



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 27 2010

CERTIFIED MAIL 7009 1680 0000 7665 1226
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:
LR-8J

Ms. Deborah A. Thompson
Director
U.S. Department of Veterans Affairs
William S. Middleton Memorial Hospital
2500 Overlook Terrace
Madison, Wisconsin 53705

Re: Consent Agreement and Final Order
U.S. Department of Veterans Affairs
William S. Middleton Memorial Hospital
EPA ID No.: WI0360007298
Docket No.: **RCRA-05-2011-0004**

Dear Ms. Thompson:

Enclosed, please find an original signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on DEC 27 2010 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$48,000 in the manner prescribed in paragraphs 55-58 of the CAFO, and reference all checks with the number **BD 2751142R003** and docket number **RCRA-05-2011-0004**. Your payment is due immediately upon receipt of an executed copy of the CAFO.

Enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Gary J. Victorine
Acting Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Pat Chabot – WDNR, Madison Central Office (w/ CAFO)
Steve Sisbach – WDNR, Madison Central Office (w/CAFO)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	DOCKET NO. RCRA-05-2011-0004
)	
U.S. Department of Veterans Affairs,)	
William S. Middleton Memorial Hospital)	Proceeding to Assess a Civil Penalty
Madison, Wisconsin)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
EPA ID: WI0360007298)	42 U.S.C. § 6928(a)
)	
Respondent.)	
<hr/>		

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Consent Agreement and Final Order REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA has provided notice of commencement of this action to the State of Wisconsin, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is the U.S. Department of Veterans Affairs, the owner and operator of the William. S. Middleton Memorial Hospital, a federal facility located at 2500 Overlook Terrace, Madison, Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901-6992k and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste pursuant to Sections 3001 – 3007 and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927 and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring after March 15, 2004 through January 12, 2009; and a civil penalty up to \$37,500 per day for each violation of Subtitle C of RCRA occurring after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as defined by WAC NR 660.10(90) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the owner and operator, as defined by WAC NR 660.10(88) and (87) [40 C.F.R. § 260.10], of a healthcare facility located at 2500 Overlook Terrace in Madison, Wisconsin.

18. At all times relevant to this CAFO, Respondent generated wastes at the facility, which were “solid wastes,” as defined in WAC NR 660.10(108) and 661.02 [40 C.F.R. § 261.2].

19. At all times relevant to this CAFO, Respondent generated “hazardous waste,” as that term is defined in WAC NR 660.10(52) 661.03 [40 C.F.R. § 261.3].

20. At all times relevant to this CAFO, Respondent’s healthcare facility was an “individual generation site,” as that term is defined in WAC NR 660.10(59) [40 C.F.R. § 260.10].

21. At all times relevant to this CAFO, Respondent was a “generator,” as that term is defined in WAC NR 660.10(50) [40 C.F.R. § 260.10].

22. At all times relevant to this CAFO, Respondent accumulated hazardous waste in containers, as that term is defined in WAC NR 660.10(14) [40 C.F.R. § 260.10].

23. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, or the analogous Wisconsin regulations as part of the applicable state hazardous waste management program for the state of Wisconsin, or both.

24. At all times relevant to this CAFO, the State of Wisconsin has not issued a license to Respondent to treat, store, or dispose of hazardous waste at the facility.

25. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

26. On June 10, 2009, U.S. EPA conducted an inspection of Respondent's William S. Middleton Memorial Hospital to evaluate Respondent's compliance with the applicable requirements of RCRA.

27. On June 16, 2009, Respondent submitted to U.S. EPA information requested during the inspection (Response 1).

28. On October 5, 2009, U.S. EPA issued a Notice of Violation (NOV) to Respondent outlining the violations alleged in this CAFO.

29. Respondent responded to the NOV in correspondence dated November 4, 2009 (Response 2).

30. On July 20, 2010, U.S. EPA issued a Notice of Intent to File a Civil Administrative Complaint to Respondent.

31. On September 16, 2010, the parties engaged in a "pre-filing conference" and, subsequently, engaged in pre-filing settlement negotiations.

32. On October 7, 2010, Respondent submitted additional information for U.S. EPA's consideration in this matter.

Count 1:

Failure to Make Hazardous Waste Determinations

33. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

34. Pursuant to WAC NR 662.011, 662.040(3) [40 CFR §§ 262.11, 262.40(c)], a person who generates a solid waste must determine if the waste is a hazardous waste and maintain records of these determinations for at least three years from the last date the material was sent for treatment, storage, or disposal.

35. At the time of the inspection, June 10, 2009, Respondent had not made hazardous waste determinations for the following materials:

- a. Reagents used in the analytical and histology laboratories;
- b. silver-containing bandages and ointments;
- c. autoclave indicator materials;
- d. electro-tabs and ECG leads;
- e. osmium tetroxide used in the electron microscopy laboratory; and
- f. chlorohexadiene.

36. At all times relevant to this CAFO, Respondent was a generator of the materials identified in paragraph 35.

37. In Response 2, dated November 4, 2009, Respondent provided hazardous waste determinations for the materials identified in paragraph 35.

38. In Response 2, Respondent stated that reagents used in two analyzers (Dimension Flex® and Cell Dyn SMS) are hazardous wastes when discarded.

