

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

The Children's Mercy Hospital )  
2401 Gillham Road )  
Kansas City, Missouri 64108 )

CONSENT AGREEMENT  
AND FINAL ORDER

EPA ID No. MOR000040071 )

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). )

Docket No. RCRA-07-2008-0005

**I. PRELIMINARY STATEMENT**

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air and Waste Management Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is The Children's Mercy Hospital, a non-profit corporation formed under the laws of the State of Missouri.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Consent Agreement and Final Order is a complete

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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.

The State of 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 the State of Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations ("C.S.R."), Chapter 25 ("10 C.S.R. 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 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 Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 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 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), for the violations of RCRA alleged in this Consent Agreement and Final Order.

## **II. ALLEGATIONS**

### **Jurisdiction, Statutory and Regulatory Requirements**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, and the regulations found at 40 C.F.R. Parts 262 and 265; as well as the Revised Statutes of Missouri ("RSMo.") 260.380.1(6) and (7) and the regulations found at 10 C.S.R. 25-5.262.

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3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Respondent is a non-profit corporation organized in and authorized to operate in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

**Factual Background**

5. Respondent operates The Children's Mercy Hospital located in Kansas City, Missouri. This facility provides health care services for children and families.
6. Respondent has been in operation since 1897 and at this location since 1970. It currently employs approximately 3700 employees.
7. On or about December 3, 1999, Respondent notified the Missouri Department of Natural Resources that it was operating as a small quantity generator (100 to 1000 kg/month) of hazardous waste.
8. Respondent has been assigned the facility identification number MOR000040071.
9. On January 30-31, 2007, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on observation of Respondent's hazardous waste generation rates and accumulation amounts, the inspector determined that Respondent was operating at that time as a small quantity generator (100 to 1000 kg/month) of hazardous waste. Respondent's findings were documented in a RCRA Compliance Evaluation Inspection report.
10. Based on information obtained during the January 2007 inspection, Respondent was issued a Notice of Violation for a number of requirements of RCRA.
11. On March 1, 2007, EPA sent Respondent a letter, enclosing a copy of the RCRA Compliance Evaluation Inspection report.
12. On July 6, 2007, EPA sent Respondent a Letter of Warning / Request for Information, which included an attachment entitled "List of Violations Documented at The Children's Mercy Hospital in Kansas City, Missouri on January 30-31, 2007."
13. On February 25, 2008, EPA sent Respondent a letter for "pre-filing negotiations" for alleged RCRA violations.

**Violations**

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

**COUNT I**

**FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

15. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), a generator of solid waste, as defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

16. At the time of the January 2007 EPA inspection, Respondent had been storing the following solid wastes in various locations of its facility, as follows:

- a. Hazardous Waste Storage Room: one container of acid waste; one container of cacodylic free acid waste; one container of mounting medium waste; two containers of picric acid waste;
- b. Pharmacy Lab 410: two containers labeled TEA waste;
- c. Pharmacy Lab 4708: ten containers of xylene and ethanol;
- d. Pharmacy Lab 3703: one container of unknown waste;
- e. Pharmacy Lab 3702.01: one container of phenol  $\text{CHCl}_3$  waste;
- f. Pharmacy Lab 4711: one container of phenol waste;
- g. Cytogenetics Lab: waste barium hydroxide;
- h. Pharmacy Lab 410: used film developing solution waste;
- i. Pharmacy: containers of 17 different types of waste pharmaceuticals (cytotoxics); and
- j. Plant Operations: containers of waste paint booth filters and spent solvent rags.

Respondent had not conducted a hazardous waste determination on any of these wastes when they were first generated.

17. Respondent's failure to make hazardous waste determinations on these wastes is a violation of 40 C.F.R. § 262.11.

## COUNT II

### OPERATING AS A HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR INTERIM STATUS

#### A. Satellite Accumulation Containers

18. The regulations at 10 C.S.R. 25-5.262(2)(C)3, which incorporate the requirements in 40 C.F.R. § 262.34(c), state in pertinent part that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 40 C.F.R. § 262.34(a), provided that the containers are marked with either the words "Hazardous Waste" or with other words that identify the contents of the containers and the beginning date of satellite storage.

19. At the time of the January 2007 EPA inspection, at least four satellite accumulation hazardous waste containers in the Histology Lab were not dated with the beginning date of satellite accumulation.

20. At the time of the January 2007 EPA inspection, at least one satellite accumulation hazardous waste container in the Pharmacology and Research Lab 410 was not dated with the beginning date of satellite accumulation.

