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**REGIONAL HEARING CLERK
EPA REGION 6**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

IN THE MATTER OF:	§	
	§	
	§	
Tulane University, d/b/a	§	Consent Agreement and Final Order
Tulane National Primate Research Center	§	USEPA Docket No. RCRA-06-2024-0948
	§	
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, Tulane University, d/b/a Tulane National Primate Research Center ("Respondent" or "Tulane") and concerns the facility located at 18703 Three Rivers Road, Covington, LA 70433 ("the Tulane National Primate Research Center Facility").
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. Respondent explicitly waives any right to contest the allegations or to appeal the proposed final order contained in this CAFO and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation authorized to do business in the State of Louisiana.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code (LAC) LAC 33:V.109¹,

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November

[40 C.F.R. § 260.10].

11. Respondent owns or operates the Tulane National Primate Research Center Facility.
12. The Tulane National Primate Research Center Facility is a biomedical research facility and USDA Class B animal dealer licensed to sell and purchase animals for research purposes.
13. During the period from January 2023 through November 2023, EPA conducted a RCRA record review of the Tulane's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
 - A. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, certain wastes which were listed on the manifests as having the following waste codes: P-listed acute hazardous wastes: sodium azide (P105), and potassium cyanide (P098).
 - B. EPA further subsequently determined, in conversation with Respondent, that the sodium azide waste reported by Respondent was not, in fact, a "hazardous waste" regulated under RCRA because it was not the "sole active ingredient" in the process waste that Respondent generated. Respondent's use of the P-list code P105 for this waste was erroneous.
 - C. EPA also subsequently determined, in conversation with Respondent, that Respondent had inadvertently reported a greater quantity of potassium cyanide waste than it had actually generated and disposed of. Although the amount identified on the manifest for this waste

2015, incorporated by reference under 40 C.F.R. § 272. 951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272. 951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.

was two kilograms, Respondent had only generated and disposed of 0.025 kilograms of potassium cyanide in two 0.25-kilogram glass containers.

14. The Tulane National Primate Research Center Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.10].
15. The waste streams identified in Paragraph 13 are "hazardous waste" as defined in LAC 33: V.4901.B, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
16. From the Investigation, EPA determined that Respondent operated and declared its generator status as a Small Quantity Generator of hazardous waste under LAC 33:V.109, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
17. During the Investigation, EPA determined that the Tulane National Primate Research Center Facility had declared its generator status as a Large Quantity Generator on or about February 8, 2011, and filed for a change in generator status to Small Quantity Generator on April 19, 2012.
18. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33:V.109, [40 C.F.R. § 260.10].
19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R Part 262 and 270].
21. The EPA conferred with Respondent regarding the violations alleged herein and provided opportunities for Respondent to submit additional information or materials, which Respondent submitted. EPA's conferral with Respondent established that the Respondent

acted in good faith and that the Respondent complied with the vast majority of applicable regulatory requirements.

22. In the spirit of cooperation and in interest of avoiding further costs, Respondent has agreed to resolve this matter with this CAFO and consents to the penalty identified in Paragraph 29 below.

IV. VIOLATIONS

Claim. 1 Failure to make an accurate hazardous waste determination

23. The allegations in Paragraphs 1-22 are re-alleged and incorporated herein by reference.
24. Pursuant to LAC 33:V.1103, [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in LAC 33:V.109, shall determine if that waste is a hazard.
25. As identified in Paragraph 13, Respondent generated hazardous waste and completed hazardous waste manifests in the year of 2019.
26. Respondent failed to make an accurate hazardous waste determination for certain nonhazardous solid wastes generated, and hazardous waste manifests completed in the year of 2019, in violation of LAC 33:V.1103, [40 C.F.R. § 262.11], by incorrectly reporting such solid wastes as hazardous on these manifests.

V. COMPLIANCE ORDER

27. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams at the Tulane National Primate Research Center Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Tulane National Primate Research Center Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
 - B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Tulane National Primate Research Center Facility and within the prescribed time period; and
 - C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
 - D. Respondent shall certify the cost of implementation of injunctive relief.
28. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:
- "I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Adolphus Talton
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email to Adolphus Talton, respectively at talton.adolphus@epa.gov or at 214-665-6651.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

29. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of fifteen thousand dollars (\$15,000.00).
30. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
31. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

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U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (**Tulane University, d/b/a Tulane National Primate Research Center, Docket No. RCRA-06-2024-0948**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

32. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Adolphus Talton
Dallas, Texas 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within

thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

34. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

35. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

36. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty,

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Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

37. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 04/11/24

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Tulane University, d/b/a
Tulane National Primate Research Center

Mark A. Alise

Print Name

FOR THE COMPLAINANT:

Date: _____

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Thomas Rucki
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 filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the addressees:

Copy via Email to Complainant, EPA:

pittman.lawrence@epa.gov

Copy via Email to Respondent:

dstein@tulane.edu

Tulane National Primate Research Center
18703 Three Rivers Road
Covington, LA 70433

Regional Hearing Clerk
U.S. EPA, Region 6