

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KS 66101

09 FEB 18 AM 10:24  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

\_\_\_\_\_  
IN THE MATTER OF: )  
)  
)

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

Dwight D. Eisenhower Veterans )  
Medical Center )  
4101 S. 4<sup>th</sup> Street Trafficway )  
Leavenworth, Kansas )  
RCRA ID No. KS3360090002 )

\_\_\_\_\_  
Docket No. RCRA-07-2008-0013  
\_\_\_\_\_

and )  
)

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

Respondent. )  
)

Proceeding under Section 3008(a) and (g) of the )  
Resource Conservation and Recovery Act )  
As amended, 42 U.S.C. § 6928(a) and (g) )  
\_\_\_\_\_ )

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

The Respondent, by and through its attorney, hereby files its Answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing (hereinafter "Complaint"). The Respondent's responses below correspond to the Complaint's section and paragraph numbers.

### **Request for Hearing**

As the Respondent states in response to paragraphs 52 – 55 of the Complaint, the Respondent hereby requests a public hearing of the above-styled matter.

### **General Denial**

The Respondent denies all allegations set forth in the Complaint, Compliance Order and Notice of Opportunity for Hearing not otherwise admitted below.

### **Defenses**

1. The United States Environmental Protection Agency (hereinafter “EPA”) should recover nothing, or less than their demand, for equitable reasons including but not limited to the doctrines of estoppel, waiver, or laches.

---

2. The EPA’s Complaint may be barred in whole or in part by the applicable statutes of limitations.
3. The EPA’s penalties, if any, should be diminished under applicable laws and regulations.
4. Some of the substances alleged in the Complaint to be wastes were not waste.
5. Some of the substances alleged in the Complaint to be improperly handled wastes were being properly recycled.

### **A. Preliminary Statement**

1. Paragraph 1 is a statement summarizing the various authorities under which the Complaint is brought and the identification of the parties, and as such, no answer to it is required.
2. Insofar as paragraph 2 is a statement concerning the authority that has been delegated to execute this Complaint, that authority speaks for itself such that an answer is not required to paragraph 2.

3. Insofar as paragraph 3 summarizes the authority found in the United States Code, the statutes speak for themselves.

4. Insofar as paragraph 4 summarizes the authority found in the United States Code, the statutes speak for themselves.

**B. Complaint**

5. The Respondent admits to paragraph 5.

6. The Respondent admits to paragraph 6.

7. The Respondent admits to paragraph 7.

8. The Respondent admits to paragraph 8.

---

9. The Respondent admits to paragraph 9.

10. The Respondent admits to paragraph 10.

11. The Respondent admits to paragraph 11.

12. The Respondent admits to the first, second and fourth sentences of paragraph 12. With respect to the third sentence, the Respondent admits that the EPA inspectors made the determination, but the Respondent denies the determination was entirely accurate and therefore denies the third sentence.

13. The Respondent admits to the first and second sentences of paragraph 13. The Respondent admits that EPA inspectors noted RCRA violations, but the Respondent denies committing said violations.

Count I

14. Insofar as paragraph 14 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

15. The Respondent denies paragraph 15.

16. The Respondent denies paragraph 16.

Count II

17. Insofar as paragraph 17 summarizes the authority found in the United States Code and the Kansas Administrative Regulations, the statute and regulation speaks for themselves.

18. Insofar as paragraph 18 summarizes the authority found in the Kansas Administrative Regulations, the regulations speak for themselves.

19. Paragraph 19 alleges that the Respondent failed to comply with requirements, but does not delineate those requirements. Insofar as paragraph 19 alleges that the Respondent failed to comply with any federal or state statute or regulation, or local ordinance, the Respondent denies the allegation.

---

20. Insofar as paragraph 20 summarizes the authority found in the Kansas Administrative Regulations, the regulations speak for themselves.

21. The Respondent denies paragraph 21.

22. Insofar as paragraph 22 summarizes the authority found in the Kansas Administrative Regulations, the regulations speak for themselves.

