

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:	)	Docket Number: RCRA-04-2008-4012(b)	
)		
Northern Kentucky University	)	Proceeding under Section 3008(a)	RECEIVED EPA REGION IV
70 Campbell Drive	)	of the Resource Conservation and	
Highland Heights, Kentucky 41099	)	Recovery Act, 42 U.S.C. § 6928(a)	
	)		2008 AUG 28 PM 3:41
EPA ID No.: KYD 136 936 366)		
Respondent.)		
_____)		

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270; and Title 401 Kentucky Administrative Regulations (KAR) Chapters 30 – 40.

2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 CFR 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 CFR §§ 22.13(b) and 22.18(b)(2).

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), Complainant and Respondent 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 & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is Northern Kentucky University (NKU), an agency of the Commonwealth of Kentucky, located at 70 Campbell Drive, Highland Heights, Kentucky.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 24, 1984, the Commonwealth of Kentucky received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. On June 25, 1996, the Commonwealth of Kentucky received final authorization for the Hazardous and Solid Waste Amendments (HSWA) portion of RCRA. The Kentucky Department for Environmental Protection (KYDEP) is charged with the statutory duty of enforcing the law of the Commonwealth of Kentucky relating to hazardous waste management under Title 401 of the Kentucky Administrative Regulations (KAR). Therefore, for the purpose of this Order, a citation hereinafter to the requirements of 40 C.F.R. Parts 124, 270, and 260 – 268 shall constitute a citation to the equivalent requirements of KAR.

7. Although EPA has granted the Commonwealth of Kentucky authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA

exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the Commonwealth of Kentucky.

8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the Commonwealth of Kentucky before issuance of this CA/FO.

9. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. Pursuant to that provision, EPA promulgated 40 CFR parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The regulations became effective on May 19, 1980.

10. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), and Title 401 KAR Chapters 30-40, sets forth standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262.

11. Pursuant to 40 C.F.R. § 261.2, adopted by reference at 401 KAR 31:010 Section 2, a “solid waste” is any discarded material that is not otherwise excluded by regulation.

12. Pursuant to 40 C.F.R. § 261.3, adopted by reference at 401 KAR 31:010 Section 3, a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and it meets any of the criteria set out in this section.

13. Pursuant to 40 C.F.R. § 260.10 and 401 KAR 30:005 Section 1, a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. § 261.3.

14. Pursuant to 40 C.F.R. § 265.173(a), as incorporated by 40 C.F.R. § 262.34(a)(1)(i), adopted by reference at 401 KAR 35:180 Section 4, containers of accumulated hazardous waste must be closed except when it is necessary to add or remove waste.

IV. EPA ALLEGATIONS AND DETERMINATIONS

15. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 CFR § 260.10, and 401 KAR 30:005.

16. Respondent is the “operator” of a generator facility, located at 70 Campbell Drive, Highland Heights, Kentucky (the “Facility”), as those terms are defined in 40 CFR § 260.10, adopted by reference at 401 KAR 32:005 Section 1.

17. Respondent began its operation at its current location in 1968 and was assigned the site specific EPA ID number KYD 136 936 366 by KYDEP.

18. Facility maintenance and the operation of the science labs generate characteristic and listed hazardous wastes.

19. On November 27, 2007, EPA and KYDEP conducted a RCRA Compliance Evaluation Inspection (CEI) of Respondent’s facility, accompanied by Gary Easton, Associate Director, and Kelly Dawn, Carpenter.

20. Pursuant to 40 C.F.R. § 265.173(a), as incorporated by 40 C.F.R. § 262.34(a)(1)(i), adopted by reference at 401 KAR 35:180 Section 4, containers of accumulated hazardous waste must be closed except when it is necessary to add or remove waste. During the CEI, Respondent had unclosed containers of hazardous waste located in the Paint Shop Maintenance Building and Rooms 367 and 466 of the Natural Science Center.

