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U.S. EPA REGION 10
HEARING CLERK

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. RCRA-10-2024-0131
)
WESTERN WASHINGTON)
UNIVERSITY,) **CONSENT AGREEMENT**
)
Main Campus and Physical Plant)
Facilities,)
)
Bellingham, Washington,)

Respondent.

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA granted the State of Washington final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA may enforce the federally-approved Dangerous Waste program codified at Washington Administrative Code (“WAC”) Chapter 173-303-010 *et seq.* The EPA most recently authorized Washington’s Dangerous Waste Regulations that were effective on December 31, 2014. See 83 Fed. Reg. 10,383 (Apr. 9, 2018). All citations provided in this Consent Agreement are to the December 31, 2014, effective date WAC.

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to State of Washington.

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, the EPA issues, and Western Washington University (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between the EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1 As authorized by federal law, the State of Washington has adopted regulations for the management of dangerous wastes at WAC 173-303.

3.2 The regulation at WAC 173-303-016(3)(a) defines “solid waste” as “any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under WAC 173-303-017(5).” In accordance with WAC 173-303-016(4), materials are solid waste if they are abandoned by being (a) disposed of; (b) burned or incinerated; or (c) accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned be being disposed of, burned, or incinerated.

3.3 The regulation at WAC 173-303-040 defines “dangerous waste” to mean “those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste.” In accordance with WAC 173-303-070(3), a solid waste is a “dangerous waste” if, inter alia, the waste is a listed dangerous waste source under WAC 173-303-082 or the waste exhibits any dangerous waste characteristics identified in WAC 173-303-090.

3.4 The regulation at WAC 173-303-040 defines a “person” as an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

3.5 The regulation at WAC 173-303-040 defines a “facility” as all contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units.

3.6 The regulation at WAC 173-303-040 defines a “permit” as an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operation. Permits must be

issued either by the Department of Ecology, EPA [pursuant to 40 C.F.R. Part 270], or another state authorized by EPA [pursuant to 40 C.F.R. Part 271].

3.7 The regulation at WAC 173-303-040 defines “operator” as the person responsible for the overall operation of a facility.

3.8 The regulation at WAC 173-303-040 defines “disposal” as the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

3.9 The regulation at WAC 173-303-040 defines “storage” as the holding of dangerous waste for a temporary period. “Accumulation” of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

3.10 The regulation at WAC 173-303-040 defines “treatment” in part as the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume.

3.11 In accordance with WAC 173-303-800(2), the owner or operator of a dangerous waste facility that transfers, treats, stores, or disposes of (“TSD”) or recycles dangerous waste must obtain a permit covering, inter alia, the active life, closure period, and groundwater protection compliance for any regulated unit.

3.12 The regulation at WAC 173-303-040 defines a “generator” as any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

3.13 The regulation at WAC 173-303-040 defines a “container” as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

3.14 The regulation at WAC 173-303-040 defines a “satellite accumulation area” (“SAA”) as a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into satellite containers.

General Allegations

3.15 Respondent is a public university located in Bellingham, Washington. Respondent is a “person” as that term is defined at WAC 173-303-040.

3.16 At all times relevant to the allegations set forth herein, Respondent has been the “owner” and “operator” of the Western Washington University Main Campus and Physical Plant facilities located in Bellingham, Washington (collectively, the “Facility”), as those terms are defined at WAC 173-303-040.

3.17 The Facility is a public university where a variety of educational, research, and facilities and vehicle maintenance activities result in the generation of solid and hazardous wastes.

3.18 On October 18 and 19, 2022, the EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Washington's dangerous waste regulations (the "Inspection").

3.19 At all times relevant to this Consent Agreement, Respondent was a "generator" of solid waste and dangerous waste at the Facility as those terms are defined at WAC 173-303-040.

3.20 At all times relevant to this Consent Agreement, Respondent was a "small quantity handler of universal waste" as that term is defined at WAC 173-303-040.

3.21 At all times relevant to the allegations set forth herein, Respondent's Facility was not a permitted treatment, storage, disposal facility, or an interim status facility under WAC 173-303-800.

