

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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REGIONAL HEARING  
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PROTECTION AGENCY-REG. II

In The Matter of:  City University of New York (Queens College) Respondent,  Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	<b>CONSENT AGREEMENT AND FINAL ORDER</b>  Docket No.: <b>RCRA-02-2011-7109</b>
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**PRELIMINARY STATEMENT**

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is City University of New York (hereinafter "CUNY" or "Respondent"). CUNY is an urban public university comprised of numerous colleges and institutions, including Queens College, at various locations throughout New York City.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 74 Fed. Reg. 31380 (July 1, 2009). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005. EPA can enforce regulations comprising the authorized State Program.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 29, 2011. The Complaint alleged that Respondent failed to comply with RCRA and federally authorized New York hazardous waste regulations at its Queens College campus. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

### **EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Respondent**

1. Respondent is the City University of New York ("CUNY").
2. CUNY is an urban public university serving more than 480,000 students at 23 colleges and institutions in New York City including Queens College.
3. Queens College was founded in 1937. The Queens College campus is located in Flushing, New York. Students at Queens College may obtain Bachelor's and/or Master's degrees in the arts and humanities, education, mathematics, natural sciences and social sciences.
4. The Queens College Department of Chemistry and Biochemistry is housed primarily in Remsen Hall, a four-story laboratory and classroom building and also occupies several research laboratories and offices in the adjacent Science Building.
5. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. The Queens College campus constitutes an "existing facility" (hereafter referred to as "facility") as that term is defined in 6 NYCRR § 370.2(b).
7. Respondent is and has been the "owner" of the facility as that term is defined in 6 NYCRR § 370.2(b).
8. Respondent is and has been the "operator" of the facility as that term is defined in 6 NYCRR § 370.2(b).

#### **Respondent's Regulatory Status**

9. In or about November 1991, Queens College duly notified EPA of its hazardous waste activities. This notification was made pursuant to Section 3010 of RCRA. In response to the notification, EPA issued Queens College EPA Identification Number NYD089726889.
10. Respondent is and has been a "generator" of "hazardous waste" as those terms are defined in NYCRR § 370.2(b) and 6 NYCRR § 371.1(d), respectively. The requirements for generators are set forth in 6 NYCRR Part 372.
11. Respondent stores hazardous waste at its facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. At a minimum, hazardous waste

is and has been stored in the facility's hazardous waste container storage area and in numerous accumulation areas located in Remsen Hall and the Science Building.

12. Respondent's facility is and has been a "storage" facility as that term is defined in 6 NYCRR § 370.2(b).

#### **Failure to Make Hazardous Waste Determinations**

13. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates "solid waste" must determine whether the solid waste is a hazardous waste using the procedures set forth therein.

14. Pursuant to 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" which is any material that is "abandoned," "recycled" or "inherently waste-like," as those terms are further defined.

15. Pursuant to 6 NYCRR § 371.1(c)(3), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

16. On or prior to EPA's Inspection, Respondent generated and abandoned the following waste materials at its facility:

- a. Orphaned and/or expired chemicals in numerous rooms located in Remsen Hall and the Science Building, including in Remsen Hall Rooms 15, 17, 24A, and 24B and Science Building Room B112.
- b. Broken fluorescent light bulbs left in the corridor outside of Room 17 of Remsen Hall.

17. On or about February 8 and 9, 2010, Respondent manifested over six thousand and nine hundred (6,900) pounds of hazardous waste off-site for disposal. Some of this waste was generated in the Rooms referenced in Paragraph 16 above.

18. Respondent "abandoned" each of the materials identified in Paragraph 16 by storing or accumulating them before or in lieu of being disposed.

19. Each of the materials identified in Paragraph 16 above was a "discarded material" and "solid waste," as defined in 6 NYCRR § 371.1(c).

20. Prior to at least February 1, 2010, Respondent had not determined whether materials referenced in Paragraph 16 above constituted a hazardous waste.

21. Respondent's failure to determine whether each solid waste generated at its facility constituted a hazardous waste is a violation of 6 NYCRR § 372.2(a)(2).

### Failure To Minimize Releases

22. Pursuant to 6 NYCRR § 373-3.1(a)(2) facilities, such as Queens College, that are in existence on or before November 19, 1980 are subject to the regulatory standards set forth in 6 NYCRR Subpart 373-3.

