDOUS WASTE DETERMINATIONS

14. K.A.R. 28-31-4(b) requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

15. At the time of both the VA Leavenworth inspection and the VA Topeka inspection, both facilities had failed to perform hazardous waste determinations on numerous hazardous waste streams. Specifically, Respondent had not performed hazardous waste determinations on the wastes listed in paragraphs 8 and 9 above.

16. Respondent's failure to perform hazardous waste determinations on the wastes listed in paragraphs 8 and 9 above is a violation of K.A.R. 28-31-4(b).

COUNT II
**OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE OR
DISPOSAL FACILITY WITHOUT A PERMIT**

17. Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437 state that operation of a hazardous waste treatment, storage or disposal facility without a permit is prohibited.

II.a. Failure to Comply with Generator Requirements

18. The regulations at K.A.R. 28-31-4 (g) state that EPA generators may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided certain conditions are met. The regulations at K.A.R. 28-31-4(h) state that Kansas generators may accumulate waste on-site provided certain conditions are met. In both instances, these conditions require compliance with other hazardous waste regulatory requirements.

19. At the time of the VA Leavenworth and VA Topeka inspections, Respondent was not complying with the following requirements:

Improper satellite accumulation container management

20. K.A.R. 28-31-4(j)(1)(B) requires generators to identify the contents of hazardous waste satellite accumulation containers, and K.A.R. 28-31-4(j)(2) requires that satellite accumulation containers be marked with the date upon which accumulation of hazardous waste began.

21. At the time of the VA Leavenworth inspection, there were satellite accumulation containers of hazardous waste in the Histology Lab and Lab Storage Room that were not marked as hazardous waste or marked with the date upon which accumulation of hazardous waste had begun.

Improper hazardous waste container management

22. K.A.R. 28-31-4(h)(3) requires that hazardous waste containers in storage areas must be marked with the accumulation date, and K.A.R. 28-31-(h)(4) requires that such containers must be marked with the words "hazardous waste" or other words identifying the contents.

23. At the time of the VA Leavenworth inspection, Respondent had several containers of hazardous waste in the Histology Lab storage room, the paint waste storage room and one other room which were not marked with the accumulation date or marked as hazardous waste.

Emergency information not posted near telephone

24. K.A.R. 28-31-(h)(7) requires that certain emergency information be posted by at least one telephone that is accessible to employees in an emergency.

25. Neither VA Leavenworth nor VA Topeka had the required emergency information posted near a telephone at the time of the respective inspections.

Failure to document weekly inspections

26. K.A.R. 28-31-4(k) requires that generators of hazardous waste document weekly inspections of hazardous waste storage areas.

27. At the time of the VA Leavenworth inspection, Respondent was not documenting all weekly inspections of hazardous waste storage areas.

Failure to conduct weekly inspections of acute hazardous waste storage areas

28. K.A.R. 28-31-4(g)(1)(A) requires that large quantity generators of hazardous waste conduct weekly inspections of their storage areas.

29. At the time of the VA Topeka inspection, Respondent had generated sufficient quantities of acute hazardous wastes at VA Topeka to be classified as a large quantity (EPA) generator of hazardous waste pursuant to K.A.R. 28-31-4(n).

30. At the time of the VA Topeka inspection, Respondent was not conducting weekly inspections of the area where large quantities of acute hazardous waste were stored, nor was Respondent conducting weekly inspections of other hazardous waste storage areas.

Failure to make arrangements with local authorities

31. K.A.R. 28-31-4(h)(5) requires Kansas generators to make arrangements with local fire departments, police and other emergency response agencies for responding to emergencies at their facilities.

32. At the time of the VA Topeka inspection and the VA Leavenworth inspection, neither facility had made any such arrangements with local emergency response authorities.

33. K.A.R. 28-31-4(g)(4) requires EPA generators of hazardous waste to make arrangements with local fire departments, police and other emergency response agencies for responding to emergencies at their facilities.

34. At the time of the VA Topeka inspection, Respondent had not made any such arrangements with local authorities.

Failure to have a contingency plan that complied with regulations

35. K.A.R. 28-31-4(g)(4) requires EPA generators of hazardous waste to have a contingency plan that complies with the requirements of 40 C.F.R. Part 265, Subpart D.

36. At the time of the VA Topeka inspection, Respondent did not have a contingency plan that complied with the regulations. Specifically, the facility's emergency plan had not been provided to local authorities; the plan did not list the primary emergency coordinator and did not include home addresses and work phone numbers for emergency contacts at the facility. In

addition, the plan did not include any description of arrangements with local emergency authorities, and did not include a list of emergency equipment or the location and capabilities of the equipment.

Failure to have a written personnel training plan

37. K.A.R. 28-31-4(g)(4) requires EPA generators to maintain certain documentation of their personnel training plans as set forth in 40 C.F.R. § 265.16(d).

38. At the time of the VA Topeka inspection, Respondent did not have documentation of a personnel training plan that included the required information.

Storage of incompatible wastes

39. K.A.R. 28-31-4(h)(2)(A) requires Kansas generators of hazardous waste to comply with the requirements of 40 C.F.R. § 265.177 with respect to incompatible wastes.

40. At the time of the VA Leavenworth inspection, Respondent was storing incompatible wastes without separating the wastes with a berm, dike or wall as required by the regulations.