21. Pursuant to 40 C.F.R. § 262.34(b), adopted by reference at 401 KAR 32:030 Section 5, 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 40 C.F.R. 264 and 265 and the permit requirements of 40 C.F.R. part 270 unless he has been granted an extension to the 90-day period. During the CEI, it was determined that the Respondent had approximately 33 containers of

hazardous waste located inside the less-than-90-day storage area that had exceeded storage for 90 days.

22. Pursuant to 40 C.F.R. § 262.11, adopted by reference at 401 KAR 32:010 Section 2, a person who generates a solid waste must determine if that waste is hazardous using the methods described in 40 C.F.R. § 262.11. Prior to the CEI, the Respondent had not performed waste determinations on the waste solvent generated nor the waste solvent/used oil mixture located in the Motor Pool.

23. Pursuant to 40 C.F.R. § 262.34 (a)(2), adopted by reference at 401 KAR 32:030 Section 5, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container. During the CEI, the Respondent had three containers of hazardous waste stored in the less-than-90-day storage area without accumulation start dates marked on the container.

24. Pursuant to 40 C.F.R. § 262.34(c)(1)(ii), adopted by reference at 401 KAR 32:030 Section 5, generators of hazardous waste may accumulate as much as 55-gallons of hazardous waste in containers at or near the point of generation provided the containers are marked with the words, "Hazardous Waste," or with other words that describe the contents of the container. During the CEI, the Respondent had containers of hazardous waste located in the Print Shop, Rooms 365, 461 and 466 of the Natural Science Center that were not properly marked.

25. Pursuant to 40 C.F.R. § 273.14(e), adopted by reference at 401 KAR 43:020 Section 5, a small quantity handler of universal waste must mark or label each lamp, or package in which such lamps are contained, clearly with the words "Universal Waste-Lamps," "Waste Lamps," or "Used Lamps." During the CEI, Respondent had approximately 26 unmarked boxes of universal waste lamps.

26. Pursuant to 40 C.F.R. § 273.13(d)(1), adopted by reference at 401 KAR 43:020 Section 4, a small quantity handler of universal waste must contain any universal waste lamp in containers or packages that are structurally adequate and remain closed. During the CEI, the Respondent had approximately 26 unclosed boxes of universal waste lamps.

27. Pursuant to 40 C.F.R. § 273.14(a), adopted by reference at 401 KAR 43:020 Section 5, a small quantity handler of universal waste must label or mark clearly universal batteries with any one the following phrases: “Universal Waste-Battery(ies), or “Waste Battery(ies)” or “Used Battery(ies).” During the CEI, the Respondent had two universal waste batteries that were unmarked.

28. Pursuant to 40 C.F.R. § 279.22 (c)(1), adopted by reference at 401 KAR 44:020 Section 3, containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” During the CEI, the Respondent had two unmarked containers of used oil and an unmarked secondary containment pit storing used oil.

29. Pursuant to 40 C.F.R. § 265.174, adopted by reference at 401 KAR 35:180 Section 5, the owner/operator must inspect areas where containers are stored, at least weekly, looking for leaks and deterioration caused by corrosion or other factors. During the CEI, it was determined that the Respondent has failed to perform regular weekly inspections in the less-than-90-day storage area.

30. Pursuant to 40 C.F.R. § 262.42, adopted by reference at 401 KAR 32:040 Section 4, the facility must file an Exception Report with the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the designated facility within 45 days of the date the waste was accepted by the initial transporter. During the CEI, it was determined that the Respondent had

exception report for manifest # 000618064, dated 12/6/06, after the Respondent had not received the final signed copy of the manifest from the Hazardous Waste Treatment, Storage, and Disposal Facility.

31. Pursuant to 40 C.F.R. § 265.16(d)(1), as incorporated by 40 C.F.R. § 262.34(a)(4), adopted by reference at 401 KAR 35:020 Section 7, the owner/operator must maintain documentation of the job title of each hazardous waste management position and the employees name filling the position. During the CEI, the Respondent failed to provide corresponding job titles for each of the employees with hazardous waste management positions.

V. TERMS OF AGREEMENT

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

32. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above.

33. Respondent neither admits nor denies the factual allegations or legal conclusions set forth above.

34. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

35. 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.

