



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 16 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

Mr. Brent Walter
President
Drug & Laboratory Disposal, Inc.
331 Broad Street
Plainwell, Michigan 49080

Re: Consent Agreement and Final Order
Drug & Laboratory Disposal, Inc.
EPA ID No.: MID092947928
Docket No.: RCRA-05-2010-0010

Dear Mr. Walter:

Enclosed, please find an original signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on MAR 16 2010 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$41,300 in the manner prescribed in paragraphs 55-58 of the CAFO, and reference all checks with the number BD 2751042R010 and docket number RCRA-05-2010-0010. Your payment is due within 30 calendar days of the effective date of the CAFO. As of the effective date of this CAFO, Drug & Laboratory Disposal, Inc., is no longer deemed to be a Significant Non-Complier with respect to the facts and allegations contained in this CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Nadine Deak – MDNRE, Kalamazoo District Office (w/ CAFO)
George Bruchmann – MDNRE, Waste and Hazardous Materials Div., Lansing, MI (w/ CAFO)
John Craig – MDNRE, Waste and Hazardous Materials Div., Lansing, MI (w/o CAFO)
Kimberly Tyson - MDNRE, Waste and Hazardous Materials Div., Lansing, MI (w/o CAFO)

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

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

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

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

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

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

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

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2010-0010
)	
Drug & Laboratory Disposal, Inc.)	Proceeding to Assess a Civil Penalty
Plainwell, Michigan)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

RECEIVED
MAR 16 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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

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

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

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

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

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

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6939e, and the implementing regulations at 40 C.F.R. §§ 260.1 – 279.82.

Statutory and Regulatory Background

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

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA,

42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on October 16, 1986, 51 Fed. Reg. 36804, the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. The Michigan hazardous waste management program administrative rules were promulgated pursuant to Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended and the implementing rules are codified in the Michigan Administrative Code (MAC).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after March 15, 2004, and a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

General Allegations

17. Respondent owns and operates a waste storage and treatment facility located at 331 Broad Street in Plainwell, Michigan (the facility).

18. The facility was, and is, a “facility” as that term is defined under MAC R. 299.9103(r) and 40 C.F.R. § 260.10.

19. Respondent was, and is, a “person” as defined by MAC R. 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent was, and is, a “generator,” as that term is defined in MAC R. 299.9104(a) and 40 C.F.R. § 260.10.

21. At the facility, Respondent creates “solid wastes,” as that term is defined in MAC R.299.9202 and 40 C.F.R. § 261.2, including, but not limited to, solvent waste.

22. At the facility, Respondent’s processes produce “hazardous waste” as that term is defined or listed in MAC R. 299.9201-9230 and 40 C.F.R. § 261.3; or causes a hazardous waste to become subject to regulation under MAC 299.9101-299.11107, 40 C.F.R. Parts 260-270.

23. Any generator who treats, stores, or disposes of hazardous waste on-site is required, under, MAC R. 299.9308(2) and 40 C.F.R. § 262.41(b), to submit a biennial report. On February 15, 2008, Respondent notified as a large quantity generator in its biennial report.

24. Respondent applied for and received a Hazardous Waste Management Facility Operating License (MDEQ License) from the Michigan Department of Environmental Quality (MDEQ), now the Michigan Department of Natural Resources and Environment (MDNRE). Respondent’s MDEQ License was effective as of August 10, 1999, and was to expire on August 10, 2009, but remains in effect pending MDNRE’s final action on Respondent’s renewal license application.

25. At all times relevant to this Complaint, Respondent was licensed under its MDEQ License to accept, store, and treat hazardous waste from off-site.

26. At all times relevant to this Complaint, Respondent stored hazardous waste in “containers” as that term is defined in MAC R. 299.9102(q) and 40 C.F.R. § 260.10.

27. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, or the analogous Michigan regulations as part of the applicable state hazardous waste management program for the state of Michigan, or both.

28. On March 11, 2009, U.S. EPA conducted an inspection of the facility (Inspection).

COUNT 1

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as though set forth in this paragraph.

30. It is a requirement of Respondent’s MDEQ License, Part III.F.4., that the Respondent shall not store any container of hazardous waste for more than one year in the licensed container storage areas prior to treatment of its contents on-site or shipment off-site to another appropriately licensed hazardous waste treatment or disposal facility.

31. It is a requirement of Respondent’s MDEQ License, Part III.F.2., that the Respondent shall ensure that each container of hazardous waste in the container storage area is labeled or clearly marked with the words “Hazardous Waste,” the hazardous waste number, and the date it was accepted for storage so that compliance with the one-year storage limit can be assessed.

32. At the time of the Inspection, two 55-gallon containers of waste xylene and toluene (D001 ignitable wastes), in which Respondent was dissolving Styrofoam, were not marked with the earliest dates on which the associated wastes were accepted for storage.

33. The containers identified in paragraph 32 were located in the licensed storage area identified in Respondent's MDEQ License as DLS-3.

