

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Learjet Inc.

**One Learjet Way
Wichita, Kansas 67209**

RCRA I.D. No. KSD007234313

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-07-2005-0402

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 30, 2005, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Learjet Inc. ("Respondent"). Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Part 262. Respondent filed an Answer denying certain allegations of the Complaint.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. 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 Final Order shall not be modified except by a subsequent written agreement between the parties.

2. For purposes of this proceeding Respondent admits the jurisdictional allegations of the Complaint. Respondent 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.
3. For purposes of this proceeding Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right in this proceeding to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$60,000 as set forth in Paragraph 2 of the Final Order and Respondent shall complete the Supplemental Environmental Project set forth in Paragraphs 8 through 12 below. The projected cost of the SEP is \$21,600.

Supplemental Environmental Project

8. Respondent shall perform a Supplemental Environmental Project (SEP) as part of the settlement of this matter. Specifically, Respondent shall perform the following:
 - a. Learjet shall select, from a list to be provided by EPA, a school to receive the SEP services described herein. Learjet shall select such school and provide the name of the selected school to EPA's representative, designated in paragraph 5 of the Final Order, within 45 days of receiving EPA's list. If Learjet cannot locate a school that agrees to receive the SEP services, EPA may supply Learjet with a list of additional schools;
 - b. Learjet shall retain a third-party contractor to perform a laboratory assessment that will identify laboratory materials that need to be managed properly and/or disposed. Laboratory materials that need to be disposed of will be removed and disposed of in accordance with regulatory requirements. The services described in this subparagraph shall be performed by a third-party contractor at Learjet's cost;
 - c. Learjet shall provide chemical management training for school personnel responsible for managing the laboratory that will focus on, at a minimum, RCRA regulatory requirements, hazardous waste determinations, classification, segregation, management control, and disposal

processes for spent chemical waste. Learjet shall place an emphasis on waste minimization and pollution prevention;

d. Learjet shall assist the school in developing a chemical management plan that includes a basic process to properly identify, segregate, store and dispose of waste chemicals in accordance with regulatory requirements and best management practices. Part of this chemical management plan will include a spreadsheet or other system for tracking chemical inventory and training associated with the tracking program; and

e. Learjet is not obligated by this Consent Agreement and Final Order to complete the manifests and generator, transporter or facility reports associated with implementation of this SEP, but shall train and assist the high school personnel in the proper completion of any documents required by applicable regulatory requirements that are necessary for proper disposal of the waste removed during performance of the SEP.

f. In the event the costs of the SEP services described in paragraphs 8.a. through 8.d. do not meet the projected costs set forth in paragraph 7 (subject to the ten percent tolerance identified in paragraph 17.c.), Respondent may propose to provide the school with additional waste assessment, management, and training services, similar to those described in paragraphs 8.b. through 8.d., within other areas of the school, including but not limited to maintenance or supply areas; photography laboratories; and art rooms. Respondent shall provide the additional services in a manner consistent with this Consent Agreement and Final Order and attachment hereto. Such activities shall be paid for by Respondent and may be undertaken without regard to whether they would be performed by Respondent or third-party contractor personnel.

9. Respondent shall commence the laboratory assessment portion of the SEP within 300 days of the date the school is selected as provided in this Consent Agreement and Final Order. All activities are to be performed as set forth in this Consent Agreement and Final Order, the September 21, 2006 letter from Respondent's counsel, and the March 8, 2006 SEP Memorandum. The September 21, 2006 letter and SEP Memorandum are Attachment 1 to this Consent Agreement and Final Order, and are incorporated herein by reference.

10. Respondent shall provide a SEP Pre-Implementation Plan to EPA within 45 days of selection of the school pursuant to paragraph 8 above, that lists the secondary school that has been chosen for the SEP and a schedule for the specific actions to be performed for completion of the SEP.

11. The total expenditure for the SEP shall not be less than specified in the SEP Memorandum. The estimated expenditures set forth in the SEP Memorandum for each component are provided as guidelines only and are not mandatory, except that total expenditures from all components shall not be less than \$21,600. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

Respondent is not required by this Consent Agreement and Final Order to spend more than the total expenditures specified in the SEP Memorandum.

12. Respondent shall provide a SEP Completion Report within forty-five (45) days of the completion of the items set forth in the SEP Pre-Implementation Plan and shall send such report to Complainant's representative identified in paragraph 5 of the Final Order, below. The SEP Completion Report shall include:

a. a statement of the actual costs of performing the SEP as outlined in the SEP Memorandum;

b. documentation demonstrating the SEP expenditures;

c. a detailed discussion of how the SEP was implemented, the amount in pounds of each waste removed from the school(s), the manner in which the waste was disposed and the ultimate disposal facility, the number of persons that received the training, and a copy of the chemical management plan and chemical inventory tracking system; and

d. a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

13. Respondent agrees that failure to submit the SEP Completion Report and/or failure to submit the SEP Pre-Implementation Plan shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 17 below.

