



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

**February 11, 2021**

**ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

Ms. Elizabeth Duvall  
General Counsel  
Western Illinois University  
1 University Circle  
Macomb, Illinois 61445-1390  
[el-duvall@wiu.edu](mailto:el-duvall@wiu.edu)

Re: Compliance Agreement and Final Order  
Western Illinois University  
Docket No: **RCRA-05-2021-0010**

Dear Ms. Duvall:

Attached please find a copy of the signed, fully executed Compliance Agreement and Final Order in resolution of the above case. The original was filed with the Regional Hearing Clerk on February 11, 2021.

Please pay the civil penalty in the amount of \$30,000 in the manner described in paragraph 59 of the CAFO, and reference electronic payment with the docket number RCRA-05-2020-0010. The payment is due within 30 calendar days of the effective date of the CAFO.

Thank you for your payment and for your cooperation in resolving this matter.

Sincerely,

**MICHAEL**  
**CUNNINGHAM**

Digitally signed by  
MICHAEL CUNNINGHAM  
Date: 2021.02.05  
10:32:15 -06'00'

Michael Cunningham, Chief  
RCRA Compliance Section 1

Attachment

cc: Mr. James M. Jennings, Illinois EPA ([james.m.jennings@illinois.gov](mailto:james.m.jennings@illinois.gov))

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No.</b> RCRA-05-2020-0010
	)	
<b>Western Illinois University</b>	)	<b>Proceeding to Commence and Conclude</b>
<b>1 University Circle</b>	)	<b>an Action to Assess a Civil Penalty</b>
<b>Macomb, Illinois</b>	)	<b>Under Section 3008(a) of the Resource</b>
	)	<b>Conservation and Recovery Act,</b>
<b>U.S. EPA ID: ILD 006 328 769</b>	)	<b>42 U.S.C. § 6928(a)</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**Consent Agreement and Final Order**

**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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

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

4. Respondent is Western Illinois University, a corporation doing business in the State of Illinois.

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.

#### **Statutory and Regulatory Background**

11. 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, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6934.

12. 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.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or 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 Illinois 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. 3778 (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 \$99,681 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

16. Respondent is a "person" as defined by 35 Ill. Adm. Code § 720.110 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. The property and structures at 1 University Circle, Macomb, Illinois are a "facility," as that term is defined under 35 Ill. Adm. Code § 720.110 (Facility).

18. Respondent is the "owner" or "operator," as those terms are defined under 35 Ill. Adm. Code § 720.110, of the Facility located at 1 University Circle, Macomb, Illinois.

19. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

20. At all times relevant to this CAFO, Respondent conducted chemistry and biology

research and teaching in research and class laboratories.

21. At all times relevant to this CAFO, collection of laboratory chemicals generated hazardous waste, which Respondent collected in laboratory bottles, 2-liter bottles, and 55-gallon containers, and stored in the hazardous waste storage areas of the Facility.

22. At all times relevant to this Complaint, Respondent temporarily stored containers of waste collected from various laboratories, maintenance areas, and other areas, as well as discarded materials, before the material was shipped elsewhere for treatment, storage, disposal, burning or incineration.

23. Respondent characterized its waste as hazardous waste with multiple waste codes: D001, D002, D005, D009, D011, D016, F002, F003, F005, P105, U080, U123.

24. At all times relevant to this CAFO, Respondent's waste was a "solid waste" as that term is defined under 35 Ill. Adm. Code § 721.102.

25. At all times relevant to this CAFO, Respondent's solid waste was a "hazardous waste" as that term is defined under 35 Ill. Adm. Code § 721.103.

26. Respondent stored, transported, disposed of, or otherwise handled its hazardous waste in "containers" as that term is defined under 35 Ill. Adm. Code § 720.110.

27. At all times relevant to this CAFO, Respondent's holding of hazardous waste in containers constituted hazardous waste "storage," as that term is defined under 35 Ill. Adm. Code § 720.110.

28. Respondent is a "generator," as that term is defined in 35 Ill. Adm. Code § 720.110.

29. The Facility was generating and managing hazardous waste at the Facility after November 19, 1980.

30. On May 24, 2018, U.S. EPA conducted a Compliance Evaluation Inspection of the

Facility (the Inspection).

31. On May 22, 2019, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

32. On October 3, 2019, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

33. At all times relevant to this CAFO, the State of Illinois had not issued a permit to Respondent to treat, store, or disposed of hazardous waste at its Facility.

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

35. On or about June 6, 1988, Respondent submitted a Hazardous Waste Notification to EPA for the Facility.

36. In its Hazardous Waste Notification dated, June 6, 1988, Respondent identified itself as a Large Quantity Generator of hazardous waste.

**Count 1: Storage of Hazardous Waste Without a Permit or Interim Status**

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

38. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

39. Pursuant to 35 Ill. Adm. Code § 722.134, however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 Ill. Adm. Code § 722.134, including, but not limited to,

requirements for owners and operators in Illinois.

40. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 Ill. Adm. Code Parts 724 and 725 and the permit requirements of 35 Ill. Adm. Code §§ 703.121, 703.180, and 705.121 unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

41. At all times relevant to this Complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

42. Similarly, the failure to comply with any of the conditions of 35 Ill. Adm. Code § 722.134 subjects the generator of hazardous waste to the requirements of 35 Ill. Adm. Code Parts 724 and 725 and the permit requirements of 35 Ill. Adm. Code §§ 703.121, 703.180, and 705.121.

43. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must: a) store hazardous waste for 90 days or less; b) store hazardous waste in containers marked with the start date of accumulation; c) mark or label each container holding hazardous waste clearly with the words “Hazardous Waste”; d) test and maintain fire protection equipment to assure its proper operation in time of an emergency; e) amend the contingency plan when the list of emergency coordinators change; f) inspect areas where containers are stored at least weekly; and g) provide facility personnel with the initial required RCRA training.

44. At the time of the inspection, Respondent: a) had stored hazardous waste for more than 90 days; b) had stored hazardous waste in containers that were not marked with the start

date of accumulation; c) had not marked or labeled containers holding hazardous waste clearly with the words “Hazardous Waste”; d) had not tested and maintained fire protection equipment to assure its proper operation in time of an emergency; e) had not amended the contingency plan when the list of emergency coordinators changed; f) had not inspected areas where containers were stored at least weekly; and g) had not provided facility personnel with the initial required RCRA training, without applying for or obtaining a permit.

45. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

46. As a result of Respondent’s failure to meet all the applicable conditions for the generator exemption provided by 35 Ill. Adm. Code § 722.134 at the time of the inspection, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

47. Respondent’s storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 Ill. Adm. Code §§ 703.121, 703.180, and 705.121.

### **Count 2: Failure to Make a Waste Determination**

48. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

49. As a generator, Respondent is subject to the requirement of 35 Ill. Adm. Code § 722.111.

50. 35 Ill. Adm. Code § 722.111 requires that a generator determine whether a solid waste is a hazardous waste.

51. At the time of the inspection, Respondent had not made a determination whether solid

waste being stored in numerous containers was hazardous waste.

52. Respondent's failure to make a determination of whether waste being stored in numerous containers was hazardous waste violated 35 Ill. Adm. Code § 722.111.

**Count 3: Failure to Retain Land Disposal Restriction Notification**

53. Complainant incorporates paragraphs 1 through 36 of this Complaint as though set forth in this paragraph.

54. As a generator, Respondent is subject to the requirement of 35 Ill. Adm. Code § 728.107(a)(8).

55. 35 Ill. Adm. Code § 728.107(a)(8) requires that a generator of hazardous waste must retain on-site a copy of all notices, certification, waste analysis data, and other documentation produced for at least three years from the date that the waste, subject to such documentation, was last sent to on-site or off-site treatment, storage, or disposal.

56. At the time of the inspection, Respondent had not retained on-site a copy of the land disposal restriction notification for the hazardous waste sent off-site subject to the land disposal restriction regulations.

57. Respondent's failure to retain a copy of the land disposal restriction notification for the hazardous waste sent off-site violated 35 Ill. Adm. Code § 728.107(a)(8).

**Civil Penalty**

58. 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 \$30,000. In determining the penalty amount, Complainant considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003, the facts of this case, Respondent's ability to pay, and Respondent's cooperation and good faith efforts to comply with the applicable requirements. EPA has reduced the civil penalty on

the basis of information provided by Respondent to support its claims that it is unable to pay a higher civil penalty and remain in business.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$30,000 civil penalty for the RCRA violations. Respondent must pay the penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

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

60. This civil penalty is not deductible for federal tax purposes.

61. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

63. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [zaharoff.josh@epa.gov](mailto:zaharoff.josh@epa.gov) (for Complainant), and [el-duvall@wiu.edu](mailto:el-duvall@wiu.edu) (for Respondent).

64. Respondent’s full compliance with this CAFO shall only resolve Respondent’s

liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

65. Respondent certifies that it is currently in compliance with the requirements listed above in paragraphs 37 – 57, pursuant to RCRA, 42 U.S.C. §§ 6901 – 6992k, as codified under the regulations at 35 Ill. Adm. Code Parts 720 – 729.

66. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

67. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

68. 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).

69. The terms of this CAFO bind Respondent, its successors, and assigns.

70. 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.

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

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

**Western Illinois University, Respondent**

Date

1-28-2021

  
Elizabeth Duvall  
General Counsel  
Western Illinois University

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2021.02.08  
16:15:06 -06'00'

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Date

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division

**In the Matter of:**  
**Western Illinois University**  
**Docket No.** RCRA-05-2020-0010

**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 concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.02.10  
08:42:38 -06'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Compliance Agreement and Final Order  
In the matter of: Western Illinois University  
Docket Number: RCRA-05-2020-0010

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Compliance Agreement and Final Order**, docket number **RCRA-05-2020-0010**, which was filed on **February 11, 2021**, in the following manner to the following addressees:

Copy by e-mail to Respondent: Western Illinois University  
Elizabeth Duvall  
General Counsel  
[el-duvall@wiu.edu](mailto:el-duvall@wiu.edu)

Copy by e-mail to Attorney for Complainant: Joshua Zaharoff  
[zaharoff.josh@epa.gov](mailto:zaharoff.josh@epa.gov)

Copy by e-mail to Technical Contact for Complainant: Jamie Paulin  
[paulin.jamie@epa.gov](mailto:paulin.jamie@epa.gov)

Copy by e-mail to Regional Judicial Officer: Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5