



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

AUG 03 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cheri Hildreth
Director
Department of Environmental Health and Safety
2103 S. Third Street
Louisville, Kentucky 40208

**RE: University of Louisville – Belknap Campus
Consent Agreement and Final Order - Docket No. RCRA-04-2012-4003(b)**

Dear Ms. Hildreth:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts University of Louisville on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404) 562-8530.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Busó", written over a horizontal line.

Roberto X. Busó
Assistant Regional Counsel
Office of Environmental Accountability

Enclosures

cc: Bradley E. Dillon, Bingham Greenebaum Doll LLP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2012 AUG -3 AM 7:21
HEARING CLERK

IN THE MATTER OF:) Docket Number: RCRA-04-2012-4083(b)
)
University of Louisville) Proceeding under Section 3008(a)
Belknap Campus) of the Resource Conservation and
2200 Brook Street) Recovery Act, 42 U.S.C. § 6928(a)
Louisville, Kentucky 40208)
)
EPA I.D. No.: KYD 980 840 029)
)
Respondent)
_____)

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subchapter 46 of Chapter 224 of the Kentucky Revised Statutes (KY. REV. STAT. ANN.) (Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.*). This action seeks civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of KY. REV. STAT. ANN. § 224.46-012, *et seq.*, and the regulations promulgated pursuant thereto set forth at Title 401 Kentucky Administrative Regulations (KY. ADMIN. REG.), Chapters 30-40 (Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270).
2. The *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, provide that where the parties agree to settlement before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred solely for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, the United States Environmental Protection Agency, Region 4 (EPA).
5. Respondent is the University of Louisville, a non-profit organization incorporated under the laws of Kentucky and doing business at the Belknap Campus located at 2200 Brook Street, Louisville, Kentucky 40208.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (Kentucky or Commonwealth) has received final authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the Kentucky authorized program are found in KY. REV. STAT. ANN. § 224.46-012, *et seq.*, and 401 KY. ADMIN. REG. Chapters 30-40.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Kentucky has received final authorization for certain portions of HSWA.
8. Although the EPA has granted Kentucky authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). The EPA exercises this authority in the manner set forth in the Memorandum of Agreement between the EPA and Kentucky.
9. As Kentucky's authorized hazardous waste program operates in lieu of the federal RCRA program, citations for the violations alleged herein will be to the authorized Kentucky program, however, for ease of reference, the federal citations will follow in parentheses.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to Kentucky before issuance of this CA/FO.
11. KY. REV. STAT. ANN. § 224.46-510(1) (Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)) requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in 401 KY. ADMIN. REG. Chapter 32 (40 C.F.R. Part 262).
12. KY. REV. STAT. ANN. § 224.46-520(1) (Section 3004 of RCRA, 42 U.S.C. § 6924), requires the promulgation of standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at 401 KY. ADMIN. REG. Chapter 34 (40 C.F.R. Part 264).

13. KY. REV. STAT. ANN. § 224.46-520(1) (Section 3005 of RCRA, 42 U.S.C. § 6925) sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 401 KY. ADMIN. REG. Chapters 34, 35, and 36 (40 C.F.R. Parts 264, 265, and 270).
14. Pursuant to 401 KY. ADMIN. REG. 31:010 Section 2 (40 C.F.R. § 261.2), a “solid waste” is any discarded material that is not otherwise excluded from the regulations, and a “discarded material” includes any material that is abandoned by being disposed of, or burned or incinerated, or accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned, or incinerated.
15. Pursuant to 401 KY. ADMIN. REG. 31:010 Section 3 (40 C.F.R. § 261.3), a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under 401 KY. ADMIN. REG. 31:010 Section 4(2) (40 C.F.R. § 261.4(b)), and it meets any of the criteria specified in 401 KY. ADMIN. REG. 31:010 Section 3(1)(b) (40 C.F.R. § 261.3(a)(2)).
16. Pursuant to 401 KY. ADMIN. REG. 31:030 Sections 1 and 2 (40 C.F.R. § 261.21), a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 401 KY. ADMIN. REG. 31:040 Section 2 (40 C.F.R. § 261.31), spent halogenated solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the solvents listed in F001, F002, F004, or F005 are listed hazardous wastes and are identified with the EPA Hazardous Waste Number F002.
18. Pursuant to 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10), a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 401 KY. ADMIN. REG. 31:010 Section 3 (40 C.F.R. Part 261), or whose act first causes a hazardous waste to become subject to regulation.
19. Pursuant to 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10), a “person” includes a corporation.
20. Pursuant to 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10), an “owner” is any person who owns any part of a facility, and an “operator” is any person responsible for overall operations of a facility.
21. Pursuant to 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10), a “facility” refers to all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing, or disposing of hazardous waste.
22. Pursuant to KY. REV. STAT. ANN. § 224.46-510(2) and 401 KY. ADMIN. REG. 32:010 Section 2 (40 C.F.R. § 262.11), a person who generates a solid waste, as defined in 401 KY. ADMIN. REG. 31:010 Section 2 (40 C.F.R. § 261.2), must determine if that waste is a hazardous waste.

23. Pursuant to KY. REV. STAT. ANN. § 224.46-510(1)(c) and 401 KY. ADMIN. REG. 32:020 Section 2 (40 C.F.R. § 262.20(a)(1)), a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare a manifest (OMB Control number 2050-0039) on EPA Form 8700-22.

