

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
 REGION 7
 11201 RENNER BOULEVARD
 LENEXA, KANSAS 66219

UNITED STATES
 ENVIRONMENTAL PROTECTION
 AGENCY REGION 7
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IN THE MATTER OF:)
)
 United States Department of Veterans Affairs)
 Nebraska-Western Iowa Health Care System –)
 Omaha VA Medical Center)
 Omaha, Nebraska 68105)
 Respondent.)
 RCRA ID: NE3360010315)
)
)
 Proceeding under Section 3008(a) and (g) of)
 the Resource Conservation and Recovery)
 Act as amended, 42 U.S.C. § 6928(a) and (g))
 _____)

**CONSENT AGREEMENT
 AND FINAL ORDER**

Docket No. RCRA-07-2013-0029

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and The United States Department of Veterans Affairs, (VA or Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

2. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, as duly

delegated from the Administrator of the EPA.

3. The Respondent, the Department of Veterans Affairs, is a department of the United States federal government. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

Statutory and Regulatory Framework

4. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of Title 128 of the Nebraska Administrative Code. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Allegations

6. Respondent's facility, which is the subject of this action, is located at 4101 Woolworth Ave, Omaha, NE 68105 (the Facility). The Facility is a general medical facility, providing primary, secondary and tertiary patient care. Surgical procedures are performed, as well as oncology treatments, dental and general medicine patient care. The Facility is located on about 35 acres in a mainly residential area of southern Omaha. The facility was constructed approximately 60 years ago and its campus has about 30 buildings. About 1,200 employees staff the operations at the Facility 24 hours per day seven days per week.

7. As part of its operations at the Facility, Respondent generates solid waste and hazardous waste. Laboratories on site generate waste solvents and corrosives; the pharmacy generates acute P-listed waste; the oncology department generates cytotoxic waste; the dental department generates amalgam waste; and research operations generate solvents, corrosives and spent radiological waste. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at Neb. Admin. Code Title 128, Chapters 2 and 3.

8. On August 14-15, 2012, EPA Region 7 conducted an official inspection of the Facility. In the course of the inspection the inspector from EPA Region 7 documented several instances of mismanagement of hazardous waste at the Facility.

9. Respondent's hazardous waste notification on file with the Nebraska Department of Environmental Quality (NDEQ), filed in 1995, stated that the Facility was a "small quantity generator," i.e., that the Facility generated between 100 kilograms and 1,000 kilograms of hazardous waste per month. The Facility automatically became a large quantity generator of hazardous waste (LQG) on March 9, 2012 when it accumulated more than one kilogram of acute hazardous waste at the Facility, Neb. Admin. Code Title 128, Chapter 9 005. At the time of the inspection, the facility was categorized as an LQG.

10. Respondent has been assigned the following EPA ID Number: NE3360010315.

Violations

Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 above, as if fully set forth herein.

12. Neb. Admin. Code Title 128 Chapter 4.002 requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

13. At the time of the inspection, Respondent was storing approximately 100 spent fluorescent lamps. At least 20 of these lamps were not low mercury lamps. Respondent acknowledged that it had not conducted a hazardous waste determination on this waste.

14. Respondent's failure to make a hazardous waste determination is in violation of Neb. Admin. Code Title 128 Chapter 4 002.

Count 2

**OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

15. Complainant hereby incorporates the allegations contained in paragraphs 1 through 14 above, as if fully set forth herein.

16. The Facility does not have a permit to store hazardous waste or interim status which would allow it to store hazardous waste.

17. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statutes section 81-1505(13) and Title 128, Chapter 12 001.01 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA or under Neb. Admin. Code Title 128, Chapters 2 and 3 to have a permit for such activities. Respondent, as a hazardous waste generator, may accumulate such hazardous waste in containers on-site at a facility for ninety (90) days without a RCRA permit or without having RCRA interim status, provided certain conditions are met. Those conditions which must be met are set forth at Neb. Admin. Code Title 128, Chapter 10 004.

Storage of Hazardous Waste for More than 90 Days

18. At the time of the inspection, two containers of waste formaldehyde solution, an acute hazardous waste, were stored at the Facility. This waste had accumulated at the Facility since at least April 6, 2012, which was greater than ninety (90) prior to the inspection.

