

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

The University of North Carolina
at Chapel Hill
300 South Building CB#1000
Chapel Hill, North Carolina 27599-1000
EPA ID No.: NCD980515308

Respondent.

Docket No. RCRA-04-2023-2108(b)

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent's admission of violation or adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is The University of North Carolina at Chapel Hill, a subdivision of the State of North Carolina (State). This proceeding pertains to Respondent's facility located at 300 South Building CB# 1000, Chapel Hill, North Carolina 27599-1000 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in the North Carolina Solid Waste Management Law (NCSWML), North Carolina General Statutes (N.C.G.S.) §§ 130A-17 to -28 and 130A-290 to -310.22, and Title 15A of the North Carolina Administrative Code (N.C.A.C.) Chapter 13A, Sections .0101 to .0119.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 130A-294(c) of the N.C.G.S. [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15A N.C.A.C. 13A .0107 [40 C.F.R. Part 262].
12. Pursuant to 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
13. Pursuant to 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.4(b)].
14. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], a "facility" includes "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
15. Pursuant to N.C.G.S. § 130A-290(a)(22) [40 C.F.R. § 260.10], a "person" includes a unit of local government, State agency, or other legal entity.
16. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], an "owner" is "the person who owns a facility or part of a facility" and an "operator" is "the person responsible for the overall operation of a facility."

17. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], a “generator” means any person, by site, whose act or process produces hazardous waste identified or listed in 15A N.C.A.C. 13A .0106 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to N.C.G.S. § 130-290(a)(41) [40 C.F.R. § 260.10], “storage” means the containment of solid waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal.
19. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 262.10], a Large Quantity Generator (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2200 pounds) of non-acute hazardous waste in a calendar month.
20. Pursuant to 15A N.C.A.C. 13A .0107(b) [40 C.F.R. § 262.20(a)(1)], a generator that transports a hazardous waste for off-site treatment, storage, or disposal, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

IV. FINDINGS OF FACTS

21. Respondent’s Facility is located at The University of North Carolina at Chapel Hill, 300 South Building CB#1000, Chapel Hill, North Carolina 27599-1000.
22. Respondent owns and operates the Facility, which generates laboratory and other hazardous wastes as part of Facility operations.
23. On February 24, 2022, Respondent notified the North Carolina Department of Environmental Quality (NC DEQ) of its status as a large quantity generator of hazardous waste.
24. On February 28, 2023, the EPA and the NC DEQ conducted a Focused Compliance Inspection (FCI) at the Facility. The EPA’s findings of the FCI were documented in a report electronically mailed to Respondent, dated April 13, 2023.
25. At the time of the FCI, the EPA determined during a review of the Facility’s outgoing hazardous wastes manifests dated up to February 28, 2023, that the Facility did not completely fill out thirty-nine (39) manifests, specifically: thirty-five (35) manifests were not filled out to include the generator mailing address; four (4) manifests were not filled out to include the generator mailing address and/or site address; and one (1) manifest omitted the information for the transporter responsible for management of a shipment of hazardous waste.

V. ALLEGED VIOLATIONS

26. Respondent is a “person” as defined in N.C.G.S. § 130A-290(a)(22) [40 C.F.R. § 260.10].
27. Respondent is the “owner” and “operator” of a “facility” located at The University of North Carolina at Chapel Hill, 300 South Building, CB#1000, Chapel Hill, North Carolina, as those terms are defined in 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10].
28. Respondent generates “solid waste” and “hazardous waste” as those terms are defined in 15A N.C.A.C. 13A .0106(a) [40 C.F.R. §§ 261.2 and 261.3].

29. Respondent failed to fill out applicable sections of thirty-nine (39) of its outgoing hazardous waste manifests to include its mailing and/or site address, and/or the transporter responsible for the management of the shipment. The EPA therefore alleges that Respondent violated 15A N.C.A.C. 13A .0107(b) [40 C.F.R. § 262.20(a)(1)] by offering a hazardous waste for transport to an off-site treatment, storage or disposal facility without adequately preparing a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

VI. STIPULATIONS

30. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

31. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

32. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. 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 CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

- f. agrees to comply with the terms of this CAFO.
33. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.
34. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

35. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FORTY-TWO THOUSAND NINE HUNDRED DOLLARS (\$42,900.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
36. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

United States Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: Environmental Protection Agency

d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

37. Respondent shall send proof of payment electronically, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov
and

Daryl R. Himes
Chemical Safety and Land Enforcement Branch
Environmental Compliance and Assurance Division
himes.daryl@epa.gov

38. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. RCRA-04-2023-2108(b).

39. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
- b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).

- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. 31 C.F.R. § 901.9(b)(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

40. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

41. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

42. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
43. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO, but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
44. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
45. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

46. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
47. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
48. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
49. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
50. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
51. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
52. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
53. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
54. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
55. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
56. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE


57. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement *In the Matter of The University of North Carolina at Chapel Hill*, Docket No. RCRA-04-2023-2108(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

DocuSigned by:

645034A35558419
Signature _____ Date _____
8/8/2023 | 1:31 PM EDT
Printed Name: Nathan Knuffman
Title: Vice Chancellor Finance & Operations
Address: 300 South Building; CB 1000
Chapel Hill, NC 27599-1000

The foregoing Consent Agreement *In the Matter of The University of North Carolina at Chapel Hill*, Docket No. RCRA-04-2023-2108(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Kimberly L. Bingham
Chief
Chemical Safety and Land Enforcement Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

The University of North Carolina
at Chapel Hill
300 South Building CB#1000
Chapel Hill, North Carolina 27599-1000
EPA ID No.: NCD980515308

Respondent.

Docket No. RCRA-04-2023-2108(b)

Proceeding Under Section 3008(a) of the
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42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, *In the Matter of The University of The University of North Carolina at Chapel Hill*, Docket No. RCRA-04-2023-2108(b), were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Kristen Simonsen Lewis
Assistant University Counsel
kslewis@email.unc.edu

To EPA: Daryl R. Himes
Environmental Engineer
himes.daryl@epa.gov

 Ximena Vasquez
Associate Regional Counsel
vasquez.maria-ximena@epa.gov

 Quantindra Smith
Environmental Protection Specialist
smith.quantindra@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov