



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

AUG 19 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL # 7009 1680 0000 7677 9401
RETURN RECEIPT REQUESTED

Clifford W. Croley, CEO
Ricerca Biosciences, LLC
7528 Auburn Road
Concord Township, Ohio 44077

Re: Commence and Conclude Consent Agreement and Final Order
Ricerca Biosciences, LLC
Docket No: **RCRA-05-2015-0014**

Dear Mr. Crowley:

Enclosed please find an original signed fully-executed Commence and Conclude Consent Agreement and Final Order (CC/CAFO) in resolution of the above case. The original was filed on August 19, 2015, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$5,000 in the manner prescribed in paragraphs 89 and 90 of the CC/CAFO, and reference all checks with the docket number **RCRA-05-2015-0014**. Your payment is due within 30 calendar days of the effective date of the CC/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,

A handwritten signature in blue ink that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Teri.Finrock@epa.ohio.gov (with CC/CAFO)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2015-0014
)	
Ricerca Biosciences, LLC)	Proceeding to Commence and Conclude
Concord, Ohio)	an Action to Assess a Civil Penalty
)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)
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Consent Agreement and Final Order

Preliminary Statement



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 Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Ricerca Biosciences LLC, a Delaware limited liability company doing business in the State of Ohio.

5. 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). 40 C.F.R. § 22.13(b).

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 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 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 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. 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, pursuant to Sections 3001 – 3007, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927.

13. Pursuant to Section 3002 of RCRA, 42 U.S.C. § 6922, the Administrator of U.S. EPA promulgated regulations to protect human health and the environment from hazards associated with hazardous wastes. These regulations found at 40 C.F.R. Part 262 address: recordkeeping that accurately identifies the quantities and composition of hazardous waste that

has the potential to harm human health and the environment; container labeling; use of appropriate containers; furnishing the chemical composition of waste to subsequent handlers of the waste; use of a manifest system; and submission of hazardous waste generation reports every two years.

14. Pursuant to Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, the Administrator of U.S. EPA promulgated regulations governing generators of hazardous waste and facilities that treat, store, and dispose of hazardous waste (TSD facilities or TSDFs). EPA's regulations governing generators of hazardous waste and owners and operators of TSDFs are codified at 40 C.F.R. Parts 260 through 279.

15. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, the Administrator of U.S. EPA promulgated regulations prohibiting the treatment, storage, or disposal of hazardous waste except in accordance with a RCRA permit, and requiring each TSD to have a RCRA permit issued by EPA or the authorized state, or to have interim status under Section 3005(e) of RCRA § 6925(e).

16. 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 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.

17. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste

program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

18. 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.

19. 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, note (1996), 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 \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by Ohio Administrative Code (OAC) 3745-50-10(A)(88), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the "owner" or "operator," as those terms are defined under OAC 3745-50-10(A)(84) or (83), respectively, and 40 C.F.R. § 260.10, of a facility located at 7528 Auburn Road, Concord Township¹, Ohio 44077 (facility).

18. On November 3 and 4, 2011, U.S. EPA conducted an inspection of the facility.

19. The facility consists of land and structures, other appurtenances, and improvements

¹ Notifications of Hazardous Waste Activity have identified the city as Concord Township or Concord; the USPS address is 7528 AUBURN RD, CONCORD TWP OH 44077-9176 (U.S. Postal Service website accessed 2/13/15).

on the land used for treating, storing, or disposing of hazardous waste.

20. At all times relevant to this CAFO, Respondent created solid wastes including laboratory wastes and pilot plant wastes, including spent acids, bases, and solvents required by FDA for drug manufacturing.

21. Respondent's processes at the facility produce several hazardous wastes identified or listed in OAC 3745-51-01 to 3745-51-35 or cause a hazardous waste to become subject to regulation under OAC Rules 3745-50-01 to 3745-270 [40 C.F.R. Parts 260-270].

22. Respondent is a "generator," as that term is defined in OAC 3745-50-10(A)(45) [40 C.F.R. § 260.10].

23. Respondent characterized its solvent waste as hazardous waste with the codes included in Table 1, below.

Table 1. Wastes generated by Ricerca Biosciences, LLC in 2011 and reported² in 2012.