Violation 1: Failure to Comply with Universal Waste Requirements

3.22 Paragraphs 3.1 through 3.21 are incorporated herein by reference as if they were set forth here in their entirety.

3.23 The regulation at WAC 173-303-040 defines "universal waste" as the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573: Batteries as described in WAC 173-303-573(2); Mercury-containing equipment as described in WAC 173-303-573(3); and Lamps as described in WAC 173-303-573(5).

3.24 The regulation at WAC 173-303-040 defines "battery" as a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus connections (electrical and mechanical) as may be needed to allow the cell to

deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

3.25 The regulation at WAC 173-303-040 defines “lamp,” also referred to as “universal waste lamp” as any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon.

3.26 The regulation at WAC 173-303-040 defines a “universal waste handler” as a generator of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

3.27 The regulation at WAC 173-303-040 defines a “small quantity handler of universal waste” as a universal waste handler who does not accumulate 11,000 pounds or more total of universal waste (batteries, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

3.28 Pursuant to WAC 173-303-800(7)(c)(iii), universal waste handlers handling batteries and lamps are not required to obtain a dangerous waste permit and are instead subject to regulation under WAC 173-303-573.

Failure to Label Universal Waste Batteries

3.29 Pursuant to WAC 173-303-573(10)(a), small quantity handlers of universal waste must label or mark clearly universal waste batteries (that is, each battery), or a container in which

the batteries are contained with one of the following phrases: “Universal Waste-Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”

3.30 At the time of the Inspection, the EPA observed the following containers containing universal waste batteries that were not labeled or marked clearly with one of the following phrases: “Universal Waste-Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies)”:

- i. One container in the Health Services Storeroom; and
- ii. Four containers in the Universal Waste/Dangerous Waste Accumulation Area in Chemistry Room 141.

3.31 Therefore, Respondent violated WAC 173-303-573(10)(a) by failing to properly label its universal waste batteries.

Failure to Label Universal Waste Lamps

3.32 Pursuant to WAC 173-303-573(10)(c), universal waste lamps (that is, each lamp), or a container in which the lamps are accumulated, must be labeled or marked clearly with any one of the following phrases: “Universal Waste Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

3.33 At the time of the Inspection, the EPA observed at least one container of universal waste lamps in the WWU Physical Plant that were not labeled as either “Universal Waste Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

3.34 Therefore, Respondent violated WAC 173-303-573(10)(c) by failing to properly label its universal waste lamps.

Failure to Close Universal Waste Lamp Containers

3.35 Pursuant to WAC 173-303-573(9)(c)(ii), small quantity handlers of universal waste must minimize lamp breakage by accumulating lamps in containers and packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable circumstances.

3.36 At the time of the Inspection, the EPA observed at least thirteen containers in the WWU Physical Plant universal waste accumulation area that contained universal waste lamps that were not closed.

3.37 Therefore, Respondent violated WAC 173-303-573(9)(c)(ii).

Failure to Comply with Accumulation Time Limits

3.38 The regulations at WAC 173-303-573(2)(c)(i) and (ii) state a used battery becomes a waste on the date it is discarded (for example, when sent for reclamation), and an unused battery becomes a waste on the date the handler decides to discard it.

3.39 The regulations at WAC 173-303-573(5)(c)(i) and (ii) state a used lamp becomes a waste on the date it is discarded, and an unused lamp becomes a waste on the date the handler decides to discard it.

3.40 Pursuant to WAC 173-303-573(11)(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler.

3.41 The regulation at WAC 173-303-573(11)(c) states a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received, and

must make this determination by either: (i) placing the universal waste in a container and marking or labeling the container with the earliest date that the universal waste in the container became a waste or was received; (ii) marking or labeling each individual item of universal waste (for example, each battery, thermostat, mercury-containing equipment, or lamp) with the date it became a waste or was received; or pursuant to the other methods specified in WAC 173-303-573(11)(c)(iii) through (vi).

3.42 At the time of the Inspection, the EPA observed the following containers that were was not labeled with a date to indicate when the first universal waste was placed in the container or any other demonstration as to the length of time the universal waste had been accumulating:

- i. One container in the Health Services Storeroom that contained universal waste batteries; and
- ii. Four containers in the Universal Waste/Dangerous Waste Accumulation Area in Chemistry Room 141 that contained universal waste batteries.

3.43 At the time of the Inspection, the EPA observed two containers of universal waste lamps in the WWU Physical Plant universal waste accumulation area that were in accumulation for longer than one year: one container dated November 25, 2019, and one container dated July 8, 2021.

