

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Eldo W.R.M.S., Inc.)

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))

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2012-0002

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency ("EPA"), Region 7 ("Complainant") and Eldo W.R.M.S., Inc. ("Respondent") have agreed to a settlement of this action 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). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction

1. 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.

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

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. The Respondent is Eldo W.R.M.S., Inc., (Eldo), a company incorporated under the laws of the state of Missouri (Missouri).

Statutory and Regulatory Framework

5. Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and Missouri has adopted by reference the federal regulations cited herein at pertinent parts of 10 C.S.R. Title 25. 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 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.

6. 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 now authorized for violations of Subchapter III of RCRA that occurred between March 15, 2004, and January 12, 2009. For violations occurring after January 12, 2009, penalties of up to \$37,500 per day are authorized.

Factual Background

7. Respondent is a Missouri corporation authorized to conduct business in Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent buys abandoned, unclaimed and/or damaged materials from commercial shipping companies and resells these materials at several retail locations in Missouri and Kansas, including a facility at 11971 Grandview Road, Grandview, Missouri, where Respondent operates a retail facility named Bargain Factory, as well as a salvage wholesale facility named Oddball Salvage. Respondent employs approximately 45 people at its Grandview, Missouri location, including both Bargain Factory and Oddball Salvage employees, and has operated at this location since approximately 2005. In addition to the retail and wholesale businesses, Respondent's corporate headquarters is at this location.

9. On or about February 2 and 3, 2010, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility in Grandview, Missouri (hereinafter "the inspection").

10. During the inspection, the inspector observed several violations of RCRA, which are set forth below.

Violations

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

I. Failure to Perform A Hazardous Waste Determination

12. 10 C.S.R. 25-5.262(1) requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

13. Between January 2007 and March 2010, Respondent stored the following waste pharmaceuticals with the indicated waste codes:

Flunisolide Nasal (U002)
Terramycin (U122)
Isothesia (U044)
Banamine (U122)
Epinephrine (P042)
Warfarin Sodium (P001/U248)
Ultane (U117)

In addition, at the time of the inspection, Respondent was storing the following hazardous wastes with the indicated waste codes:

Multiple containers of Thoro 35 Coating (paint) (D001/F003)
5-gallon pail of F1253 Hapsfree Dark Grey (adhesion promoter) (D001/F003/F005)
55-gallon drum of adhesive (D001/F003/F005)
55-gallon drum of printing ink (D001/F003/F005)
55-gallon drum of Chroma Premier Binder (F003/F005)
55-gallon drum of Orange #7 Roller & Blanket Wash (D001/F003/F005)

In addition, at the time of the inspection, Respondent stated that it had generated a metal halide bulb (D009).

14. The wastes listed in paragraph 13 are hazardous wastes carrying the waste codes identified in paragraph 13.

15. Respondent failed to characterize the wastes listed in paragraph 13 as hazardous wastes in violation of 10 C.S.R. 25-5.262(1).

II. Operation of a Hazardous Waste Storage Facility Without a RCRA Permit or Interim Status

II.a. Storing Hazardous Waste without a Permit

16. Section 3005 of RCRA, 42 U.S.C. § 6925, Section 260.390.1(1) of the Revised Statutes of Missouri (RSMo), and the regulations at 10 C.S.R. 25-7.270, incorporating by reference 40 C.F.R. § 270.1(b), 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 to have a permit for such activities.

17. At the time of the inspection, Respondent held in storage hazardous pharmaceutical wastes and approximately 17,750 pounds of other hazardous wastes at its Grandview, Missouri facility.

18. Accepting hazardous waste for storage from outside parties requires a permit pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo § 260.390.1(1).

19. Respondent has not obtained a permit to operate a hazardous waste storage facility pursuant to Section 3005 of RCRA or RSMo § 260.390.1(1).

20. Respondent's storage of hazardous waste constitutes the operation of a hazardous waste treatment, storage or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and RSMo § 260.390.1(1).

II.b. Failure to Comply with Generator Requirements

Accumulation Start Date

21. The regulations at 40 C.F.R. § 262.34(a)(2), incorporated by reference at 10 C.S.R. § 25-5.262(2)(C)1, require a generator to clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

22. At the time of the inspection, Respondent had failed to mark the accumulation start date on the following storage containers:

5-gallon pail of F1253 Hapsfree Dark Grey (adhesion promoter) (D001/F003/F005)
55-gallon drum of adhesive (D001/F003/F005)
55-gallon drum of printing ink (D001/F003/F005)
55-gallon drum of Chroma Premier Binder (F003/F005)
55-gallon drum of Orange #7 Roller & Blanket Wash (D001/F003/F005)

23. Respondent's failure to date when the period of accumulation begins for each container of hazardous waste container is a violation of 10 C.S.R. 25-5.262(2)(C)1 and 40 C.F.R. § 262.34(a)(2).

*Labeling and Marking
Hazardous Waste Containers*

24. The regulation at 40 C.F.R. § 262.34(a)(3), incorporated by reference at 10 C.S.R. 25-5.262(2)(C)1, requires a generator to clearly label or mark each container of hazardous waste with the words "Hazardous Waste."

25. At the time of the inspection, Respondent had failed to label or mark the words "Hazardous Waste" on the following containers of hazardous waste located in its Grandview, Missouri facility:

5-gallon pail of F1253 Hapsfree Dark Grey (adhesion promoter) (D001/F003/F005)
55-gallon drum of adhesive (D001/F003/F005)
55-gallon drum of printing ink (D001/F003/F005)
55-gallon drum of Chroma Premier Binder (F003/F005)
55-gallon drum of Orange #7 Roller & Blanket Wash (D001/F003/F005)

26. Respondent's failure to label or clearly mark the words "Hazardous Waste" on each container of hazardous waste is a violation of 10 C.S.R. 25-5.262(2)(C)1 and 40 C.F.R. § 262.34(a)(3).