Waste	Waste Form	Source of waste	Waste Code(s)	Annual quantity (tons)
Dichloro-methane for reclaim	Concentrated halogenated solvent	Product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products; Cleaning out process equipment	F002	9.80
Acetone – reclaim	Concentrated non-halogenated solvent	Cleaning equipment; Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products	D001 F003	30.51
Toluene – reclaim	Concentrated non-halogenated solvent	Cleaning out process equipment; Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products	D001 F005	0.80
Methanol – reclaim	Concentrated non-halogenated solvent	Cleaning out process equipment; Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products	D001 F003	0.92
Flammable, Corrosive	Concentrated halogenated/non-halogenated solvent; Acidic aqueous wastes less than 5% acid	Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products;	D001 D002 F002 F003 F005	18.36

² Section 3002(a)(6) of RCRA requires large quantity generators to biannually report the source codes, waste form, hazardous waste codes and annual quantity of hazardous waste to authorized states or U.S. EPA.

Waste	Waste Form	Source of waste	Waste Code(s)	Annual quantity (tons)
Caustic, Flammable	Caustic aqueous waste without cyanides; Aqueous waste containing cyanides; Other aqueous waste or wastewaters; Concentrated halogenated solvent; Concentrated non-halogenated solvent	Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products; Cleaning out process equipment	D001 D002 D022 D038 F002 F003 F005	5.58
Water, low solvent	Other aqueous waste or wastewaters; Very dilute aqueous waste containing more than 99% water; Concentrated halogenated solvent; Concentrated non-halogenated solvent; Concentrated solvent mixture; Other organic liquid	Product and by-product processing; Cleaning out process equipment	D001 D008 D019 D022 D038 F002 F003 F005	58.50
Acidic water	Acidic aqueous wastes less than 5% acid; Other aqueous waste or wastewaters; Concentrated non-halogenated solvent	Product and by-product processing;	D002 F003 F005	10.80
Histology waste	Concentrated non-halogenated solvents	Laboratory analytical wastes	D001 D002 F003	1.24
Caustic solution	Caustic aqueous waste without cyanides	Product and by-product processing; Discarding off-specification, out-of-date, and/or unused chemicals or products; Other one-time or intermittent processes; Laboratory analytical wastes	D002 D007	4.30

24. Ricerca produced more than 1,000 kilograms (2,205 pounds) of hazardous waste per calendar month in November 2011³ and was a large quantity generator.

25. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Ohio regulations as part of the applicable state hazardous waste management program for the state of Ohio, or both.

26. At all times relevant to this CAFO, the State of Ohio has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

27. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

³ More than 1,000 kilograms of hazardous waste was staged for pick up and transportation during the inspection.

28. On September 12, 2012, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

29. On October 17, 2012, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

Count 1

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

31. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

32. Pursuant to OAC 3745-52-34(A) and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in OAC 3745-52-34(A) and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in OAC 3745-65-16; 3745-65-30 to 3745-65-37, 3745-66-70 to 3745-66-77; and 3745-270-01 to 3745-270-50 [40 C.F.R. § 265.16; part 265 subparts C, D, and I; and part 268] for containers and the generator complies with the applicable requirements of subparts AA, BB, CC of 40 C.F.R. part 265.

33. Pursuant to OAC 3745-52-34(B) and 40 C.F.R. 262.34(b), however, a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of OAC 3745-54-16; OAC 3745-54-30 to 3745-54-37, 3745-54-50 to 3745-54-56, 3745-55-70 to 3745-55-78 [40 C.F.R. § 264.16, part 264 subparts C, D, and I; and part 268] and the permit requirements of OAC 3745-50-40 to 3745-50-66 [40

C.F.R. § 270.10]; unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

34. At all times relevant to this CAFO, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

35. Similarly, the failure to comply with any of the conditions of OAC 3745-52-34(C) and 40 C.F.R. § 262.34(c) subjects the generator of hazardous waste to the requirements of OAC 3745-54-01 to 3745-54-56 and 3745-55-70 to 3745-55-78 [40 C.F.R. § Part 264, subparts A through D and I] and the permit requirements of OAC 3745-50-40 to 3745-50-66 (40 C.F.R. § part 270).

36. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with OAC 3745-52-34 [40 C.F.R. § 262.34] including the following:

- a. The generator must clearly mark the date upon which each period of accumulation begins so that it is visible for inspection on each container pursuant to OAC 3745-52-34(A)(2) and 40 C.F.R. § 262.34(a)(2).
- b. On November 3, 2011, 36 drums without accumulation start dates clearly visible were staged for transport in the 90 day storage area.

37. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with OAC 3745-52-34(A)(3) [40 C.F.R. § 262.34(a)(3)] including the following:

- a. The generator must label or mark clearly with the words, "Hazardous Waste," each container while being accumulated on-site pursuant to OAC 3745-52-

34(A)(3) and 40 C.F.R. § 262.34(a)(3).