3.44 Therefore, Respondent violated WAC 173-303-573(11)(a) and WAC 173-303-573(11)(c).

Violation 2: Failure to Determine if a Solid Waste is Also a Dangerous Waste

3.45 Paragraphs 3.1 through 3.44 are incorporated herein by reference as if they were set forth here in their entirety.

3.46 The regulation at WAC-173-303-070(1)(b) requires any person who generates a solid waste to determine if that waste is a “dangerous waste” or an “extremely hazardous waste” pursuant to the procedures outlined in WAC 173-303-070(3).

3.47 The regulation at WAC 173-303-070(3)(c)(ii)(B) requires all data and records supporting the determination that a solid waste is a dangerous waste to be retained on-site in accordance with WAC 173-303-210(3)(a), which requires a generator of dangerous wastes to keep records of any test results, waste analyses, or other determinations made in accordance with WAC 173-303-170(1) for designating dangerous waste for at least five years from the date that the waste was last transferred for on-site or offsite treatment, storage, or disposal.

3.48 At the time of the Inspection, the EPA observed the following containers of solid waste that the Respondent failed to determine whether they were dangerous waste:

- i. Two containers inside a flammable storage cabinet in Chemistry Room 141;
- ii. One bottle in the Fume Hood SAA in Chemistry Room 412;
- iii. One pint-sized container, one small bottle, and two vials in the SAA in Chemistry Room 470;
- iv. One 5-gallon container and at least one other container inside a flammable storage cabinet in the Fine Arts Painting Studio in Room FI240; and
- v. At least fourteen containers inside a plastic tote in the Engineering Technology Polymer Materials Engineering Paint Booth.

3.49 Therefore, Respondent violated WAC-173-303-070(1)(b).

Violation 3: Failure to Comply with Conditions to Operate Without a Dangerous Wastes

Permit or Interim Status

3.50 Paragraphs 3.1 through 3.49 are incorporated herein by reference as if they were set forth in their entirety.

3.51 Pursuant to WAC 173-303-200(1)(b)(i), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the waste is placed in containers and that the generator complies with WAC 173-303-630(2) through (6), (8) through (10), and 40 C.F.R. Part 265, Subparts AA, BB, and CC.

3.52 Pursuant to WAC 173-303-200(2)(a), a generator may store no more than 55 gallons of dangerous waste in containers at or near any point of generation where waste initially accumulates without a permit, so long as: the satellite area is under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes to a satellite container; and, the generator complies with WAC 173-303-630(2), (4), (5)(a), (5)(b), (8)(a), (9)(a), and (9)(b).

Failure to Properly Label Dangerous Waste Containers with the Words “Hazardous Waste” or “Dangerous Waste” and/or With a Label or Sign that Identifies the Major Risks

3.53 Pursuant to WAC 173-303-200(1)(d) and WAC 173-303-200(2)(a)(ii), each container storing dangerous waste in a 90-day area or a SAA must be marked with the words “Dangerous Waste” or “Hazardous Waste,” and must be marked with a label or sign that identifies the major risk(s) associated with the waste in the container for employees, emergency response personnel, and the public.

3.54 At the time of the Inspection, the EPA observed the following containers storing dangerous waste that were either not labeled with the words “Dangerous Waste” or “Hazardous Waste,” and/or not labeled with a hazard risk/indicator:

- i. One 4-liter glass waste container that was not marked/labeled with a hazard risk/indicator inside the fume hood SAA in Chemistry Room 370;
- ii. Two 1-gallon SAA containers and one, 5-gallon satellite accumulation container that were not marked with a hazard risk/indicator inside the fume hood SAA in Chemistry Room 470;
- iii. One glass waste container that was not marked with a hazardous waste label or a hazard risk/indicator in Chemistry Room 410;
- iv. One 1-gallon satellite accumulation container and one, pint size satellite accumulation container with no hazard risk/indicator inside the fume hood SAA in Chemistry Room 412;
- v. One pint size satellite accumulation container that was not marked with a hazard risk/indicator inside the fume hood SAA in Biology Room 364;
- vi. One 1-gallon paint can that was not marked with a hazardous waste label or a hazard risk/indicator inside the fume hood SAA in the Biology Room 246;
- vii. One pint size container, one 1-gallon container of waste acid, two 1-gallon containers that were not marked with a hazard risk/indicator and two 55-gallon containers that were not marked with a hazardous waste label or a hazard risk/indicator in the Central Accumulation Area in Room 119 of the Interdisciplinary Science Building;
- viii. One 1-gallon poly container, one pint size glass bottle, one medium sized zip-lock bag, and five containers that were not marked with a hazard risk/indicator inside Room 503 of the Institute for Watershed Studies Lab;