21. At the time of the January 2007 EPA inspection, at least three satellite accumulation hazardous waste containers in the Pharmacology and Research Lab 4708 were not dated with the beginning date of satellite accumulation.

22. At the time of the January 2007 EPA inspection, at least one satellite accumulation hazardous waste container in the Paint Shop was not dated with the beginning date of satellite accumulation.

23. The regulations at 10 C.S.R. 25-5.262(2)(C)3, which incorporate the requirements in 40 C.F.R. § 262.34(c)(2), state that a generator who accumulates hazardous waste in excess of 55 gallons or acutely hazardous waste in excess of one quart at or near any point of generation must, with respect to that amount of excess waste, comply within three days with 40 C.F.R. § 262.34(a).

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24. At the time of the January 2007 EPA inspection, at least two satellite accumulation hazardous waste containers in Pharmacology and Research Lab 4708 were not in compliance with 40 C.F.R. § 262.34(a) within three days of it being filled.
25. At the time of the January 2007 EPA inspection, at least one satellite accumulation hazardous waste container in the Pharmacology and Research Lab 3703 was not in compliance with 40 C.F.R. § 262.34(a) within three days of it being filled.
26. By failing to comply with the required conditions of 40 C.F.R. § 262.34(c) and 10 C.S.R. 25-5.262.(2)(C)3, Respondent became subject to the requirements of having a permit or interim status for its storage of satellite accumulation hazardous waste and complying with the requirements of 40 C.F.R. § 262.34(a).

**B. Small Quantity Generator Requirements**

27. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, provided that the generator complies with the requirements set forth in 40 C.F.R. §§ 262.34(d)(1) through (5).

**Labeling and Dating of Hazardous Waste Containers**

28. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(4), state in part that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 C.F.R. §§ 262.34(a)(2) and (a)(3).
29. The regulations at 40 C.F.R. § 262.34(a)(2) require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection on each container.
30. At the time of the January 2007 EPA inspection, Respondent had accumulated at least one container of hazardous waste (pharmacy flammable hazardous waste) in the Hazardous Waste Storage Room which was not dated with the accumulation start date.
31. The regulations at 10 C.S.R. 25-5.262(2)(C)1. require that during the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark and label hazardous waste containers in accordance with the Department of Transportation regulations on hazardous materials.

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32. At the time of the January 2007 EPA inspection, Respondent had been accumulating at least one container of hazardous waste in the Hazardous Waste Storage Room that was not labeled or marked in accordance with the Department of Transportation regulations. Specifically, this container did not have a flammable, DOT label.

**Emergency Information and Emergency Devices**

33. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(5)(ii), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator posts, next to the telephone, the name and telephone number of the emergency coordinator; the location of fire extinguishers, spill control material, and, if present, the fire alarm; and the telephone number of the fire department.

34. At the time of the January 2007 EPA inspection, Respondent failed to post the emergency coordinator's name and telephone number, as well as the location of fire extinguishers and spill control material, next to the telephones in the hazardous waste container storage areas.

35. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(4), state in part that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of subpart C of 40 C.F.R. Part 265.

36. The regulations at 40 C.F.R. 265.34(a), as found in subpart C, state that whenever hazardous waste is being handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device.

37. The regulations at 40 C.F.R. 265.34(b), as found in subpart C, state that whenever there is just one employee on the premises while the facility is operating, he or she must have immediate access to a device, such as a telephone or a hand-held two-way radio, capable of summoning external emergency assistance.

38. At the time of the January 2007 EPA inspection, Respondent's employees did not have immediate access to an emergency device capable of summoning assistance.

39. In addition, at the time of the January 2007 EPA inspection, employees who entered the Hazardous Waste Storage Room alone did not have two-way radios or other similar devices capable of summoning external emergency assistance.

**Weekly Inspections of Hazardous Waste Containers**

40. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(2), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of subpart I of 40 C.F.R. Part 265, except for §§ 265.176 and 265.178.
41. The regulations at 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, require that each owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.
42. At the time of the January 2007 EPA inspection, Respondent had been conducting inspections of the Hazardous Waste Storage Room, but not on a weekly basis.

**Arrangements with Local Authorities**

43. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(4), state in part that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of subpart C of 40 C.F.R. Part 265.
44. The regulations at 40 C.F.R. § 265.37(a), as found in subpart C, state that the owner or operator of a facility must make arrangements to familiarize police, fire departments and emergency response teams with the layout of the facilities, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, and possible evacuation routes.
45. At the time of the January 2007 EPA inspection, Respondent had not made any arrangements to familiarize the local authorities with the properties and locations of the hazardous wastes on-site.