- b. On November 3, 2011, at least twelve (12) drums not labeled, “Hazardous Waste,” were staged in the 90-day storage area for transportation off-site.

38. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with OAC 3745-52-34(B) [40 C.F.R. § 262.34(b)] including the following:

- a. A generator of 1,000 kilograms or greater of hazardous waste in a calendar month who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. parts 264 and the permit requirements of part 270 pursuant to OAC 3745-52-34(B) and 40 C.F.R. 262.34(b).
- b. On November 3, 2011, one small container of sodium metal, a reactive hazardous waste, was labeled with an accumulation start date of July 2006. The hazardous waste was accumulated in excess of 90 days.

39. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with OAC 3745-52-34(C) [40 C.F.R. § 262.34(c)] including the following:

- a. Mark containers at or near any point of generation where wastes initially accumulate with the words “Hazardous Waste” or with other words that identify the contents of the containers.
- b. On November 3, 2011, 26 containers in facility laboratories were not labeled with the words “Hazardous Waste” or with other words that identified the contents of the containers (small waste disposal cans).

40. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

41. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by OAC 3745-52-34(A) [40 C.F.R. § 262.34(a)], Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

42. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC 3745-50-40 to 3745-50-66; 3745-54 to 3745-57; 3745-205 and 3745-256 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 2

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

44. As an operator of TSDF, Respondent is subject to the personnel training requirement of OAC 3745-54-16(A)(2) and the annual training requirement found at OAC 3745-54-16(C) [40 C.F.R. § 264.16].

45. Pursuant to OAC 3745-54-16, facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The training program must include a written description of the type and amount of both introductory and continuing training that will be given to each person filling a job with a position title related to hazardous waste management and the name of the employee filling each job. Initial training must be completed within six months of hire or within six months of assignment to a position title with hazardous

waste responsibilities. This training must be reviewed annually.

46. At the time of the inspection, Respondent had not provided hazardous waste training to two employees within six months of employees' assignment to a job with hazardous waste management responsibilities or provided annual refresher training.

47. Respondent's failure to provide training that teaches employees to perform their duties in a way that ensures the facilities compliance with the standards for owners and operators of hazardous waste treatment storage and disposal facilities violated OAC 3745-54-16(A)(2) and OAC 3745-54-16(C) [40 C.F.R. § 264.16].

Count 3

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

49. As an operator of TSDF, Respondent is subject to the requirement of OAC 3745-54-31 [40 C.F.R. § 264.31].

50. OAC 3745-54-31 [40 C.F.R. § 264.31] requires that the owner or operator of a TSDF comply with a design and operation of facility requirement. Facilities must be designed, constructed, maintained, and operated to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

51. On November 3, 2011, Respondent was storing drums of hazardous waste outside on a paved surface sloped to an open storm drain.

52. Respondent's storage of drums outside on a paved surface without a barrier between the drums and the open storm drain violated OAC 3745-54-31 [40 C.F.R. § 264.31].

Count 4

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

54. As an operator of TSDF, Respondent is subject to the requirement of OAC 3745-54-35 [40 C.F.R. § 264.35].

55. OAC 3745-54-35 [40 C.F.R. § 264.35] requires that the owner or operator of a TSDF comply with the preparedness and prevention required aisle space rule. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire equipment, and decontamination equipment to any area of the facility operation in an emergency.

56. On November 3, 2011, Respondent stored containers of waste against each other so that containers had to be moved prior to unobstructed movement of personnel. Aisles were not being maintained.

57. Respondent's failure to maintain aisle space violated OAC 3745-54-35 [40 C.F.R. § 264.35].

Count 5

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

59. As an operator of a TSDF, Respondent is subject to the preparedness and prevention requirement of OAC 3745-54-37 [40 C.F.R. § 264.37].

60. OAC 3745-54-37 [40 C.F.R. § 264.37] requires the owner or operator to make the arrangements in subparagraph 54-37(A) [§ 264.37(a)] with emergency authorities and, pursuant to subparagraph 54-37(B) [§ 264.37(b)], where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

61. On November 3 or 4, 2011 Respondent had not shared its Contingency Plan with Concord Township Fire Department. Evidence that emergency response authorities declined to enter into arrangements was not available.

62. Respondent's failure to document arrangements with emergency authorities violated OAC 3745-54-37 [40 C.F.R. § 264.37].

Count 6

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

64. As an operator of a TSDF, Respondent is subject to the requirements of OAC 3745-54-52(D) [40 C.F.R. § 264.52(d)].

65. OAC 3745-65-52(D) [40 C.F.R. § 264.52(d)] requires that the contingency plan list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date.

