



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 08 2011

Via Certified Mail – Return Receipt Requested

Ms. Maria A. Gralia
Assistant General Counsel
University of Miami
1320 South Dixie Highway
Coral Gables, Florida 33146

SUBJ: Consent Agreement and Final Order
University of Miami, Coral Gables, Florida
Docket No. RCRA-04-2011-4012(b)

Dear Ms. Gralia:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from that effective date.

If you have any questions, please feel free to contact me at (404) 562-9685.

Sincerely,

A handwritten signature in cursive script that reads "Colleen E. Michuda".

Colleen E. Michuda
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2011-4012(b)
)
University of Miami) Proceeding under Section 3008(a) of the
Coral Gables Campus) Resource Conservation and
1507 Levante Avenue) Recovery Act, 42 U.S.C. § 6928(a)
Coral Gables, FL 33101)
)
EPA ID No.: FLD981469307)
)
Respondent.)

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2011 SEP -8 PM 3:45
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. § 403.702 et seq. (Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939e). This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of Fla. Stat. 403.702 et seq., and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated Rule (Fla. Admin. Code Ann. r.) 62-730 (Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270 and 273).
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is the University of Miami, an institution of higher education, research, and service, incorporated as a not-for-profit corporation under the laws of the State of Florida, located at 1507 Levante Avenue in Coral Gables, Florida.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Florida authorized program are found at Fla. Stat. § 403.702 et seq. and Fla. Admin. Code Ann. r. 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State of Florida has received final authorization for certain portions of HSWA.
8. Although the EPA has granted the State of Florida authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State of Florida.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given written notice of this action to the State of Florida before the issuance of this CA/FO.
10. As the State of Florida's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Florida program; however, for ease of reference, the federal citations will follow in parentheses.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 (Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)), requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found at Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. Part 262).
12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)), sets forth the requirement that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this

requirement are found at Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 (40 C.F.R. Parts 124, 264, 265 and 270).

13. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.”
14. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), “disposal” is defined as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), “treatment” is defined as “any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste . . . or so as to render such waste non-hazardous, or less hazardous . . . or reduced in volume.”
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “facility” includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “person” includes a corporation.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), an “owner” is the person who owns a facility or part of a facility and an “operator” is the person responsible for the overall operation of a facility.
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.2), a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.3), a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under Fla. Admin. Code r. 62-730.030(1) (40 C.F.R. § 261.4(b)), and it meets any of the criteria specified in Fla. Admin. Code r. 62-730.030(1) (40 C.F.R. § 261.3(a)(2)).
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.20), solid wastes that exhibit any of the characteristics identified in Fla. Admin. Code r. 62-730.030(1) (40 C.F.R. §§ 261.21 through 261.24), are characteristic hazardous wastes, and are provided with the EPA Hazardous Waste Numbers D001 through D043.

22. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. § 261.30), a solid waste is a hazardous waste if it is listed in Fla. Admin. Code Ann. R. 62-730.030(1) (40 C.F.R. Part 261, Subpart D). Listed hazardous wastes include the F-Listed and P-Listed wastes identified in Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. §§ 261.31(a) and 261.33(e)).
23. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.11), a person who generates a solid waste must determine if that waste is a hazardous waste.
24. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(4)(a), a generator who discharges hazardous wastes through a sewer system to a publicly owned treatment works (POTW) is required to notify the POTW and the Florida Department of Environmental Protection (FDEP) of such discharge and to keep a copy of the notification in the facility's file. The notification is required to meet the requirements of Fla. Admin. Code Ann. r. 62-625.600(15), which requires that the notification include the name and EPA number of the hazardous waste, and the type of discharge (continuous, batch, or other).
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)), a generator of greater than 1,000 kilograms of hazardous waste per month may accumulate hazardous waste on-site for 90 days or less, without a permit or interim status, provided that the generator complies with the management requirements of Fla. Admin. Code r. 62-730.160(1) (40 C.F.R. § 262.34(a)(1)-(4)) (hereinafter referred to as the "40 C.F.R. § 262.34(a) permit exemption").
26. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(b)), a generator of greater than 1,000 kilograms of hazardous waste per month who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Fla. Admin. Code Ann. r. 62-730.180(1) and (2) (40 C.F.R. Parts 264 and 265) and the permit requirements of Fla. Admin. Code Ann. r. 62-730.220(1) (40 C.F.R. Part 270).
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(2)), a condition of the 40 C.F.R. § 262.34(a) permit exemption, a generator must ensure that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each hazardous waste container.
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(3)), a condition of the 40 C.F.R. § 262.34(a) permit exemption, a generator must label or mark each hazardous waste container with the words "Hazardous Waste."
29. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)), 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 Fla. Admin. Code r. 62-730.160(1) (40 C.F.R. § 262.34(a)), provided that the generator complies with the

management requirements of Fla. Admin. Code r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(i)-(ii)) (hereinafter referred to as the “40 C.F.R. § 262.34(c) permit exemption”).

30. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(c)(1)(i)), a condition of the 40 C.F.R. § 262.34(c) permit exemption, a generator must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.173(a)), which requires that containers holding hazardous waste must always be closed during storage except when it is necessary to add or remove wastes.
31. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.32(c)(1)(ii)), a condition of the 40 C.F.R. § 262.34(c) permit exemption, a generator must mark each container of hazardous waste with the words “Hazardous Waste” or with other words that identify the contents of the container.
32. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(a)(1)(i)), a condition of the 40 C.F.R. § 262.34(a) permit exemption, a generator must comply with Fla. Admin. Code Ann. r. 62-730.180(2) (40 C.F.R. § 265.174), which requires weekly inspections of areas where hazardous waste containers are stored. In addition, Fla. Admin. Code Ann. r. 62-730.160(6) requires that written documentation of such inspections be kept at least three years from the date of the inspection.
33. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.9), a “Universal Waste Handler” includes a generator of universal waste, and a “Small Quantity Handler of Universal Waste” is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste at any time.
34. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.9), “Universal Waste” includes hazardous waste lamps as described in Fla. Admin. Code r. 62-730.185(1) (40 C.F.R. § 273.5), and hazardous waste batteries as described in Fla. Admin. Code r. 62-730.185(1) (40 C.F.R. § 273.2).
35. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(1)), a small quantity handler of universal waste is required to contain its universal waste lamps within closed containers.
36. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.14(e)), a small quantity handler of universal waste is required to contain its universal waste lamps in containers clearly marked with the words “Universal Waste-Lamp(s),” or “Waste Lamp(s)” or “Used Lamp(s).”
37. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.14(a)), a small quantity handler of universal waste is required to contain its universal waste batteries in containers clearly marked with the words “Universal Waste-Battery(ies),” or “Waste Battery(ies)” or “Used Battery(ies).”

38. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(a)(1)), a small quantity handler of universal waste is required to contain its universal waste batteries within closed containers.
39. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.15(c)), a small quantity handler of universal waste is required to be able to demonstrate the length of time that its universal waste has accumulated from the earliest date that the universal waste became a waste or was received.

IV. EPA ALLEGATIONS AND DETERMINATIONS

40. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10).
41. Respondent is the “owner” and “operator” of a “facility” located in Coral Gables, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10).
42. Respondent is a private institution of higher education, research, and service with more than 15,000 students from around the world. The Coral Gables Campus houses seven schools and two colleges on a 230-acre tract in suburban Coral Gables, Florida. This campus supports the functions of a normal university, including schools and laboratories for Engineering, Biology, Chemistry, Nursing and Health Studies and Pharmacy.
43. On March 18, 2008, and March 22, 2010, Respondent notified FDEP as a Large Quantity Generator of hazardous waste, meaning that it generates greater than 1,000 kilograms of hazardous waste, or one kilogram of acute hazardous waste, per month.
44. Respondent is a generator and small quantity handler of Universal Waste lamps and batteries.
45. Respondent generates wastes that are “solid wastes” and “hazardous wastes” as defined in Fla. Admin. Code Ann. r. 62-730.030(1) (40 C.F.R. §§ 261.2 and 261.3).
46. Among the hazardous waste generated at the facility, Respondent reported generation of:
 - a. Aqueous solutions contaminated with F-Listed hazardous wastes and mercury (F002, F003, F005, and D009);
 - b. Aqueous acid waste from research labs (D002);
 - c. Halogenated and non-halogenated waste solvent from research labs (D004, D005, D007, D008, D011, D018, D019, D022, D036, F002, F003, and F005);
 - d. Paint-related waste (D001, F002, F003, and F005);
 - e. F-Listed waste contaminated debris (F002, F003, and F005); and,
 - f. Acute and non-acute hazardous waste lab packs.