14. After receipt of the SEP Completion Report described in paragraph 12 above, EPA will do one of the following:

a. notify Respondent in writing of any deficiencies in the SEP Completion Report, in which case Respondent shall have an additional thirty (30) days to correct any deficiencies;

b. inform Respondent that the project has been completed in accordance with the requirements of this Consent Agreement and Final Order; or

c. determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and seek stipulated penalties pursuant to paragraph 17 below.

15. If Respondent receives notice that the SEP Completion Report is deficient pursuant to paragraph 14 above, Respondent shall correct the deficiencies and resubmit the report within the thirty (30) day time period. If, upon resubmission, the deficiencies identified in the SEP Completion Report have not been corrected, EPA reserves the right to determine that the project

has not been completed in accordance with the requirements of this Consent Agreement and Final Order and to seek stipulated penalties pursuant to paragraph 17 below.

16. Deadlines established herein for SEP deliverables may be extended by written agreement of the parties.

Stipulated Penalties

17. Respondent shall pay stipulated penalties as follows:

a. For failure to complete the SEP in accordance with the provisions of this Consent Agreement and Final Order, including, but not limited to, failure to select a school to receive the SEP services specified in paragraph 8 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$14,546.

b. If the SEP is completed in accordance with the provisions of this Consent Agreement and Final Order, but Respondent fails to expend at least 90 percent of the amount of money which was required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of \$2,000.

c. If the SEP is completed in accordance with this Consent Agreement and Final Order and Respondent spends at least 90 percent of the money required to be spend on the SEP, Respondent shall not be liable for any stipulated penalties.

d. For failure to timely submit the SEP Completion Report required by paragraph 12 of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty in the amount of \$100.00 per day for each day after the report is due, until the report is finally submitted.

e. For failure to timely submit the SEP Pre-Implementation Plan required by paragraph 10 of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty in the amount of \$100.00 per day for each day after the plan is due, until the plan is finally submitted.

f. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

General Provisions

18. Respondent agrees that in any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, Respondent will include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by

the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act.

19. This Consent Agreement and Final Order 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.

20. This Consent Agreement and Final Order shall remain in full force and effect until Complainant's representative designated in paragraph 5 of the Final Order provides Respondent with written notice, in accordance with paragraph 14 of the Consent Agreement, that all requirements hereunder have been satisfied.

21. Respondent understands that failure to comply with 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.

22. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

III. 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 Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$60,000.

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

Regional Hearing Clerk
U.S. EPA Region VII
c/o Mellon Bank
PO Box 371099M
Pittsburgh, PA 15251.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Jonathan Meyer
Office of Regional Counsel
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

In addition, a copy of the check shall be provided to EPA's representative identified in paragraph 5 below.

3. 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 two percent (2%) per annum.

4. 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. Submittals

5. All documents required to be submitted to EPA pursuant to this Final Order shall be sent to:

Edwin Buckner ARTD/RESP
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101
Phone: (913) 551-7621
Fax: (913) 551-9621
E-mail: Buckner.Edwin@epa.gov.

C. Parties Bound

6. This Consent Agreement and 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

7. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and 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 provided herein or, if not specified, an amount

not to exceed \$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.

8. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.

9. Except as expressly provided herein, and except for those facts and circumstances alleged in the Complaint and resolved 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.

10. 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.

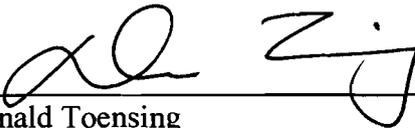
11. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

E. Termination

12. 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.

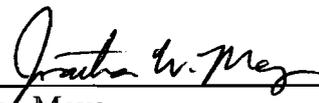
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

11/9/06
Date



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

11/13/06
Date



Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
Learjet Inc.

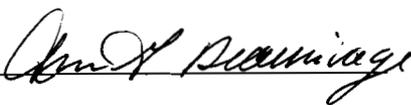
11/1/06
Date

Signature 

Printed Name DONALD R. PUFALH

Title ASST. TREASURER

11/01/06
Date

Signature 

Printed Name Anne G. Beaurivage

Title General Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date November 15, 2006

SPENCER FANE

BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

JAMES T. PRICE
DIRECT DIAL: (816) 292-8228
jprice@spencerfane.com

File No. 2767800-1

September 21, 2006

**VIA ELECTRONIC MAIL AND
UNITED STATES MAIL**

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

**Re: In the Matter of Learjet, Inc., No. RCRA -07-2005-0402 (United States
Environmental Protection Agency Region VII)**

Dear Jonathan:

In response to your September 13, 2006 inquiries, I have contacted Learjet and obtained the information set forth in this letter.

