



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 16 2014

UNITED PARCEL SERVICE

Ms. Susan Spurgeon, Esq.
Pennington Law
2701 N. Rocky Point Drive Suite 900
Tampa, Florida 33607

Re: University of South Florida
Consent Agreement and Final Order
Docket Number: CERCLA-04-2014-2009(b)

Dear Ms. Spurgeon:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Comprehensive Environmental Response, Compensation, and Liability Act matter (Docket No. CERCLA-04-2014-2009(b)) involving the University of South Florida. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of filing.

If you have any questions, please call Ms. Michiko Kono at (404)-562-9558.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
University of South Florida)
)
Respondent)
_____)

Docket Number: CERCLA-04-2014-2009(b)

HEARING CLERK

2014 APR 16 PM 12:55

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is University of South Florida.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegations 14-31, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, University of South Florida, is a public university in the State of Florida.

5. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(9).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7. Respondent's facility is located at 4202 E. Fowler Avenue, Tampa, Florida.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA.

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

11. Respondent was in charge of the facility on May 30, 2013.

12. Sodium hypochlorite is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On May 30, 2013, Respondent had a release of sodium hypochlorite above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of sodium hypochlorite in an amount equal to or greater than its RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

IV. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above, but neither admits nor denies the factual allegations set out above.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

18. Respondent consents to the assessment of, and agrees to pay, the civil penalty as set forth in this CAFO.

19. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

20. Respondent certifies that as of the date of execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

21. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

22. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

V. Final Order

23. Respondent shall pay a CERCLA civil penalty of TWO HUNDRED SEVENTY FIVE DOLLARS (\$275) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

24. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

25. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Patricia Rubin
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

26. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

27. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than ONE THOUSAND SEVENTY EIGHT DOLLARS (\$1,078) for the purchase of the following equipment and donation to the City of Tampa Fire Rescue:

Quantity	Description
1	Altair 4 Multi-Gas Meter

28. This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to the Agreement.

29. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

30. Respondent has obtained and presented to EPA a separate written Certification from the recipient of the SEP, City of Tampa Fire Rescue, stating that it is not a party to any open federal financial assistance transaction as stated in paragraph 29.

31. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP in accordance with Paragraph 27.

32. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of ONE THOUSAND SEVENTY EIGHT DOLLARS (\$1,078), Respondent shall pay to the United States a stipulated penalty of the difference between \$1,078 and the actual amount expended on the SEP.

33. For purposes of Paragraph 32, whether Respondent has fully and timely completed the SEP shall be the sole discretion of EPA.

34. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representation made herein.

35. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state, or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

36. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)."

37. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Patricia Rubin at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorizing company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoice receipts, showing a total expenditure of no less than \$1,078, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 27.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

38. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

39. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

40. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

41. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

43. This CAFO shall be binding upon the Respondent, its successors, and assigns.

44. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

45. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION LEFT INTENTIONALLY BLANK

VI. Effective Date

46. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

University of South Florida

By: Sandy Lovins Date: 3/26/14

Name: Sandy Lovins (Typed or Printed)

Title: Vice President (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 4/2/14

Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 16 day of April, 2014.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of, University of South Florida, Docket Number: EPCRA- 04-2014-2009(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

Michiko Kono (Via EPA's internal mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Susan Spurgeon (Certified Mail—Return Receipt Requested)
Pennington P.A.
2701 N. Rocky Point Drive Suite 900
Tampa, Florida 33607

Date: 4-15-14



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511