23. The Respondent admits to paragraph 23 only insofar as the allegation pertaining to the past waste storage room. The Respondent otherwise denies paragraph 23.

24. Insofar as paragraph 24 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

25. The Respondent denies paragraph 25.

26. Insofar as paragraph 26 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

27. The Respondent admits to paragraph 27.

28. Insofar as paragraph 28 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

29. The Respondent denies paragraph 29.

30. The Respondent admits to paragraph 30.

31. Insofar as paragraph 31 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

32. The Respondent denies paragraph 32.

33. Insofar as paragraph 33 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

---

34. The Respondent denies paragraph 34.

35. Insofar as paragraph 35 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

36. The Respondent denies paragraph 36.

37. Insofar as paragraph 37 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

38. The Respondent denies paragraph 38.

39. Insofar as paragraph 39 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.

40. The Respondent denies paragraph 40.

41. Insofar as paragraph 41 summarizes the authority found in the United States Code, the statute speaks for itself.

42. The Respondent admits to incinerating waste at the VA Topeka but denies incinerating waste at the VA Leavenworth.

43. The Respondent admits to paragraph 43.
44. The Respondent denies paragraph 44.
45. Insofar as paragraph 45 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.
46. Insofar as paragraph 46 summarizes the authority found in the Kansas Administrative Regulations, the regulation speaks for itself.
47. The Respondent admits to paragraph 47.
48. The Respondent denies paragraph 48.
49. The Respondent denies paragraph 49.

---

### **C. Compliance Order**

Paragraphs 50 – 51, including their respective subparts, are orders to the Respondent regarding payment of penalty. As such, answers are not required to those paragraphs. To the extent that answers may be required, the Respondent denies that the proposed penalties are appropriate.

### **D. Notice of Opportunity to Request a Hearing**

Paragraphs 52 – 55 restate the procedure and requirements for filing an Answer to the Complaint and Compliance Order. As such, answers are not required to those paragraphs. To the extent that answers may be required, the Respondent submits that this Answer meets the regulatory requirements. Furthermore, the Respondent hereby requests a public hearing of the above-styled matter. Moreover, in response to paragraph 55, insofar as an answer is required, the Respondent denies that the proposed penalty is appropriate.

### **E. Settlement Conference**

Paragraphs 56 – 59 summarize settlement conference procedures. As such, answers are not required to those paragraphs. To the extent that answers may be required, the Respondent submits that it understands the settlement conference procedures and has separately requested a settlement conference.

**F. Submittals**

The Respondent will comply with the request to submit its Answer to the EPA's Environmental Engineer.

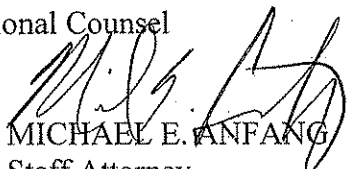
**G. Effective Date**

Paragraph 61 is a statement regarding the effective date of the Complaint and as such, an answer to it is not required.

---

Respectfully submitted,

J. PATRICK WIESE  
Regional Counsel

BY:   
MICHAEL E. ANFANG  
Staff Attorney  
Department of Veterans Affairs  
Office of Regional Counsel

**CERTIFICATE OF SERVICE**


I hereby certify that on this date, I caused a copy of the Respondent's Answer to Complaint, Compliance Order and Notice of Opportunity for Hearing to be delivered to the following individuals by regular mail.

Regional Hearing Clerk  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

Edwin Buckner, P.E.  
Environmental Engineer  
U.S. EPA Region 7, AWMD/RESP  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

---

Belinda Holmes  
Senior Counsel  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

  
\_\_\_\_\_  
MICHAEL E. ANFANG  
Staff Attorney  
Department of Veterans Affairs  
Office of Regional Counsel  
1201 Walnut Street, Suite 800  
Kansas City, MO 64106  
Telephone: 816-701-3080  
Facsimile: 816-701-3098  
Email: [michael.anfang@va.gov](mailto:michael.anfang@va.gov)

February 17, 2009  
Date