36. Respondent waives any right it may have pursuant to 40 CFR § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or

communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.

37. 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.

38. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.

39. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

PAYMENT OF CIVIL PENALTY

40. Respondent consents and agrees to the payment of a civil penalty in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000), payable within thirty (30) calendar days after the effective date of this CA/FO.

41. Respondent shall make payment of the penalty by cashier's check or certified check, made payable to: **Treasurer, United States of America**. Respondent shall reference the facility name and the docket number for this matter on the face of the check, and shall be tendered, if by U.S. Postal Service, to:

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

or if by commercial express delivery service to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency "

If Respondent chooses the On Line Payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North Enforcement & Compliance Section
RCRA/OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

28. If Respondent fails to remit the civil penalty as agreed to herein, 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 CFR § 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).

29. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

VII. RESERVATION OF RIGHTS

30. 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 any other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondents' facility may present an imminent and substantial endangerment to human health or the environment.

31. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in this CA/FO.

32. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.

33. 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.

34. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

VIII. PARTIES BOUND

35. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

36. 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.

37. 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.

IX. SEVERABILITY

38. 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.

X. OTHER APPLICABLE LAWS

39. 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. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XI. SERVICE OF DOCUMENTS

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

Cathy Winokur
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9569

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

Sara Sidebottom
General Counsel
Northern Kentucky University
70 Campbell Drive
Highland Heights, Kentucky
859-572-5588

XII. TERMINATION AND SATISFACTION

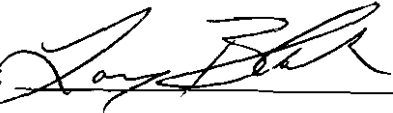
41. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully satisfied the requirements of this CA/FO.

XIII. EFFECTIVE DATE

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

AGREED AND CONSENTED TO:

Northern Kentucky University

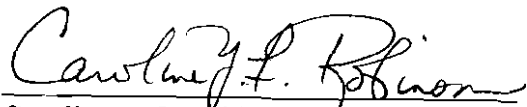
By: 

Dated: 8/12/08

(print name) Larry Blake

Its: AVP for Facilities

U.S. Environmental Protection Agency

By: 

Dated: 8/19/08

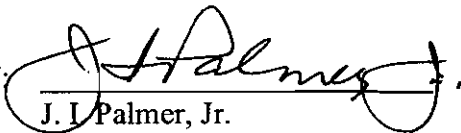
Caroline Y.F. Robinson, Chief
RCRA/OPA Enforcement and Compliance Branch
RCRA Division

IN THE MATTER OF:	)	DOCKET NUMBER: RCRA-04-2008-4012(O)
)	
Northern Kentucky University	)	Proceeding under Section 3008(a)
70 Campbell Drive	)	of the Resource Conservation and
Highland Heights, Kentucky	)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: KYD 136 936 366)	
Respondent.)	
_____)	

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 CFR Part 22. 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 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 26th day of August, 2008.

BY: 
 J. I. Palmer, Jr.
 Regional Administrator
 EPA Region 4

In the Matter of Northern Kentucky University
Docket Number: RCRA-04-2008-4012(b)

CERTIFICATE OF SERVICE

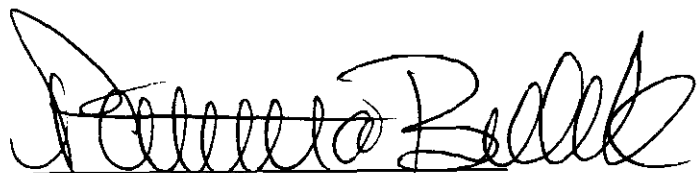
I hereby certify that on AUG 29 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Northern Kentucky University, Docket Number: RCRA-04-2008-4012(b), and that on AUG 29 2008 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

(Via EPA's internal mail)

Cathy Winokur
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9569

(Via Certified Mail- Return Receipt Requested)

Sara Sidebottom
General Counsel
Northern Kentucky University
70 Campbell Drive
Highland Heights, Kentucky
859-572-5588



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511