

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

07 MAR 19 AM 10:56

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

University of Kansas Medical Center )

EPA ID No. KDS07274737 )

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). )

MOTION FOR LEAVE TO AMEND  
ANSWER

Respondent, University of Kansas Medical Center (hereafter, "KUMC"), moves the Presiding Officer for leave to file an Amended Answer. In support of this motion, KUMC states the following:

1. KUMC filed its Answer on November 6, 2006.
2. Subsequent to filing its Complaint, Environmental Protection Agency (hereafter, "EPA") provided Respondent KUMC with details of EPA's interpretation of the regulations at issue in the Complaint. It thereupon became clear to KUMC that EPA's interpretation of the regulation is inconsistent and confusing, and thus does not provide KUMC with fair notice of the law under which EPA charges KUMC with violating. Consequently, KUMC has amended its Answer to include the affirmative defense of fair notice.
3. In addition, KUMC is specifically requesting fees and costs under the Equal Access to Justice Act (hereafter "EAJA"), since the EPA's position in this action is not substantially justified, nor do any special circumstances exist to make an award to KUMC unjust.

WHEREFORE, KUMC respectfully requests the Presiding Officer for good cause shown to allow it to amend its Answer to add an affirmative defense and request for fees and costs under the EAJA.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: Terry J. Satterlee  
Terry J. Satterlee      MO Bar #23695  
William J. Denton      KS Bar #14056

2555 Grand Boulevard  
Kansas City, Missouri 64108  
Tel: (816) 474-6550  
Fax: (816) 421-5547

ATTORNEYS FOR UNIVERSITY OF  
KANSAS MEDICAL CENTER

**CERTIFICATE OF SERVICE**

I certify that on the 16<sup>th</sup> day of March, 2007, a copy of the aforementioned document was sent via regular mail to the following:

Kristi J. Denney  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Donald Toensing, Chief  
RCRA Enforcement and State Programs Branch  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Terry J. Satterlee