- ix. One 5-gallon satellite accumulation container that was not marked with a hazard risk/indicator in the Engineering Technology Polymer Materials Engineering Paint Booth;
- x. Eight containers that were not marked with a hazardous waste label or a hazard risk/indicator in the fume hood SAA in Psychology – Academic Instructional East Room 542;
- xi. One 1-gallon plastic container, one pint size container, and one 1-gallon glass reagent bottle that had no hazard risk/indicator in the fume hood SAA in Psychology – Academic Instructional East Room 532;
- xii. One container containing 32 aerosol cans where neither the individual waste aerosol cans nor the bin were labeled with the words “Dangerous Waste” or "Hazardous Waste," or marked with hazard risks/indicators in the Aerosol Can Pop Room in Biology Room 131A;
- xiii. Two 5-gallon satellite accumulation containers and one 1/2-gallon satellite accumulation container that were not marked with a hazardous waste label or a hazard risk/indicator in the Art Annex Room 51 glaze room; and
- xiv. Four 3 to 4-ounce poly containers and one container that contained seven waste aerosol cans that were not marked with a hazard risk/indicator, and one 2.5-gallon container that were not marked with a hazardous waste label or a hazard risk/indicator in the shed outside the Engineering Technology Building.

3.55 Therefore, at all times relevant to this Consent Agreement, Respondent stored dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1) and (2), and without a permit in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Failure to Close Dangerous Waste Containers

3.56 Pursuant to WAC 173-303-630(5)(a), a container holding dangerous waste must always be closed, except when it is necessary to add or remove waste.

3.57 At the time of the Inspection, the EPA observed the following containers that were not closed:

- i. One 5-gallon container that did not have a lid in the fume hood SAA in Chemistry Room 480;
- ii. One 55-gallon container inside the fume hood in the Central Accumulation Area in Room 119 of the Interdisciplinary Science Building; and
- iii. One 30-gallon satellite accumulation container with an attached aerosol can popper and filter in the walk-in fume hood in Biology Room 131A.

3.58 Therefore, at all times relevant to this Consent Agreement, Respondent stored dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1)(b)(i) and WAC 173-303-200(2)(a)(i), and without a permit in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Failure to Comply with Personnel Training Requirements

3.59 Pursuant to WAC 173-303-200(1)(e)(i), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the waste is placed in containers and that the generator complies with, *inter alia*, WAC 173-303-330.

3.60 The regulation defines “personnel or facility personnel” as all persons who work at, or oversee the operation of, a dangerous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of WAC 173-303-400 or 173-303-280 through 173-303-395 and 173-303-600 through 173-303-695.

3.61 Pursuant to WAC 173-303-330(1), a facility owner or operator must provide a program of classroom instruction or on-the-job training for facility personnel. This program must train personnel to perform their duties in a way that ensures the facility’s compliance with WAC Chapter 173-303, must teach facility personnel dangerous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed, must ensure that facility personnel are able to respond effectively to emergencies, and must include the elements set forth in the training plan required in WAC 173-303-330(2).

3.62 Pursuant to WAC 173-303-330(1)(c)(ii), the training must be successfully completed by the facility personnel within six months after their employment at or assignment to the facility, or to a new position at the facility, whichever is later.

3.63 Pursuant to WAC 173-303-330(3), a facility owner or operator must keep training records on current personnel until closure of the facility and must keep records on former employees for at least three years from the date the employee last worked at the facility.

3.64 Respondent failed to provide a program of classroom instruction and/or on-the-job training to at least fifteen Facility personnel whose responsibilities relate to the handling of dangerous waste.

3.65 Therefore, at all times relevant to this Consent Agreement, Respondent stored dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1), and without a permit in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Failure to Accumulate Dangerous Waste in Containers

3.66 Pursuant to WAC 173-303-200(1)(b)(i), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the waste is placed in containers and that the generator complies with WAC 173-303-630(2) through (6), (8) through (10), and 40 C.F.R. Part 265, Subparts AA, BB, and CC.