66. On November 3 or 4, 2011, Respondent's contingency plan did not include home addresses of emergency coordinators.

67. Respondent's failure to provide home addresses and keep the contingency plan up to date violated OAC 3745-65-52(D) [40 C.F.R. § 264.52(d)].

Count 7

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

69. As an operator of a TSDF, Respondent is subject to the requirements of and OAC 3745-55-73(A) [40 C.F.R. § 264.173(a)].

70. OAC 3745-55-73(A) [40 C.F.R. § 264.173(a)] requires that a container holding

hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

71. On November 3 or 4, 2011, Respondent stored a hazardous waste container (i.e., a safety disposal can) open.

72. Respondent's storage of an open hazardous waste container violated OAC 3745-55-73(A) [40 C.F.R. § 264.173(a)].

Count 8

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

74. As an operator of a TSDF, Respondent is subject to the requirement of OAC 3745-55-74 [40 C.F.R. § 264.174].

75. OAC 3745-55-74⁴ [40 C.F.R. § 264.174] requires that, at least weekly, the owner or operator inspect areas where containers are stored, and the owner or operator must record inspections in an inspection log or summary.

76. At the time of the inspection, Respondent did not have records of container storage area and emergency equipment inspections for the most recent four weeks.

77. Respondent's failure to perform and record inspections violated OAC 3745-55-74 [40 C.F.R. § 264.174].

Count 9

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

⁴ OAC 3745-55-74 requires a written log of inspections and is federally authorized; a log of inspections is not explicitly required by 40 C.F.R. § 264.174.

79. As a small quantity handler of universal waste, Respondent is subject to the requirement of 40 C.F.R. § 273.13(d).

80. 40 C.F.R. § 273.13(d) requires that small quantity handlers of universal waste lamps must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- a. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

81. At the time of the inspection, Respondent was storing about seven universal waste lamps in an open plastic bucket in the Building B maintenance area. Approximately one third of the lamp length extended above the bucket height.

82. Respondent violated 40 C.F.R. § 273.13(d) by storing universal waste lamps in a container that was not adequate to prevent breakage and by storing universal waste lamps in a container (bucket) that was not closed.

Count 10

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

84. As a small quantity handler of universal waste, Respondent is subject to the requirement of 40 C.F.R. § 273.14(e).

85. 40 C.F.R. § 273.14(e) requires that small quantity handlers of universal waste lamps must label or mark all universal waste to identify the type of universal waste as specified below:

- a. Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste – Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

86. At the time of the inspection, Respondent was storing approximately seven universal waste lamps in an open container (plastic bucket) and approximately fourteen lamps over four feet long in a fiberboard container. The U.S. EPA inspection noted that the containers did not bear any “Universal Waste – Lamps,” “Waste Lamps,” or “Used Lamps” labeling/markings.

87. Respondent violated 40 C.F.R. § 273.14(e) by storing universal waste lamps in a container that was not labeled/marked.

Civil Penalty

88. 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 \$5,000. 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, in particular the Respondent’s ability to pay a penalty.

89. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 civil penalty for the RCRA violations, using one of the following payment options:

- a. For checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must state Ricerca Biosciences, LLC and the docket number of this CAFO.

- b. For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state Ricerca Biosciences, LLC and the docket number of this CAFO.

- c. By electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Ricerca Biosciences, LLC and the docket number of this CAFO.

- d. By ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- e. By on line payment, go to:

WWW.PAY.GOV

Use the Search Public Forms option and enter ‘sfo 1.1’ in the search field. Open form and complete required fields.

90. For payment by check, a transmittal letter stating Respondent’s name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the

check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sue Rodenbeck Brauer (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kimberly W. Portnoy (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

92. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

93. 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

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

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

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

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

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

99. 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.

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

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


Ricerca Biosciences LLC, Respondent

7/22/15
Date


Clifford W. Croley, CEO
Ricerca Biosciences LLC

United States Environmental Protection Agency, Complainant

8/10/2015
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Ricerca Biosciences LLC
Docket No. RCRA-05-2015-0014

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.

12 August 2015
Date



Susan Hedman, Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Ricerca Biosciences, LLC
Docket Number: **RCRA-05-2015-0014**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on August 19, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Clifford W. Croley, CEO
Ricerca Biosciences, LLC
7528 Auburn Road
Concord Township, Ohio 44077

Copy by E-mail to
Attorney for Complainant:

Randa Bishlawi
bishlawi.randa@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

August 19, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): #7009 1680 0000 7677 9401