**Personnel Training**

46. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(5)(iii), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator ensures that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.



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47. At the time of the January 2007 EPA inspection, Respondent had not been giving its employees whose responsibilities involve hazardous waste, sufficient training in the proper management of hazardous waste or in the procedures for responding to hazardous waste emergencies.

48. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(d), which is alleged in paragraphs 28 through 47, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

49. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA and the permitting requirements found at 10 C.S.R. 25-5.262.

**C. Illegal Treatment of Hazardous Waste**

50. At the time of the January 2007 EPA inspection, Respondent had been treating anhydrous barium hydroxide hazardous waste in the Cytogenetics Laboratory by allowing it to evaporate.

51. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a treatment facility, in violation of Section 3005 of RCRA and the permitting requirements found at 10 C.S.R. 25-5.262.

**COUNT III**

**OFFERING HAZARDOUS WASTE FOR TRANSPORT WITHOUT A MANIFEST;  
SHIPPING HAZARDOUS WASTE TO AN UNAUTHORIZED TREATMENT  
STORAGE AND DISPOSAL FACILITY;  
FAILING TO COMPLY WITH LAND DISPOSAL RESTRICTIONS**

52. Pursuant to the Revised Statutes of Missouri Section ("RSMo") 260.380.1(6), hazardous waste generators shall provide a separate manifest to the transporter for each load of hazardous waste transported from the premises where it was generated.

53. Furthermore, the regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.20(a), also state that a hazardous waste generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal must prepare a manifest according to the instructions included in the appendix to 40 C.F.R. Part 262.

54. At the time of the January 2007 EPA inspection, Respondent was offering some of its pharmaceutical hazardous waste and cytotoxic hazardous waste for transportation off-site, without using a manifest.

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55. At the time of the January 2007 EPA inspection, Respondent was offering its spent rags and gloves hazardous waste from the Plant Operations Paint Shop for transportation off-site, without using a manifest. This hazardous waste was being shipped and disposed of in the general trash, as non-hazardous waste.

56. Pursuant to RSMo 260.380.1(7), hazardous waste generators shall utilize for treatment, resource recovery, disposal or storage of all hazardous waste, only a hazardous waste facility authorized to operate pursuant to RSMo Sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act.

57. At the time of the January 2007 EPA inspection, Respondent was transporting some of its pharmaceutical hazardous waste and cytotoxic hazardous waste to a facility that is not authorized to accept hazardous waste.

58. At the time of the January 2007 EPA inspection, Respondent was transporting its spent rags and gloves hazardous waste from the Paint Shop to a facility that is not authorized to accept hazardous waste.

59. The regulations at 40 C.F.R. § 268.7(a)(1) require that a generator of hazardous waste determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the standards in 40 C.F.R. §§ 268.40, 268.45 or 268.49. This determination must be done by testing the waste or by using knowledge of the waste.

60. At the time of the January 2007 EPA inspection, Respondent had not made the required land disposal determination on all of its pharmaceutical hazardous waste and cytotoxic hazardous waste prior to the wastes being shipped off-site.

61. At the time of the January 2007 EPA inspection, Respondent had not made the required land disposal determination on the spent rags and gloves hazardous waste from the Paint Shop prior to the wastes being shipped off-site.

### **III. CONSENT AGREEMENT**

62. 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. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

63. Respondent admits the jurisdictional allegations of this Consent Agreement and Final

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Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

64. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order, but agrees to settle all claims alleged by Complainant under the terms set forth herein without further cost or delay.

65. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order and agrees not to appeal the Final Order set forth below.

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

67. This Consent Agreement and Final Order addresses all civil administrative claims for the alleged RCRA violations identified in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law. Nothing in this paragraph is intended to affect the ability of Respondent to assert any available defenses and affirmative defenses in any subsequent administrative proceeding initiated by Complainant for alleged violations of RCRA not identified in paragraphs 15 through 61 in this Consent Agreement and Final Order.

68. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of Subchapter III of RCRA (Hazardous Waste Management). 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.

69. Respondent agrees that, in settlement of the claims alleged in the Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of \$86,043 as set forth in paragraph 75 of the Final Order.

70. The effect of settlement described in paragraph 67 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in paragraph 68 above.

71. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.

72. This Consent Agreement and Final Order shall be effective upon entry of the Final Order

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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.

73. This Consent Agreement and Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 87 of the Final Order, that all requirements hereunder have been satisfied.