34. In addition, at the time of the Inspection, Respondent was storing four 30-gallon containers of sawdust that had been used on the day of the Inspection for absorbing liquid residues and condensation from the concrete floors and for cleaning out the shredders in the licensed storage area identified in Respondent's MDEQ License as DLS-3.

35. Respondent characterized the waste material identified in paragraph 34 as hazardous waste containing minor amounts of RCRA hazardous materials including, but not limited to, metals.

36. The containers identified in paragraphs 32 and 34 were neither labeled with the words "Hazardous Waste" nor marked with start dates of accumulation as required by Part III.F.2. of Respondent's MDEQ License.

37. Respondent violated the requirement listed in Part III.F.2. of its MDEQ License and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

COUNT 2

38. Complainant incorporates paragraphs 1 through 28 of this CAFO as though set forth in this paragraph.

39. Respondent's MDEQ License, Part III.F.4. requires that the Respondent shall not store any container of hazardous waste for more than one year in the licensed container storage areas prior to treatment of its contents on-site or shipment off-site to another appropriately licensed hazardous waste treatment or disposal facility.

40. At the time of the Inspection, two 55-gallon drums of waste acid and mercury were dated from December 11, 2007, or 90 days past one year.

41. The containers identified in paragraph 40 underwent treatment for mercury on March 20, 2009, or 98 days after one year.

42. At the time of the Inspection, one 55-gallon drum of mercury-contaminated waste was dated from January 8, 2008, or 62 days past one year.

43. The container identified in paragraph 42 was shipped off-site as hazardous waste on March 23, 2009, or 74 days past one year.

44. The containers identified in paragraphs 34, 36 and 38 were not shipped off-site within one year as required by Part III.F.4. of Respondent's MDEQ License.

45. Respondent violated the requirement listed in Part III.F.4. of its MDEQ License and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

COUNT 3

46. Complainant incorporates paragraphs 1 through 28 of this CAFO as though set forth in this paragraph.

47. Pursuant to MAC R 299.9306(2), a generator may, without a construction permit or an operating license and without complying with MAC R. 299.9301(1), accumulate hazardous waste at or near the point of generation provided he mark each satellite container with the words "Hazardous Waste" and with either the hazardous waste number or the chemical name of the waste.

48. At the time of the Inspection, one 14-gallon satellite container of hazardous waste generated from the atomic adsorption apparatus was stored in the Wet Laboratory at the facility.

49. At the time of the Inspection, one 14-gallon satellite container of hazardous waste generated from the Gas Chromatograph – Mass Spectrometer (GC-Mass Spec) was stored in the GC-Mass Spec Laboratory at the facility.

50. The containers identified in paragraphs 44 and 45 were not marked with the words “Hazardous Waste” as required by MAC R 299.9306(2).

51. The containers identified in paragraphs 44 and 45 were not marked with either the hazardous waste number or the chemical name of the wastes as required by MAC R 299.9306(2).

52. The Wet Laboratory at the Facility is not included as a licensed hazardous waste storage area in the MDEQ License.

53. Respondent did not apply for or obtain a construction permit from the Chief of the Waste Management Division for the Wet Laboratory.

54. Therefore, Respondent violated the licensing requirements of MAC R 299.9502 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Civil Penalty

55. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$41,300. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA’s *RCRA Civil Penalty Policy*, dated June 23, 2003.

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$41,300 civil penalty for the RCRA violations. Respondent agreed to pay the penalty by “On-Line Payment,” available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter ‘sfo 1.1’ in the Search Public Forms field.

Open form and complete required fields.

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

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

General Provisions

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

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

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

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

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

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

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

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

67. This Consent Agreement and Final Order shall become effective immediately upon filing with the Regional Hearing Clerk

Drug & Laboratory Disposal, Inc., Respondent

2-22-2016
Date

Bret W. Walter
Brent Walter, President
Drug & Laboratory Disposal, Inc.

United States Environmental Protection Agency, Complainant

3/12/10
Date

Allen Tuller
for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Drug & Laboratory Disposal, Inc.
Docket No. RCRA-05-2010-0010

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MAR 16 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Final Order

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

3/16/10

Date

Walter W. Karolyk

Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 28 2010
OFFICE OF REGIONAL
COUNSEL

CASE NAME: Drug & Laboratory Disposal, Inc.
DOCKET NO: RCRA-05-2010-0010

RECEIVED
MAR 16 2010

CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

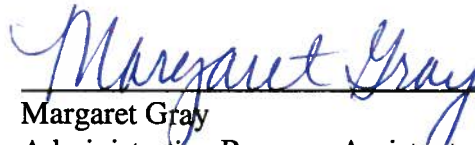
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Brent W. Walter, Esq. CHMM
President
Drug & Laboratory, Inc.
331 Broad Street
Plainwell, Michigan 49080

Certified Mail Receipt # _____

Dated: 3/16/10, 2010



Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency

Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590