II.b. Treating Hazardous Waste Without a Permit

41. Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437 state that operation of a hazardous waste treatment facility without a permit is prohibited.

42. At the time of the VA Topeka inspection and the VA Leavenworth inspection, Respondent had been incinerating some of its hazardous waste on-site at both facilities.

43. Neither VA Topeka nor VA Leavenworth has a permit to store, treat or dispose of hazardous waste.

44. Respondent's failure to comply with applicable generator requirements and its operation of a hazardous waste treatment facility without a permit are violations of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437.

COUNT III
OFFERING HAZARDOUS WASTE FOR SHIPMENT TO A TRANSPORTER
WITHOUT A MANIFEST; AND OFFERING HAZARDOUS WASTE TO AN
UNREGISTERED TRANSPORTER

45. K.A.R. 28-31-4(d)(1) states that generators of hazardous waste offering hazardous waste for off-site treatment or disposal must ship such waste using a hazardous waste manifest.

46. K.A.R. 28-31-4(c)(2) states that generators of hazardous waste may only offer hazardous waste for treatment or disposal to transporters that have an EPA identification number.

47. At the time of the VA Topeka and VA Leavenworth inspections, Respondent was shipping hazardous waste between the facilities without a manifest and VA Leavenworth was offering hazardous waste for treatment to the VA Topeka facility using a transporter which did not have an EPA identification number as a transporter of hazardous waste.

48. Respondent's shipment of hazardous waste from VA Leavenworth to VA Topeka without a hazardous waste manifest is a violation of K.A.R. 28-31-4(d)(1).

49. Respondent's offering hazardous waste to a transporter who had not obtained an EPA identification number is a violation of K.A.R. 28-31-4(c)(2).

C. COMPLIANCE ORDER

50. IT IS HEREBY ORDERED that:

a. Within thirty (30) days of receipt of this Order, the Respondent shall pay a penalty of \$281,203.00; and

b. Within thirty (30) days of receipt of this Order, the Respondent shall provide copies of all manifests, bills of lading, invoices or other documents related to Respondent's shipment of hazardous waste from both VA Topeka and VA Leavenworth within the last six months, demonstrating that Respondent is properly disposing of hazardous waste generated at these facilities. Such wastes include but are not necessarily limited to the wastes listed in paragraphs 8 and 9 of this Complaint. This information must be submitted to EPA's representative identified in paragraph 60 below.

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

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

or by wire transfer, directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The check must reference the EPA Docket Number of this Complaint and Compliance Order and the Respondent by name. A copy of the check or confirmation of the wire transfer shall also be mailed to EPA's representative identified in paragraph 60, Edwin Buckner, and to:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

53. A written answer to the Complaint and Compliance Order and the request for hearing must satisfy the requirements of 40 C.F.R. Section 22.15 (1980) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, EPA, Region 7, 901 North Fifth Street, 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 Belinda L. Holmes, Senior Counsel, Office of Regional Counsel, at the same address.

54. The Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint, Compliance Order, and Notice of Opportunity for Hearing will constitute a binding admission of all allegations contained in the Complaint and a

waiver of the 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.

55. The total proposed penalty for Counts I and II is \$281,203.00. This proposed penalty is based on the best information available to EPA at the time that the Complaint was issued. The penalty 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.

E. SETTLEMENT CONFERENCE

56. Whether or not the 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 write to: Belinda L. Holmes, Senior Counsel, Office of Regional Counsel, U.S. EPA, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; or call her at (913) 551-7714.

57. 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.

58. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of 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 Consent Order which may be issued by the Regional Judicial Officer, EPA Region 7.

59. If the Respondent has neither effected a settlement by informal conference nor requested a hearing within the thirty (30) day time period allowed by the Complaint, Compliance Order and Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and the Respondent will be notified that the penalties have become due and payable.

F. SUBMITTALS

60. All document required to be submitted pursuant to this Complaint, Compliance Order and Notice of Opportunity for Hearing shall be sent to:

Edwin Buckner, P.E.
Environmental Engineer
U.S. EPA Region 7, AWMD/RESP
901 North 5th Street
Kansas City, Kansas 66101.

G. EFFECTIVE DATE

61. This Complaint, Compliance Order and Notice of Opportunity for Hearing shall become effective on the date signed by the Chief of the RCRA Enforcement and State Programs Branch, Air and Waste Management Division, EPA Region 7.

IT IS SO ISSUED AND ORDERED:

1-14-09
Date

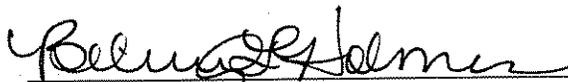


Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

In the matter of Department of Veterans Affairs Eastern Kansas Health Care System
Complaint and Compliance Order
Page 16

1-15-09

Date



Belinda L. Holmes
Senior Counsel
U.S. Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested, to Peter Almenoff, Director, VISN 15, Department of Veterans Affairs, 1201 Walnut, Suite 800, Kansas City, Missouri 64106, with a copy to Michael Anfang, 1201 Walnut, Suite 800, Kansas City, Missouri, 641060 on this 16 day of January, 2009.



Belinda L. Holmes
Senior Counsel
U.S. EPA, Region 7