19. Respondent's storage of hazardous waste at the Facility for greater than ninety days (90) without a RCRA permit or RCRA interim status is a violation of Neb. Admin. Code Title 128, Chapter 10 004.

Inadequate Aisle Space

20. At the time of the inspection, the EPA inspector observed that the aisle space in the basement storage room B075 was inadequate. The inspector noted that there was very little aisle space between the flammable storage cabinets and the nearest waste container row, and virtually no aisle space at the west end of room B075.

21. Neb. Admin. Code Title 128, Chapter 10 004.01H requires that LQGs must follow the requirements of Neb. Admin. Code Title 128, Chapter 17 006. Pursuant to Neb. Admin. Code Title 128, Chapter 17 006, a generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. Therefore, maintaining inadequate aisle space in a hazardous waste accumulation area is a violation of Neb. Admin. Code Title 128, Chapter 10 004.01H.

22. Because Respondent failed to comply with the generator requirements as set forth in Count 2 herein, Respondent was not authorized to store hazardous waste at its facility for any

length of time without a permit or interim status, and therefore was operating a hazardous waste storage facility without a permit.

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

24. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

25. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

26. Respondent waives any right to contest the allegations set forth herein and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

27. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

28. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

29. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

30. The effect of settlement described in the Consent Agreement and Final Order is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 31 below.

31. Respondent certifies that by signing this Consent Agreement and Final order that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

32. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

33. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Ten Thousand Two Hundred

Thirty Eight Dollars (\$10,238) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order below.

34. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in the preceding paragraphs.

36. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

Effective Date

37. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

38. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

39. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

40. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or

corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, 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.

41. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future 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 and the environment.

42. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

43. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of Ten Thousand Two Hundred Thirty Eight Dollars (\$10,238).

2. The payment described in the preceding paragraph shall be made by way of the Intra-Governmental Payment and Collection (IPAC) System, which is administered by the United States Department of the Treasury. Such payment shall be directed to Agency Location Code 68010727, and shall identify Respondent by name and shall include the docket number of this CAFO.

3. A copy of the payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

B. Compliance Actions

4. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

5. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, and monthly for a period of one year thereafter, Respondent shall submit to the EPA a report that includes photographs demonstrating that hazardous waste containers are properly stored, labeled, dated, and closed. The report shall also include information showing the monthly generation rate of hazardous waste and copies of all hazardous waste manifests.

6. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraph 5 of this Final Order to the following mailing address or electronically to the e-mail address set forth below:

Edwin G. Buckner, PE
AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
buckner.edwin@epa.gov

C. Parties Bound

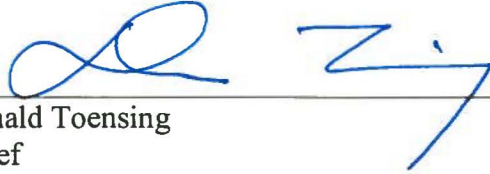
7. The Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9-30-13

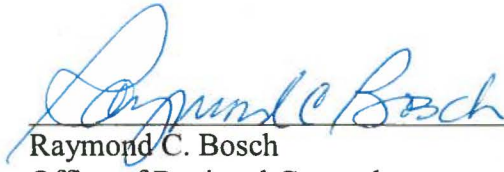
Date



Donald Toensing
Chief
Waste Enforcement and Materials Management
Branch
Air and Waste Management Division

9-30-2013

Date



Raymond C. Bosch
Office of Regional Counsel

FOR RESPONDENT:

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS

Marcus Kyle, Director VA NWI
Name and Title

9-30-13
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

9/30/13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF United States Department of Veterans Affairs; Nebraska-Western Iowa
Health Care System, Respondent
Docket No. RCRA-07-2013-0029

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the
following manner to the addressees:


Copy by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Robin Fried
GEMS Coordinator
U.S. Department of Veterans Affairs
Nebraska-Western Iowa Health Care System
4101 Woolworth Ave, Omaha, Nebraska 68105

Dated: 9/30/13


Kathy Robinson
Hearing Clerk, Region 7