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

**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 the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

**A. Payment of Civil Penalty**

75. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$86,043.

76. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US 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-07-2008-0005, on the check. A copy of the check shall also be mailed to:

Alex Chen  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, KS 66101

and to:

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Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, KS 66101.

77. 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 rate of three percent (3%) per annum.

78. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

**B. Compliance Actions**

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

- a. No later than March 15, 2009, Respondent shall submit documentation to EPA, demonstrating that a complete and accurate hazardous waste determination has been performed on all investigative pharmaceutical wastes generated from September 1, 2008 to March 1, 2009, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation shall include, but is not limited to, the following information:
  - i.) a description of the waste stream, including a detailed description of the process or processes that generated the waste and the generation rate of the waste;
  - ii.) a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
  - iii.) a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
  - iv.) a determination of whether or not the waste is identified in Subpart C of 40 C.F.R. Part 261. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedures set forth in Subpart C, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory

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analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and the basis to support this determination.

- b. Respondent shall provide EPA with copies of any and all hazardous waste manifests for all off-site shipments of pharmaceutical waste that occur during the period of six (6) months, starting from September 1, 2008. This submittal shall be due no later than March 15, 2009.
  - c. No later than March 15, 2009, Respondent shall provide EPA with a written description on the current procedures in place for weekly inspections of the hazardous waste storage containers. Such inspections must look for leaks and for deterioration caused by corrosion or other factors, and must ensure that these containers are properly closed, labeled and dated. In addition, Respondent shall provide EPA with copies of the logs for the completed weekly inspections that occur during a period of six (6) months after September 1, 2008. The submittal of these logs shall be due no later than March 15, 2009.
  - d. No later than March 15, 2009, Respondent shall provide EPA with plans, records or other documentation to show that it is in compliance with all of the training documentation requirements of 40 C.F.R. § 265.16(d).
80. All documents required to be submitted by this Consent Agreement and Final Order shall be sent to the attention of:

Ms. Deborah Finger  
AWMD/RESP  
U.S. EPA Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

**C. Parties Bound**

81. This Final Order shall apply to and be binding upon Complainant and 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.

**D. Reservation of Rights**

82. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA

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reserves the right to enforce the terms of the 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-two thousand five hundred dollars (\$32,500) 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 with respect to non-compliance with the terms of the Final Order.

83. 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.

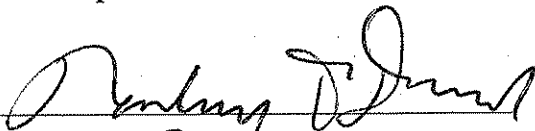
84. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability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

85. 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.

86. 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.

87. 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.

**For the Respondent:**

By:   
Printed Name: Randall O'Donnell, Ph.D.  
Title: President + CEO

Date 9/16/08

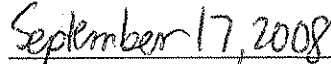
In the Matter of The Children's Mercy Hospital  
Consent Agreement and Final Order

**For the Complainant:**

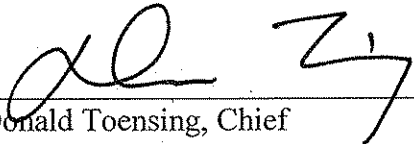
The United States Environmental Protection Agency



Alex Chen  
Assistant Regional Counsel



Date



Donald Toensing, Chief  
RCRA Enforcement and State Programs Branch  
Air and Waste Management Division

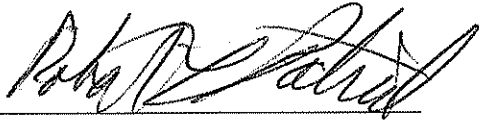


Date

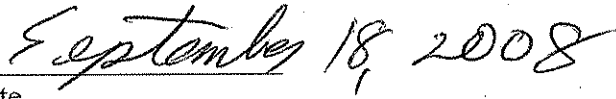


In the Matter of The Children's Mercy Hospital  
Consent Agreement and Final Order

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



Robert Patrick  
Regional Judicial Officer



Date

IN THE MATTER OF The Children's Mercy Hospital, Respondent  
Docket No. RCRA-07-2008-0005

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:

Alex Chen  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101


Original by Certified Mail Return Receipt to:

Brad Hiles, Esq.  
Husch Blackwell Sanders LLP  
720 Olive Street, Suite 2400  
St. Louis, Missouri 63101

and

Shomari L. Benton, Esq.  
Husch Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112

Dated: 9/18/08

  
Kathy Robinson  
Hearing Clerk, Region 7