IV. ALLEGATIONS AND DETERMINATIONS

24. Respondent is a “person” as defined in 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10).
25. Respondent is the "owner" and/or "operator" of the University of Louisville’s Belknap Campus, located at 2200 Brook Street, a “facility” as defined in 401 KY. ADMIN. REG. 31:005 Section 1 (40 C.F.R. § 260.10).
26. On September 20, 2011, a representative of the EPA performed a RCRA compliance evaluation inspection (CEI) of the Respondent’s facility. A representative from the Kentucky Department for Environmental Protection was also present during the CEI.
27. Respondent, as a result of its maintenance operations, generates spent propane cylinders, a solid waste as defined in 401 KY. ADMIN. REG. 31:010 Section 2 (40 C.F.R. § 261.2).
28. Respondent, as a result of its maintenance operations, generates absorbent pads contaminated with spent tetrachloroethylene solvent, a solid waste and a listed hazardous waste identified with the EPA Hazardous Waste Number F002 pursuant to 401 KY. ADMIN. REG. 31:040 Section 2 (40 C.F.R. § 261.31).
29. At the time of the CEI, Respondent disposed of the solid wastes identified in Paragraphs 27 and 28, without making an adequate hazardous waste determination.
30. The EPA therefore alleges that Respondent violated 401 KY. ADMIN. REG. 32:010 Section 2 (40 C.F.R. § 262.11), by failing to make a hazardous waste determination on solid wastes discussed in paragraphs 27 and 28 above, which were generated at its facility.
31. At the time of the CEI, Respondent indicated that it had disposed of absorbent material discussed in paragraph 28 above offsite without preparing a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22 to accompany the shipment off-site.
32. The EPA therefore alleges that Respondent violated 401 KY. ADMIN. REG. 32:020 Section 1 (40 C.F.R. § 262.20(a)(1)), by offering hazardous waste for transportation off-site without preparing a Manifest (OMB Control Number 2050-0039) on EPA Form 8700-22.
33. On November 7, 2011, the EPA issued a Notice of Violation to Respondent that included the foregoing allegations.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

34. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
35. The Respondent neither admits nor denies the factual allegations or alleged violations set out in this CA/FO.
36. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
37. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
38. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
39. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
40. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged in this CA/FO.
41. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Kentucky hazardous waste program.
42. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

43. Respondent consents to the payment of a civil penalty in the amount of Ten Thousand Dollars (US \$10,000), payable within thirty (30) calendar days of the effective date of this CA/FO.
44. Payment shall be made by cashier's check with good and sufficient funds, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

If paying by EFT, the Respondent shall transfer the payment to:

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

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, 301-887-6548

Respondent shall submit a copy of the payment to the following addressees:

Pat Bullock,
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North RCRA and OPA Enforcement & Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

45. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
 - (c) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
46. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

47. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
48. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

49. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

50. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the 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 or the environment.
51. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
52. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the 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.
53. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

IX. OTHER APPLICABLE LAWS

54. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

55. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Roberto X. Busó
Assistant Regional Counsel
U.S. EPA – Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9539

56. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is authorized to receive service for the Respondent in this proceeding:

Cheri Hildreth
Director
Department of Environmental Health and Safety
2103 S. Third Street
Louisville, Kentucky 40208

With a copy to Respondent's Counsel:

Bradley E. Dillon
Attorney
Bingham Greenebaum Doll LLP
3500 National City Tower
Louisville, Kentucky 40202-3197

XI. SEVERABILITY

57. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

[SIGNATURES ON NEXT PAGE]

XII. EFFECTIVE DATE

58. The effective date of this CA/FO is the date it is filed with the Regional Hearing Clerk.

In the matter of University of Louisville, Docket No. RCRA-04-2012-4003(b)

AGREED AND CONSENTED TO:

University of Louisville.

By: Larry Owsley JFD Dated: 7.5.12
Larry Owsley
Vice President
Business Affairs

U.S. Environmental Protection Agency,

By: César A. Zapata Dated: 07/31/12
César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2012-4003(b)
)	
University of Louisville)	Proceeding under Section 3008(a)
Belknap Campus)	of the Resource Conservation and
8887THIRTY, KENTUCKY 40200)	
)	
EPA I.D. No.: KYD 980 840 029)	
)	
Respondent)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *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. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 2nd day of Aug, 2012.

BY: 
Susan B. Schub
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of University of Louisville, Docket Number: Docket Number: RCRA-04-2012-4003(b), on 8-3, 2012, and on August 3, 2012, served copies on the parties listed below in the manner indicated:

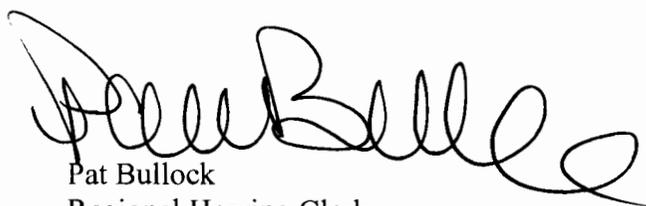
Roberto X. Busó (Via the EPA's internal mail)
Assistant Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Cheri Hildreth (Via Certified Mail - Return Receipt Requested)
Director
Department of Environmental Health and Safety
2103 S. Third Street
Louisville, Kentucky 40208

Bradley E. Dillon (Via Certified Mail - Return Receipt Requested)
Attorney
Bingham Greenebaum Doll LLP
3500 National City Tower
Louisville, KY 40202-3197

Quantindra Smith (Via EPA Electronic Mail)
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Date: 8-3-12


Pat Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511