

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Washburn University)

1700 Southwest College Avenue)

Topeka, Kansas 66621)

RCRA I.D. No. KSD041141433)

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-07-2008-0012

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Washburn University (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). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

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 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that EPA has reason to believe that Respondent violated the Kansas Solid Waste Management Act, Kan. Stat. Ann. § 65-3401 et. seq., and the implementing regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"), and section 3005 of RCRA, 42 U.S.C. § 6925, and the implementing regulations at 40 C.F.R. Part 262 and 265.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region VII.

4. The Respondent is Washburn University (Respondent), a subdivision of the State of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas 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 Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes 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. 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 Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 occur after March 15, 2004. Based upon the facts alleged in this CAFO 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), for the violations of RCRA alleged in this CAFO.

Factual Background

7. Respondent is a subdivision of the State of Kansas, and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 1700 Southwest College Avenue, Topeka, Kansas, is a public university offering undergraduate and graduate degrees. Respondent employs approximately 900 full time employees at its Topeka campus.

9. On or about January 18, 2007, Respondent notified the Kansas Department of Health and Environment (KDHE) that it is a Kansas generator and a federal small quantity generator. Kansas generators generate between 25 and 1,000 kilograms of hazardous waste per month and less than 1 kilogram of acutely hazardous waste per month. Federal Small Quantity generators generate between 100 and 1,000 kilograms of hazardous waste per month and less than 1 kilogram of acutely hazardous waste per month.

10. Respondent has been assigned the following EPA ID Number: KSD041141433.

11. On or about September 10, 2003, KDHE conducted an inspection at Respondent's facility. Based on information obtained during the September 2003 inspection, Respondent was issued a Notice of Violation for failing to make a hazardous waste determination on at least one waste stream, failing to label satellite accumulation containers with the words "Hazardous Waste," failure to conduct weekly inspections, and storage of more than one satellite accumulation container of the same hazardous waste in one satellite accumulation area.

12. On or about February 20-21, 2008, an EPA representative conducted a compliance evaluation inspection at the Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violations

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

13. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 12 above, as if fully set forth herein.

14. Pursuant to 40 C.F.R. § 262.11 and K.A.R. § 28-31(b), a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

15. At the time of the February 2008 inspection, Respondent had been generating seven different waste streams which were located in the vehicle maintenance flammable cabinet. One waste stream was a Sherwin Williams Reducer # 54, one waste stream was evercoat kitty hair, and five waste streams were deemed to be unknown wastes. Respondent had not conducted a hazardous waste determination on the seven different waste streams.

16. At the time of the February 2008 inspection, Respondent had been generating three different waste streams which were located in the paint shop. Two waste streams were spent solvents and one waste stream was spent xylol. Respondent had not conducted a hazardous waste determination on the three different waste streams.

17. At the time of the February 2008 inspection, Respondent had been generating two different waste streams which were located in the biology chemical storage area, rooms 125 and 126. The waste streams were waste pet ether benzene and waste chloroform. Respondent had not conducted a hazardous waste determination on the two different waste streams.

18. The twelve waste streams described in Paragraphs 15-17, above, were hazardous waste.

19. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. § 262.11 and K.A.R. § 28-31-4(b).

COUNT 2
OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT
A RCRA PERMIT OR INTERIM STATUS

Failure to Meet Generator Requirements

20. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 19 above, as if fully set forth herein.

21. Respondent, as a Kansas generator may accumulate hazardous waste on-site without a permit, interim status, or time restrictions, and shall be exempt from all the requirements in 40 CFR Part 265, subparts G and H, except for 265.111 and 265.114, if all nine conditions set forth in the regulation are met. K.A.R. § 28-31-4(h).

22. Respondent, as a federal small quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for one hundred and eighty (180) days without a permit or without having interim status, provided that certain conditions are met. Those conditions are listed in 40 C.F.R. § 262.34(d).