47. Respondent's operations encompass a number of support services and laboratories which generate hazardous waste streams. Respondent generates characteristic hazardous wastes, listed hazardous wastes, and acute hazardous wastes.
48. On March 11, 2010, a representative of the EPA and a representative of FDEP performed a RCRA Compliance Evaluation Inspection (CEI) of Respondent's facility. The findings of the CEI were documented in a June 2, 2011, "Notice of Violation and Opportunity to Show Cause" letter, and a May 31, 2011, CEI Report.
49. At the time of the CEI, Respondent had not made a hazardous waste determination on certain lab wastes/chemicals disposed of, evaporated or neutralized in the Cox Science Building Lab 245.
50. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.11) by failing to make a hazardous waste determination on certain solid waste generated at its facility.
51. At the time of the CEI, the inspectors observed that toluene hazardous waste (D001 and F005) generated in the Cox Science Building Lab 245 was being placed in an open small container that also contained bleach. Respondent's employee stated that when the container is full, the contents of the container are disposed of down the drain. Respondent's sanitary drain in the Cox Science Building is connected to the Miami-Dade Water and Sewer Authority (MDWSA), which is a POTW. Respondent did not submit notification of the hazardous waste discharge to FDEP or the MDWSA.
52. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), and Fla. Admin. Code Ann. r. 62-730.180(1)-(2) and 62-730.220(1) (40 C.F.R. Parts 264, 265 and 270), by disposing of hazardous waste without a permit or interim status.
53. With respect to Paragraph 51 above, the EPA also alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.030(4)(a), by failing to notify FDEP or the MDWSA of a hazardous waste discharge to the sewer system.
54. At the time of the CEI, the inspectors observed a toluene container and a chamois-like cloth spread out flat under the hood in the Cox Science Building Lab 245. Respondent's employee explained to the inspectors that when there is a very small amount of toluene to dispose of, it is poured on this cloth and allowed to evaporate. Respondent's employee also stated that the toluene is mixed with bleach prior to being disposed down the drain in order to "neutralize" it. Evaporation and/or neutralization meet the definition of "treatment" in Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10) because they change the chemical composition or reduce the volume of the hazardous waste.
55. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), by illegally treating hazardous waste without a permit or interim status.

56. At the time of the CEI, the inspectors observed that Respondent had accumulated one 55-gallon drum of hazardous paint waste in the Physical Plant/Facilities Building storage area for greater than 90 days.
57. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste in excess of 90 days without a permit or interim status, in violation of the requirements found at Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.34(b)).
58. At the time of the CEI, various containers of hazardous waste were found in multiple locations at or near generation points without the words “Hazardous Waste” or other words to correctly identify the contents of the containers, to wit: Cox Science Building Lab 230; Cox Science Building Lab 245; Cox Science Building Lab 251; and Knight Physics Annex Chemistry Lab 143.
59. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the 40 C.F.R. § 262.34(c) permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. § 262.32(c)(1)(ii)), which requires that generators must properly label their hazardous waste containers with the words “Hazardous Waste” or other words to identify the contents of the containers.
60. At the time of the CEI, the inspectors observed that Respondent failed to keep a container of toluene hazardous waste (D001 and F005) near the point of its generation in the Cox Science Building Lab 245 closed when waste was not being added or removed.
61. The EPA therefore alleges that Respondent violated Fla. Stat. 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the 40 C.F.R. § 262.34(c) permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1), which incorporates Fla. Admin. Code r. 62-730.180(2) (40 C.F.R. § 262.34(c)(1)(i)), which incorporates 40 C.F.R. § 265.173(a), which requires that generators must keep their containers of hazardous waste closed when waste is not being added or removed.
62. At the time of the CEI, the container inspection log in the Bulking Area/90 Day Storage Area indicated that no inspections had been conducted from December 21, 2009, to January 2, 2010, and from February 22, 2010, to March 11, 2010. In addition, no weekly inspections had been conducted in the Cox Science Building (Basement Labpack Area/90 Day Storage Area) from December 21, 2009, to January 2, 2010, and from February 22, 2010, to March 11, 2010.
63. The EPA therefore alleges that Respondent violated Fla. Stat. 403.722 (Section 3005 of RCRA, 42 U.S.C. 6925), for storing hazardous waste without a permit or interim status, by failing to meet a requirement of the 40 C.F.R. § 262.34(a) permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1), which incorporates Fla. Admin. Code r. 62-730.180(2) (40 C.F.R. § 262.34(a)(1)(i)), which incorporates 40 C.F.R. § 265.174), which

requires that generators conduct weekly inspections of hazardous waste container storage areas.

64. At the time of the CEI, one 55-gallon drum of hazardous waste (D019, D022, and F002) was found with no start accumulation date in the Bulking Area/90 Day Storage Area, and one drum of hazardous paint waste was found in the Physical Plant/Facilities Building without an accumulation start date or a label marked with the words "Hazardous Waste."
65. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status, by failing to meet the requirements of the 40 C.F.R. § 262.34(a) permit exemption provided in Fla. Admin. Code Ann. r. 62-730.160(1) (40 C.F.R. §§ 262.34(a)(2) and (a)(3)), which require that generators label and mark accumulation start dates on their containers of hazardous waste.
66. At the time of the CEI, Respondent was managing universal waste batteries in the Cox Science Building (Basement Labpack/90 Day Storage Area) in unmarked cardboard boxes which were not labeled with the words "Universal Waste-Battery(ies)," or "Waste Battery(ies)" or "Used Battery(ies)."
67. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.14(a)), by failing to label its containers of universal waste batteries with the words "Universal Waste-Battery(ies)," or "Waste Battery(ies)" or "Used Battery(ies)."
68. At the time of the CEI, universal waste batteries were not stored within closed boxes in the Cox Science Building (Basement Labpack/90 Day Storage Area).
69. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(a)(1)), by failing to manage its universal waste batteries in closed containers.
70. At the time of the CEI, Respondent was managing universal waste lamps in containers which were not labeled with the words "Universal Waste-Lamp(s)," or "Waste Lamp(s)" or "Used Lamp(s)."
71. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.14(e)), by failing to manage its universal waste lamps in containers clearly marked with the words "Universal Waste-Lamp(s)," or "Waste Lamp(s)" or "Used Lamp(s)."
72. At the time of the CEI, universal waste lamps were not stored within closed boxes and containers that would prevent breakage in the Physical Plant/Facilities Building storage area.

73. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.13(d)(1)), by failing to manage its universal waste lamps in closed containers.
74. At the time of the CEI, Respondent was not able to demonstrate the length of time that its universal waste had accumulated from the date that it became a waste.
75. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.185(1) (40 C.F.R. § 273.15(c)), by failing to be able to demonstrate the length of time that its universal waste had accumulated.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

76. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
77. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
78. Respondent waives its right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
79. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
80. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
81. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
82. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations and facts stipulated to in this CA/FO.
83. Each party will pay its own costs and attorney's fees.

VI. DEMONSTRATION OF COMPLIANCE

84. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Florida hazardous waste program.

VII. PAYMENT OF CIVIL PENALTY

85. Respondent consents to the payment of a civil penalty in the amount of **SIXTY FIVE THOUSAND, SIX HUNDRED DOLLARS (\$65,600)**, payable within thirty (30) calendar days of the effective date of this CA/FO.
86. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White
(301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

87. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar-day period over which an unpaid balance remains.

- c. Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

- 88. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VIII. RESERVATION OF RIGHTS

- 89. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the 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 or the environment.
- 90. 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 CA/FO.
- 91. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the 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.
- 92. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

IX. OTHER APPLICABLE LAWS

- 93. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

X. PARTIES BOUND

- 94. This CA/FO shall be binding upon Respondent and its successors and assigns.
- 95. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
- 96. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

XI. SERVICE OF DOCUMENTS

97. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Colleen E. Michuda
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909
michuda.colleen@epa.gov

98. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Ms. Maria A. Gralia
Assistant General Counsel
University of Miami
1320 South Dixie Highway
Coral Gables, Florida 33146

XII. SEVERABILITY

99. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

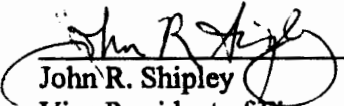
XIII. EFFECTIVE DATE

100. The effective date of this CA/FO shall be the date on which the fully executed CA/FO is filed with the Regional Hearing Clerk.

In the matter of University of Miami, Docket No. RCRA -04-2011-4012(b):

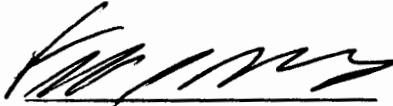
AGREED AND CONSENTED TO:

For the Respondent, University of Miami

By: 
John R. Shipley
Vice President of Finance & Treasurer
University of Miami

Dated: 9/6/2011

For the United States Environmental Protection Agency

By: 
Frank S. Ney, Acting Chief
RCRA and OPA Enforcement
and Compliance Branch
RCRA Division

Dated: 9/7/11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2011-4012(b)
)
University of Miami) Proceeding under Section 3008(a) of the
Coral Gables Campus) Resource Conservation and
1507 Levante Avenue) Recovery Act, 42 U.S.C. § 6928(a)
Coral Gables, FL 33101)
)
EPA ID No.: FLD981469307)
)
Respondent.)
<hr/>)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 8th day of Sept, 2011.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of University of Miami, Docket Number: RCRA-04-2011-4012(b), on 9/8, 2011, and on 9/8, 2011, served copies on the parties listed below in the manner indicated:

Colleen E. Michuda
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Parvez Mallick
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

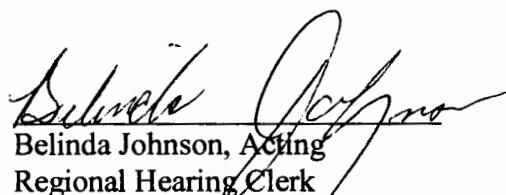
Ms. Maria A. Gralia
Assistant General Counsel
University of Miami
1320 South Dixie Highway
Coral Gables, Florida 33146

(Via Certified Mail- Return Receipt Requested)

Howard E. Nelson
Attorney at Law
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue
Suite 2300
Miami, Florida 33131

(Via Certified Mail- Return Receipt Requested)

Date: 9/8/11


Belinda Johnson, Acting
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9686