3.67 Pursuant to WAC 173-303-200(2)(a), a generator may accumulate as much as fifty-five gallons of dangerous waste in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040). The satellite area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes to a satellite container. Satellite accumulation is allowed without a permit provided the generator: (i) Complies with WAC 173-303-630(2), (4), (5)(a) and (b), (8)(a), and (9)(a) and (b); and (ii) complies with subsection (1)(d) of this section.

3.68 At the time of the Inspection, the EPA observed at least two instances of dangerous waste accumulated outside of satellite accumulation containers:

- i. One, 30-gallon satellite accumulation container with an attached aerosol can popper and filter that had residual waste liquids leaking down the side of the container and pooled beneath it; and
- ii. One satellite accumulation container with an attached aerosol can popper and filter that had residual waste liquids leaking down the side of the container and pooled beneath it.

3.69 Therefore, at all times relevant to this Consent Agreement, Respondent stored and treated dangerous waste at the Facility without a permit and without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1) and WAC 173-303-200(2)(a), in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Storing and Treating Dangerous Waste Without a Permit

3.70 The regulation at WAC 173-303-800 requires the owner or operator of a dangerous waste facility that stores and/or treats dangerous waste to obtain a permit.

3.71 Pursuant to WAC 173-303-200(1)(b)(i), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the waste is placed in containers and that the generator complies with WAC 173-303-630(2) through (6), (8) through (10), and 40 C.F.R. Part 265, Subparts AA, BB, and CC.

3.72 At the time of the Inspection, the EPA observed dangerous waste being “stored” and/or “treated” as those terms are defined at WAC 173-303-040:

- i. The EPA observed one container of dangerous waste being stored that was labeled with a hazardous waste label, a hazard risk/indicator, and the words “Waste Gas” with an accumulation start date of March 31, 2022. This means

the container had been in accumulation for 201 days at the time of the Inspection.

- ii. The EPA observed two 5-gallon satellite accumulation containers and one 1/2-gallon satellite accumulation container containing waste glaze being treated. The waste glaze was being dried out prior its disposal as a hazardous waste. Drying out of the waste glaze is a physical process for treating a dangerous waste.

3.73 At no time relevant to this Consent Agreement did Respondent possess a permit.

3.74 Therefore, Respondent stored and treated dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1), and without a permit, in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Failure to Label Dangerous Waste Containers with an Accumulation Start Date

3.75 Pursuant to WAC 173-303-200(1)(c), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the date upon which each period of accumulation begins is marked and clearly visible from inspection of each container.

3.76 At the time of the Inspection, the EPA observed at least fourteen containers located inside the shed outside the Engineering Technology Building storing dangerous waste that were not labeled with an accumulation start date.

3.77 Therefore, Respondent stored and treated dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1), and without a permit, in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Failure to Conduct Weekly Inspections

3.78 Pursuant to WAC 173-303-200(1)(b)(i), a generator may accumulate dangerous waste without a permit for no more than 90 days provided that the dangerous waste is placed in containers and the generator complies with, *inter alia*, WAC 173-303-630(6).

3.79 Pursuant to WAC 173-303-630(6), the owner or operator of a dangerous waste facility that stores containers of dangerous waste must conduct weekly inspections of the areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion, deterioration, or other factors.

3.80 Pursuant to WAC 173-303-630(6), the owner or operator of a dangerous waste facility that stores containers of dangerous waste must keep an inspection log including at least the date and time of the inspection, the printed name and handwritten signature of the inspector, a notation of the observations made, and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of the inspection.

3.81 At all times relevant to this Consent Agreement, Respondent stored dangerous waste in containers as that term is defined at WAC 173-303-040.

3.82 On at least 46 occasions between December 15, 2019, and February 19, 2022, Respondent failed to conduct weekly inspections meeting the requirements of WAC 173-303-200(1)(b)(i) and WAC 173-303-630(6).

3.83 Therefore, Respondent stored and treated dangerous waste at the Facility without complying with the conditions for exemption from the permit requirements at WAC 173-303-200(1), and without a permit, in violation of WAC 173-303-200(1) and WAC 173-303-800(2).