23. At the time of the February 2008 inspection, Respondent was not complying with the following conditions found at K.A.R. § 28-31-4(h) and 40 C.F.R. § 262.34(d):

Failure to Mark Storage Containers with the Words "Hazardous Waste"

24. The regulations at K.A.R. § 28-31-4(h)(4) and 40 C.F.R. § 262.34(d)(4), incorporating 40 C.F.R. § 262.34(a)(3) by reference, require that while being accumulated on-site, each container and tank is labeled or clearly marked with the words "Hazardous Waste."

25. At the time of the February 2008 inspection, Respondent failed to label the following storage containers with the words "Hazardous Waste": (a) one container of spent solvents located in the vehicle maintenance area; (b) one container labeled "acetone waste" in the biology chemical storage room 125; and (c) one container labeled "mercury waste" in the biology chemical storage room 125.

26. Respondent's failure to label the storage containers with the words "Hazardous Waste" is a violation of K.A.R. § 28-31-4(h)(4) and 40 C.F.R. § 262.34(d)(4).

Failure to Mark the Accumulation Start Date on Storage Containers

27. The regulations at K.A.R. § 28-31-4(h)(3) and 40 C.F.R. § 262.34(d)(4), incorporating 40 C.F.R. § 262.34(a)(2) by reference, requires that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank.

28. At the time of the February 2008 inspection, Respondent failed to mark the accumulation start date on the following storage containers: (a) one container of spent solvents located in the vehicle maintenance area; (b) one container labeled "acetone waste" in the biology chemical storage room 125; and (c) one container labeled "mercury waste" in the biology chemical storage room 125.

29. Respondent's failure to mark the accumulation start date on the storage containers is a violation of K.A.R. § 28-31-4(h)(3) and 40 C.F.R. § 262.34(d)(4).

Failure to Comply with Satellite Accumulation Container Requirements

30. The regulation at K.A.R. § 28-31-4(j) states that any Kansas or EPA generator may accumulate as many as 55 gallons of each type of hazardous waste or one quart of acutely hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate, and that is under the control of the operator of the process generating the waste, without a permit or interim status without complying with subsections (g) and (h), if the generator performs both of the following: (a) complies with 40 C.F.R. §§ 265.171, 265.172, 265.173; and (b) marks the containers with the words "Hazardous Waste".

31. At the time of the February 2008 inspection, Respondent failed to mark two satellite accumulation containers of spent acetone located in chemistry room 307 with the words "Hazardous Waste".

32. At the time of the February 2008 inspection, Respondent stored two satellite accumulation containers of the same type of hazardous waste in art room 205 in the same satellite accumulation area.

33. Respondent's failure to mark satellite accumulation containers with the words "Hazardous Waste" and Respondent's storage of two satellite accumulation containers of the same waste in the same satellite accumulation area is a violation of K.A.R. § 28-31-4(j), and therefore a violation of K.A.R. § 28-31-4(h).

COUNT 3

FAILURE TO CONDUCT WEEKLY INSPECTIONS ON STORAGE CONTAINERS

34. The regulation at K.A.R. § 28-31-4(k) states that each Kansas or EPA generator shall document weekly inspections of hazardous waste storage areas and daily inspections of tanks in accordance with 40 C.F.R. §§ 265.15(d) and 265.195.

35. At the time of the February 2008 inspection, Respondent failed to conduct and document weekly inspections of the following hazardous waste storage containers: (a) one container of spent solvents located in the vehicle maintenance area; (b) one container labeled "acetone waste" in the biology chemical storage room 125; and (c) one container labeled "mercury waste" in the biology chemical storage room 125.

36. Respondent's failure to conduct weekly inspections on the hazardous waste storage containers is a violation of K.A.R. § 28-31-4(k).

COUNT 4

FAILURE TO COMPLY WITH UNIVERSAL WASTE REQUIREMENTS

37. The regulation at K.A.R. § 28-31-15 states that each owner or operator of a facility that manages universal waste shall comply with the requirements of 40 C.F.R. Part 273, as adopted by reference in K.A.R. § 28-31-1(a)(8).