As part of the effort to resolve this pending enforcement matter, Learjet proposes to undertake a Supplemental Environmental Project (SEP) directed toward assisting an educational institution addressing concerns about risks posed by laboratory chemicals. Learjet's initial proposal was set forth in a March 8, 2006 memorandum (copy attached). As revised, Learjet and EPA would work together to select the educational facility. Learjet would engage a third-party contractor to assess the laboratory facility and identify laboratory materials that need to be disposed of or managed in a different fashion. Those that need to be disposed of would be removed and disposed of in accordance with regulatory requirements. These tasks would be performed by a licensed hazardous waste management contractor currently under contract to perform services for Learjet. Learjet's out-of-pocket cost for this portion of the SEP would not exceed \$15,000, and that limit would be considered in selecting the facility to receive these services.

In addition, Learjet would provide chemical management training and would assist the school in developing a chemical management plan, focused upon the school's laboratory facilities. The training would be provided by Learjet personnel. The training would focus on RCRA regulatory requirements, hazards, waste determinations, classification, segregation, management control, and disposal processes for spent chemical waste. There would be an emphasis on waste minimization and pollution prevention and control. The chemical management plan would include a basic process

1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140
(816) 474-8100 www.spencerfane.com Fax (816) 474-3216

WA 869461.1

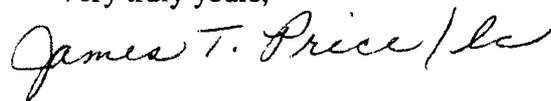
SPENCER FANE
BRITT & BROWNE LLP
ATTORNEYS & COUNSELORS AT LAW

September 21, 2006
Page 2

to properly identify, segregate, store and dispose of waste chemicals in accordance with regulatory requirements and best management practices. Learjet anticipates that such a chemical management plan would include a spreadsheet or other system for tracking chemical inventory and training associated with that tracking program.

Please contact me if you have further questions.

Very truly yours,



James T. Price

JTP/lhc

cc: Mr. M. Brett Harding
Anne G. Beaurivage, Esq.
Amy E. Wilbur, Esq.

MEMO

DATE March 8, 2006
SUBJECT Supplement Environment Project (SEP)
FROM Brett Harding, Learjet Inc.
TO Environmental Protection Agency, Region 7
c/o Jonathan Meyer
CC Anne Beurivage, Amy Wilbur, James Price

SUMMARY: In the matter of Learjet Inc., NO. RCRA-07-2005-0402 (United States Environmental Protection Agency Region VII), this memorandum is being provided to document the actions Learjet Inc., located in Wichita, Kansas, is proposing to undertake in an effort to demonstrate the Company's continued commitment in protecting human health and the environment.

The Kansas Department of Health and Environment (KDHE) initiated the "Kansas School Lab Sweep Program" to address concerns regarding the risks posed by laboratory chemicals used in the States' secondary school laboratory classes. The program consists of assisting schools with making assessments of their chemical inventories, helping with the disposal of particularly hazardous and/or out-dated chemicals, and providing guidance to the school for developing chemical management programs for future activities. Currently 194 schools had participated in the program and over 11,500 containers of chemicals had been properly disposed of. KDHE is now considering expanding this program to junior college schools.

Learjet Inc. is proposing to sponsor a "Kansas School Lab Sweep Program" for a Wichita or surrounding area junior college. In conjunction with KDHE, Learjet will provide financial resources for third party agencies and/or profit organizations to perform the laboratory assessment and properly package and ship the chemicals for disposal. Learjet will further commit to providing chemical management training for school personnel responsible for managing the laboratories, including providing assistance in developing a chemical management plan.

Learjet will solicit assistance from KDHE for school(s) selection for this program. Learjet is proposing to have these activities classified as a Supplemental Environmental Project to be considered as part of the current negotiation process.

Learjet estimates the financial burden of this SEP to be \$ 21,600.00. The calculation detail for this figure is provided below:

Supplemental Environmental Cost was calculated using the guidance outlined in the Issuance of Supplemental Environmental Projects Policy memorandum dated April 10, 1998:

One-time non-depreciable cost.....	\$15,000.00
[cost includes assessment, labor, administration, regulatory document preparation, and disposal cost from third party vendor]	
Learjet labor cost.....	\$ 6,225.00
[cost includes 40 hours coordination, 10 hours training preparation, 16 hours of training delivery, 20 hours for chemical management plan support, and 32 hours of follow-up support. Labor cost calculated at \$ 52.75 per hour.]	
Learjet material cost.....	\$ 375.00
[cost includes training tools (i.e., overhead slides), participant training material copies, travel and other miscellaneous expenses]	
Total.....	\$ 21,600.00

For additional information regarding this memorandum, please contact:

Brett Harding
Manager
Environmental, Health and Safety
Learjet Inc.
One Learjet Way
Wichita, KS 67209
(316) 956-6925
brett.harding@aero.bombardier.com

IN THE MATTER OF Learjet Inc., Respondent
Docket No. RCRA-07-2005-0402

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:

Jonathan W. Meyer
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:

James T. Price
Sara H. Hertz
Spencer Fane Britt Browne, LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Barbara A. Gunning
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 11/16/06


Kathy Robinson
Hearing Clerk, Region 7