Violation 4: Failure to Submit Manifest Exception Report

3.84 Paragraphs 3.1 through 3.83 are incorporated herein by reference as if they were set forth in their entirety.

3.85 The regulations at WAC 173-303-040 define a “manifest” as the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the requirements of WAC 173-303-180 (Manifest), and the applicable requirements of WAC 173-303-170 through 173-303-692.

3.86 Pursuant to WAC 173-303-200(2)(a), a generator who does not receive a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five days of the date the waste was accepted by the initial transporter must contract the transporter(s) and/or facility to determine the status of the dangerous waste shipment.

3.87 Pursuant to WAC 173-303-200(2)(b), a generator must submit an exception report to the Washington Department of Ecology (the “Department”) if they have not received a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within forty-five days of the date the waste was accepted by the initial transporter.

3.88 Pursuant to WAC 173-303-210(2), a generator must keep a copy of each exception report for a period of at least five years from the due date of each exception report.

3.89 At the time of the Inspection, Respondent was unable to produce a copy of the exception report that had been submitted to the Department in connection with Manifest No. 017264524FLE within five years before the Inspection.

3.90 Therefore, Respondent violated WAC 173-303-210(2).

* * * * *

3.91 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, the EPA may assess a civil penalty of not more than \$121,275 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, the EPA took into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, the EPA determined, and Respondent agrees, that an appropriate penalty to settle this action is \$18,302 (the “Assessed Penalty”). The EPA reduced the civil penalty based on information submitted by the Respondent to support its claim that it does not have the financial resources to pay a higher civil penalty.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days after the date of the Final Order and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: www.epa.gov/financial/makepayment. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery
(no delivery confirmation requested):*

U.S. Environmental Protection Agency
P.O. Box 979078

*Address format for signed receipt confirmation
(FedEx, DHL, UPS, USPS certified, registered,
etc):*

U.S. Environmental Protection Agency
Government Lockbox 979078

St. Louis, MO 63197-9000

3180 Rider Trail S.
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective action within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

4.10. Based on the findings contained in this Consent Agreement, Respondent is also ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

- a. Respondent's Hazardous Waste Manager shall conduct an annual compliance audit for academic fiscal years 2025, 2026, and 2027. This audit shall review Respondent's compliance with the applicable standards and regulations for the management of dangerous wastes at WAC 173-303 *et seq* at all of Respondent's Facilities described in Paragraph 3.16 and defined at WAC 173-303-040.
- b. By no later than September 1, 2025, September 1, 2026, and September 1, 2027, Respondent shall submit an annual compliance report to the EPA. This report shall identify the methodologies of the compliance audit; findings of the audit, including

any violations that were discovered during the audit; and what corrective actions were taken or are planned to prevent their recurrence.

- c. Respondent shall include the following signed certification with all submissions required by this Final Order, signed by the Vice President of Business and Financial Affairs: “I certify under penalty of law that these documents and all attachments are true, accurate, and complete.”

4.11. Respondent shall provide compliance documentation required to the following address:

Xiangyu Chu
U.S. Environmental Protection Agency Region 10
1200 6th Avenue, Suite 155, Mail Stop 20-C04
Seattle, Washington 98101
Chu.Xiangyu@epa.gov

4.12. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.14. Except as described in Paragraphs 4.8 and 4.9, each party shall bear its own costs and attorneys’ fees in bringing or defending this action.

4.15. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.16. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4.17. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

4.18. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.19. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.20. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

JOYCE LOPES
Vice President, Business & Financial Affairs
Western Washington University

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2024-0131
)	
WESTERN WASHINGTON)	FINAL ORDER
UNIVERSITY)	
Main Campus and Physical Plant)	
Facilities)	
)	
Bellingham, Washington)	

Respondent.

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by the EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Western Washington University, Docket No.: RCRA-10-2024-0131**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Rachel M. Breslin
U.S. Environmental Protection Agency Region 10
1200 6th Avenue, Suite 155, Mail Stop 11-C07
Seattle, Washington 98101
Breslin.rachel@epa.gov

Joyce Lopes
Vice President, Business & Financial Affairs
Western Washington University
516 High Street
Bellingham, Washington 98225
Joyce.lopes@wwu.edu

Regional Hearing Clerk
EPA Region 10