38. The regulations at 40 C.F.R. Part 273 set forth the universal waste regulations. Those regulations include, but are not limited to the following:

- a. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible

with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. 40 C.F.R. § 273.13(d)(1).

- b. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste. For universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste -- Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)." 40 C.F.R. § 273.14(a).
- c. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste. For each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste -- Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." 40 C.F.R. § 273.14(e).
- d. 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. The handler may make this demonstration by complying with any one of six methods described in the regulations. 40 C.F.R. § 273.15(c).

39. At the time of the February 2008 inspection, Respondent failed to store more than 100 spent fluorescent lamps in closed containers, failed to properly label universal waste batteries, failed to properly label universal waste lamps, and failed to demonstrate the length of time universal waste lamps were accumulated.

40. Respondent's failure to comply with the universal waste requirements is a violation of K.A.R. § 28-31-15 and 40 C.F.R. Part 273.

III. CONSENT AGREEMENT

41. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

42. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO set forth below.

43. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

44. 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 CAFO.

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

46. This CAFO 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.

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

48. Respondent certifies that by signing this CAFO 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.

49. The effect of settlement described in Paragraph 46 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 48, above, of this CAFO.

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

51. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty Eight Thousand Nine Hundred Eighty Six Dollars (\$ 28,986.00) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

52. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 51 above.

53. 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 attorneys 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).

54. 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.

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

56. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 10 of the Final Order, that all requirements hereunder have been satisfied.

IV. 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 CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a mitigated civil penalty of Twenty-Eight Thousand Nine Hundred Eighty-Six Dollars (\$ 28,986.00).

2. Payment of the penalty shall be by cashier or certified check 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.

The Respondent shall reference the Docket Number, RCRA-07-2008-0012 on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101.

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

B. Parties Bound

4. This Final Order portion of this CAFO 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 CAFO.

C. Reservation of Rights

5. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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-Two Thousand Five Hundred Dollars (\$ 32,500.00) 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.

6. 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 CAFO.

7. Except as expressly provided herein, nothing in this CAFO 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,

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.

8. Notwithstanding any other provisions of the CAFO, 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.

9. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

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

B. Compliance Actions

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

a. Respondent shall provide copies of all documentation generated as a result of weekly inspections on all hazardous waste storage containers for one (1) month after the effective date of this CAFO.

b. Respondent shall provide photographic documentation that shows the universal waste is handled in compliance with RCRA and its implementing regulations. This information shall be submitted within thirty (30) days of the effective date of this CAFO.

12. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraph 11(a) and 11(b), above, of the Final Order to the following address:

In the matter of Washburn University
Docket No. RCRA-07-2008-0012

Deborah Finger, AWMD
Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101.

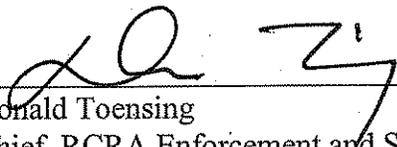
13. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

In the matter of Washburn University
Docket No. RCRA-07-2008-0012

For the Complainant:
The United States Environmental Protection Agency

2-10-09

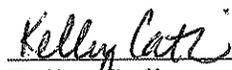
Date



Donald Toensing
Chief, RCRA Enforcement and State Programs
Air and Waste Management Division
U.S. Environmental Protection Agency
Region VII

2/9/09

Date



Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

In the matter of Washburn University
Docket No. RCRA-07-2008-0012

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

February 10, 2009
Date



Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Washburn University, Respondent
Docket No. RCRA-07-2008-0012

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:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Darrell Dibbern
Director of Risk Management & Safety
Washburn University
1700 Southwest College Avenue
Topeka, Kansas 66621

Wanda Hill
Vice President of Administration & Treasurer
Washburn University
1700 Southwest College Avenue
Topeka, Kansas 66621

Ken Hackler
University Counsel
Washburn University
1700 Southwest College Avenue
Topeka, Kansas 66621

Duke Divine
Director of Business Services
Washburn University
1700 Southwest College Avenue
Topeka, Kansas 66621

Dated: 2/11/09



Kathy Robinson
Hearing Clerk, Region 7