III. Offering Hazardous Waste For Shipment To A Transporter Without A Hazardous Waste Manifest

27. 40 C.F.R. Part 262.20, as incorporated by reference at 10 C.S.R. 25-5.262, requires a generator who offers hazardous waste for transportation to an off-site treatment, storage or disposal facility to prepare a hazardous waste manifest and ship the wastes accompanied by the manifest.

28. In the three years prior to the inspection, Respondent had, on multiple occasions, shipped hazardous waste pharmaceuticals to a medical waste incinerator for disposal without using a hazardous waste manifest.

29. Respondent's failure to prepare a hazardous waste manifest when offering hazardous waste for transportation to an off-site disposal facility is a violation of 40 C.F.R. Part 262.20, as incorporated by reference at 10 C.S.R. 25-5.262.

CONSENT AGREEMENT

30. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

31. Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO set forth below.

32. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

33. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CA/FO.

34. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

35. This CA/FO 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.

36. Nothing contained in the Final Order portion of this CA/FO 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.

37. Respondent certifies that by signing this CA/FO 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.

38. The effect of settlement described in Paragraph 35 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 37, above, of this CA/FO.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

40. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$23,900.25 as set forth in paragraph 1 of the Final Order.

41. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

42. This CA/FO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

43. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 12 of the Final Order, that all requirements hereunder have been satisfied.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of Twenty-Three Thousand Nine Hundred Dollars and Twenty-Five Cents (\$23,900.25).

2. Payment of the penalty shall be made either by cashier or certified check or by wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

The Respondent shall reference the Docket Number on the check or transfer. A copy of the check or transfer shall also be mailed to EPA's representative identified in paragraph 5 below.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Within thirty days of the effective date of this Final Order, Respondent shall:
- a. provide documentation demonstrating that Respondent has performed hazardous waste determinations on all solid waste streams being generated by Respondent at Respondent's facility at 11971 Grandview Road in Grandview, Missouri on the date of the Final Order, in accordance with 40 C.F.R. s. 262.11. Such documentation shall include a description of each solid waste stream generated at the facility; whether each solid waste is a hazardous waste or non-hazardous waste; a list of all hazardous waste codes that apply to each hazardous waste generated at the facility; and all information (including but not limited to analytical results, MSDS documentation, process knowledge information) which form the basis of Respondent's hazardous waste determinations for each solid waste stream.
 - b. provide documentation outlining how Respondent will ensure future performance of hazardous waste determinations for materials entering Respondent's facility that complies with 40 C.F.R. § 262.11;
 - c. provide a plan describing what steps the Respondent will take to ensure that Respondent's suppliers do not send hazardous waste to Respondent's facility. The plan will be subject to review and approval by the EPA representative identified in paragraph 5 of this Final Order. Any comments provided by EPA's

representative must be addressed and/or incorporated into a new plan, which shall be resubmitted to EPA's representative. Failure to address EPA's comments will be deemed a violation of this Final Order; and

- d. provide a narrative outlining how Respondent will ensure that materials removed from Respondent's product inventory due to holds placed by customers of Respondent's suppliers are tracked, and that, upon resolution of holds, those materials will be timely disposed as waste in accordance with applicable regulations, returned to supplier, or re-entered into product inventory.

Within fourteen days of the effective date of this Final Order:

- e. Respondent shall provide a written description of the steps Respondent will take to examine incoming shipments to its facility and to handle and ultimately dispose of any materials the facility determines to be hazardous waste in accordance with applicable regulations.
- f. Respondent shall provide documentation showing that the universal waste lamps are correctly labeled and the length of storage time is properly demonstrated.

Within fourteen days of the effective date of this Final Order, and thereafter once quarterly for a period of one year:

- g. Respondent shall provide documentation (hazardous waste manifests) demonstrating that Respondent is shipping hazardous waste to a facility authorized to receive hazardous waste and that such waste is being shipped under a hazardous waste manifest. If no hazardous wastes were manifested within the previous quarter, Respondent shall provide notification stating such.

5. All documentation required by this Final Order and any correspondence related to this CA/FO shall be sent to:

Marc Matthews
U.S. EPA Region 7, AWMD/WEMM
901 North 5th Street
Kansas City, Kansas 66101.

C. Parties Bound

6. This Final Order portion of this CA/FO 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 CA/FO.

D. Reservation of Rights

7. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

8. 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 CA/FO.

9. Except as expressly provided herein, nothing in this CA/FO 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.

10. Notwithstanding any other provisions of the CA/FO, 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.

11. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

12. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

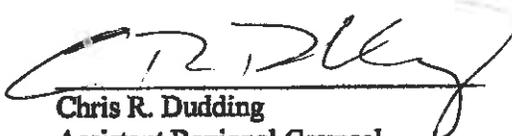
**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

11-22-11
Date



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

11/22/11
Date



Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

For Respondent Eldo W.R.M.S., Inc.

11/15/2011
Date

Signature



William Vestal
Printed Name

*In the matter of Eldo W.R.M.S., Inc.
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IT IS SO ORDERED. This Final Order shall become effective immediately.

Nov. 22, 2011
Date

Robert Patrick
Robert Patrick
Regional Judicial Officer

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CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Chris R. Dudding
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William Vestal
Eldo W.R.M.S., Inc.
11971 Grandview Road
Grandview, Missouri 64030

Dated: 11/23/11



Kathy Robinson
Hearing Clerk, Region 7