39. In Response 2, Respondent stated that the silver-containing bandages and ointment, electro-tabs and ECG leads, osmium tetroxide, and chlorohexadiene are hazardous wastes when discarded.

40. Respondent's failure to make hazardous waste determinations violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 662.011 [40 C.F.R. § 262.11], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

Count 2:

Failure to Apply For and Obtain a Hazardous Waste Operating License

41. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

42. Except as otherwise provided, a large quantity generator may, for 90 days or less, accumulate hazardous waste that is generated on-site without a Wisconsin hazardous waste license, provided that the conditions of WAC NR 662.034 [40 C.F.R. § 262.34] are met.

43. If the conditions of WAC NR 662.034 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating license under WAC NR 670.001(3); 670.010(1) [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

44. In order to avoid the need for an operating license, large quantity generators of hazardous waste must, *inter alia*, remove accumulated hazardous waste from the site within 90 days; mark containers of hazardous waste with start dates of accumulation; and keep satellite containers closed when not in use. See, WAC NR 662.034(1)(b), (2), and (3)(a)1. [40 C.F.R. § 262.34(a)(2), (b), and (c)(1)(i)].

45. At the time of the inspection, June 10, 2009, Respondent was storing discarded wastes in five containers in a designated accumulation area for more than 90 days.

46. Respondent determined prior to the inspection that the discarded wastes in each of the five containers identified in paragraph 45 were hazardous.

47. The containers of hazardous waste identified in paragraph 45 above were shipped off-site to a permitted treatment, storage, and disposal facility on June 12, 2009.

48. One container of hazardous waste identified in paragraph 45 was marked with a start date of January 16, 2009, and was stored for 148 days.

49. One 8-gallon container of mixed hazardous waste identified in paragraph 45 was marked with a start date of January 22, 2009, and was stored for 142 days.

50. Three 5-gallon carboys of spent photo-developing fixer identified in paragraph 45 were marked with start dates of March 3, 2009, and were stored for 102 days.

51. Further, at the time of the inspection, Respondent failed to label one black sharps container in the 90-day hazardous waste accumulation area with the start date of accumulation.

52. Also, at the time of the inspection, Respondent failed to close the following three hazardous waste satellite accumulation containers: one 8-gallon container in the Out-Patient Pharmacy; one 8-gallon container in a Medication Room in the Emergency Department; and one 8-gallon container in a Medication Room in the Ambulatory Operating Room.

53. Waste was neither being added nor removed from the containers identified in paragraph 52 at the time of the inspection.

54. Respondent's failure to meet the conditions of WAC NR 662.034 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a license for the storage of hazardous waste violated Section 3005(a) of RCRA, 42 U.S.C.

§ 6925(a) and the regulations found at WAC NR 664 and 670.001(3), 670.010(1), 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

Civil Penalty

55. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$48,000. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

56. Respondent agrees to pay a \$48,000 civil penalty for the violations alleged in this CAFO. The civil penalty is due and payable immediately upon Respondent's receipt of an executed copy of this CAFO. Respondent shall pay the civil penalty by sending electronic funds transfer or certified check, payable to the "Treasurer, United States of America," as follows:

By regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By overnight mail:

U.S. Bank
Government Lockbox 979077 - U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

If paying by check, the check must state the case title, the docket number of this CAFO, and the billing document number.

By electronic transfer:

Wire Transfers

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

Automated Clearing House (ACH) Transfers

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment or description field of the electronic funds transfer, state the case title, the docket number of this CAFO, and the billing document number.

57. For payment by check, a transmittal letter stating Respondent's name, the case title, Respondent's complete address, the docket number of this CAFO and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brenda Whitney (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Richard Murawski (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

58. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

General Provisions

59. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

60. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

61. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

62. Each party agrees to bear its own costs and attorney's fees in this action.

63. This CAFO constitutes the entire agreement between the parties.

64. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

IN THE MATTER OF:
U.S. Department of Veterans Affairs
William S. Middleton Memorial Hospital, Madison, WI

**U.S. Department of Veterans Affairs, William S. Middleton Memorial Hospital,
Respondent**

12/7/10
Date

Deborah A. Thompson
Deborah A. Thompson
Director
U.S. Department of Veterans Affairs,
William S. Middleton Memorial Hospital

United States Environmental Protection Agency, Complainant

12/15/10
Date

Bruce F. Sypniewski
Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

IN THE MATTER OF:

U.S. Department of Veterans Affairs

William S. Middleton Memorial Hospital, Madison, WI

RCRA-05-2011-0004

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

Ordered this 21st day of December, 2010.

By:



Susan Hedman
Regional Administrator
U.S. EPA Region 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

IN THE MATTER OF:
U.S. Department of Veterans Affairs
William S. Middleton Hospital, Madison, WI

RCRA-05-2011-0004

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Certified Mail # 700 9 1680 0000 7665 1226

Ms. Deborah A. Thompson
Director
U.S. Department of Veterans Affairs
William S. Middleton Memorial Hospital
2500 Overlook Terrace
Madison, WI 53705

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: 12/27 2010

Hayden Cuenca for Margaret Gray
Margaret Gray
Administrative Program Assistant
RCRA Branch
United States Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5882