

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Missouri Western State University)
4525 Downs Drive)
St. Joseph, Missouri 64507)

CONSENT AGREEMENT AND
FINAL ORDER

EPA ID No. MOR 000014803)

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).)

Docket No. RCRA-07-2006-0267

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 29, 2006, 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 the Missouri Western State University ("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.), Parts 262 and 265.

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 the Final Order shall not be modified except by a subsequent written agreement

between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and 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. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
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 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 \$123,240 as set forth in paragraph 11 of the Final Order and Respondent shall complete the Compliance Actions set forth in paragraph 15 of the Final Order. Furthermore, Respondent shall perform the Supplemental Environmental Project ("SEP") set forth in paragraphs 20 through 25 of the Final Order. The projected total cost of the SEP is approximately \$15,000.
8. 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.
9. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in paragraph 16 of the Final Order provides Respondent with written notice, in accordance with paragraph 39 of the Final Order, that all requirements hereunder have been satisfied.
10. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the 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 the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

11. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$123,240. This penalty shall be paid according to the following schedule:

- a. A payment of \$15,746 shall be due within thirty (30) days following the effective date of this Consent Agreement and Final Order.
- b. Payments of \$15,746 each shall be due on each of the following dates:
 - March 1, 2007;
 - June 1, 2007;
 - September 4, 2007;
 - November 30, 2007;
 - March 4, 2008;
 - June 3, 2008;
 - September 2, 2008.

Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2006 through December 31, 2006) on the unpaid balance until such civil penalty and accrued interest are both paid in full. As provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) will be assessed on any amount not paid within ninety (90) days of the due date.

12. 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
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2006-0267, on the check. A copy of the check shall also be mailed to:

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

13. 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 five percent (5%) per annum.

14. 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. Compliance Actions

15. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

- a. Within sixty (60) days of the effective date of the Final Order, Respondent shall submit a list of all solid waste streams managed at the facility to EPA. In addition, for each such solid waste stream generated at the facility, Respondent shall submit documentation to EPA, demonstrating that an accurate hazardous waste determination has been performed, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation will include, but is not limited to, the following information:
 - i. a description of the waste stream, which includes a detailed description of the process or processes that generated the waste;
 - ii. a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
 - iii. a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
 - iv. a determination of whether or not the waste is identified in 40 C.F.R. Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination

must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and reasoning regarding the basis for this determination.

- b. Within sixty (60) days of the effective date of the Final Order, Respondent shall demonstrate to EPA, in writing, that all hazardous wastes on site have not been stored for more than the maximum time allowed by 40 C.F.R. § 262.34 (as appropriate to Respondent's current generator status).
- c. Beginning on the effective date of the Final Order, and continuing for a period of one year on a semi-annual basis, Respondent shall provide EPA with copies of all manifests for the off-site disposal of all hazardous wastes generated during this time-frame.

16. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Edwin G. Buckner, PE
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

17. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Tim Kissock
Missouri Western State University
4525 Downs Drive
St. Joseph, Missouri 64507.

18. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the Parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submission, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification/approval.

C. Supplemental Environmental Project

19. In response to the violations of RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by RCRA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in paragraphs 20-25.

20. Respondent agrees to conduct an audit and clean-out of the science laboratories and other rooms (such as, but not limited to, classrooms, vocational/technical shops, storage areas, closets, art studios, photographic darkrooms, etc.) located at public high schools and/or middle schools located in the St. Joseph, Missouri school district. Furthermore, Respondent (or its designated contractor or representative) agrees to pack and label all hazardous wastes found in these schools, and arrange for transportation of these hazardous wastes by a qualified hazardous waste transporter to a permitted hazardous waste treatment, storage or disposal facility. As part of this SEP, Respondent agrees to do no more than one audit and clean-out per school.

21. Respondent agrees to conduct seminars for science teachers, students and facility managers for the same public high schools and/or middle schools located in the St. Joseph, Missouri school district referenced in paragraph 20. These seminars will offer instruction on RCRA regulations and proper hazardous waste and chemical management, as well as techniques for reducing the amount of hazardous waste generated in the science laboratories and other rooms in the future. A safety DVD and checklist (or outline) of the presentation will be handed out as part of the seminars. Following the seminars, Respondent agrees to meet with each of the schools on a quarterly basis to provide assistance as needed with hazardous waste minimization and management and with each respective school's RCRA compliance.

22. Respondent shall expend a minimum of \$15,000 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order.

23. Prior to implementation of the SEP, Respondent shall submit a SEP Implementation Plan to EPA for approval. This Plan shall include a detailed description of how Respondent will fulfill the requirements of paragraphs 20-22 and a schedule for the performance of those requirements. This Plan shall be submitted to EPA no later than December 31, 2006. Upon receipt of the Plan, EPA will approve, disapprove, and/or provide comments in accordance with paragraph 18 above. Immediately upon EPA approval of the SEP Implementation Plan, Respondent shall implement the Plan in accordance with the schedule contained therein.

24. Respondent shall begin implementation of the SEP on or before January 1, 2007 and complete the SEP no later than January 1, 2008. Respondent shall submit quarterly status reports to EPA (on or before April 30, 2007; July 31, 2007; and October 31, 2007). Such reports shall provide the status of the project, along with any encountered problems and/or expected delays.

25. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a Final SEP Report. This report shall provide a detailed description of the SEP as implemented and estimate the measurable reduction in pollutants generated and/or reduction in pollutants released to the environment as a result of the SEP. The report shall also document all approvable costs incurred during the implementation of the SEP.

26. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

27. 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 shall 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.

28. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times, to monitor Respondent's implementation of the SEP and performance of required compliance actions. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

D. Stipulated Penalties

29. In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 20 through 25 above, then pursuant to the EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$15,000. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$2,000.

30. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

31. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of paragraph 12 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 13 of the Final Order.

E. Parties Bound

32. This Final Order shall apply to and be binding upon EPA 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.

F. Reservation of Rights

33. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's September 29, 2006 Complaint, Docket No. RCRA-07-2006-0267. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

34. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the 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 not to exceed thirty-two thousand five hundred dollars (\$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.

35. 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 Consent Agreement and Final Order.


36. Except as expressly provided herein, including the provisions of Section E of this Consent Agreement and Final Order, 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.

37. 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.

38. 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.

39. 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 to EPA's satisfaction.

For the Respondent:

By: 
Printed Name: Ronald J. Olinger
Title: Vice President
Financial Planning + Administration
MWSU.

11/10/06
Date

For the Complainant:
The United States Environmental Protection Agency

Alex Chen

Alex Chen
Assistant Regional Counsel

November 14, 2006

Date

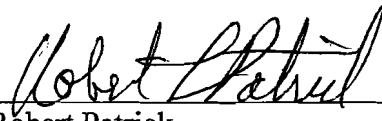
Jan K. Auerbach for Don Toensing

Donald Toensing, Chief
RCRA Enforcement and State Programs Branch
Air, RCRA and Toxics Division

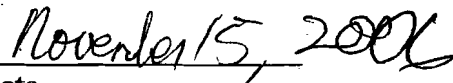
11/14/06

Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick
Regional Judicial Office



Date

IN THE MATTER OF Missouri Western State University, Respondent
Docket No. RCRA-07-2006-0267

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:

Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ronald J. Olinger, Vice President
Missouri Western State University
4525 Downs Drive
St Joseph, Missouri 64507-2294

11/15/06
Dated


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7