23. Six NYCRR § 373-3.3(b) requires, in part, that a facility "must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment."

24. As of early February 2010, Respondent failed to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents through numerous actions or inactions including but not necessarily limited to the following situations:

- a. Storing chemicals and hazardous waste next to each other in locations including but not limited to Remsen Hall Room 25 (acetic and nitric acids; hydrofluoric acid and sodium cyanide; propylene oxide and ammonium hydroxide; and bromine and nitrobenzene), Remsen Hall Room 154 (acetic acid and nitric acid) Remsen Hall Room 24B (acetic acid and acetic anhydride next to hydrogen peroxide) and Remsen Hall Room 15 (nitric acid, hydrochloric acid, potassium permanganate and potassium dichromate).
- b. Storing chemicals on the floor or above existing cabinetry thereby potentially increasing the risk of releases of hazardous waste or hazardous constituents from inadvertent spills or accidents. This occurred in various locations including Science Building Room E 111 and Remsen Hall Building Rooms 17 and 24B.
- c. Packing chemicals on open shelving in Remsen Hall Building 256 such that many of the containers were hanging over the edge of shelves potentially increasing the likelihood that a container would fall off a shelf and potentially release hazardous waste or hazardous waste constituents.
- d. Creating a potentially explosive site condition by leaving an unsecured gas cylinder near chemicals and a hazardous waste satellite accumulation area in Remsen Hall Room 19.
- e. Using a hazardous waste container storage area to temporarily store unidentified chemicals during building renovations without determining whether these chemicals were incompatible with the hazardous waste being stored in that area.
- f. Failing to discard a bottle of ethyl ether opened on November 22, 2008, which was located in Remsen Hall Room 255 or to conduct tests to determine whether peroxide was present. As indicated in Respondent's 1999 Chemical Hygiene Plan, ethers can form explosive peroxide crystals after exposure to air and bottles of ether

should be discarded or tested every six months after a container is opened. Failure to properly handle open containers of ethers could result in an explosion.

g. A release of a potassium fluoride from a chemical container was found in Remsen Hall Room D 223. Potassium fluoride is a hygroscopic material which absorbs moisture. The contaminated moisture accumulated in the plastic tray used to hold various chemicals including the potassium fluoride. Potassium fluoride can be toxic if inhaled or ingested. It is also corrosive and can cause burns.

25. Each action or inaction set forth in the Paragraph above constitutes a failure by Respondent to maintain or operate its facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, and each action or inaction constitutes a violation of 6 NYCRR § 373-3.3(b).

#### **Storage of Hazardous Waste Without a Permit**

26. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925, and 6 NYCRR § 373-1.2, a RCRA permit or interim status is required for the storage of hazardous waste.

27. Respondent's facility does not have interim status or a permit authorizing the storage of hazardous waste at its facility.

28. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a generator may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided all applicable requirements referenced therein, including but not limited to the requirements set forth in 6 NYCRR § 373-1.1(d)(1)(iii), are complied with.

29. Pursuant to 6 NYCRR § 372.2(a)(8)(iii), a small quantity generator ("SQG") may accumulate up to 6,000 kilograms of (non-acute) hazardous waste on-site for 180 days or less without having a permit or interim status provided it complies with all applicable conditions identified therein, including but not limited to the labeling requirements set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii)(c)(2)-(3); the container requirements set forth in 6 NYCRR § 373-3.9 and the preparedness and prevention requirements set forth in 6 NYCRR 373-3.3.

30. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii), storage areas that are exempt must comply with, among other things, the container requirements set forth in 373-3.9; the preparedness and prevention requirement set forth in 6 NYCRR 373-3.3 and the contingency plans and emergency procedures set forth in 6 NYCRR § 373-3.4. Additionally, pursuant to 6 NYCRR §§ 373-1.1(d)(1)(iii)(c)(2)-(3), accumulation dates must be clearly marked on containers and each container must be labeled as containing "hazardous waste."

31. Respondent failed to maintain and operate its facility in a manner to minimize threats to human health and the environment as required by 6 NYCRR § 373-3.3(b).

32. Six NYCRR § 373-3.3(d) requires that a facility communications or alarm systems, fire protection equipment, and spill control equipment be tested and maintained as necessary to assure their proper operation in time of emergency.
33. As of at least February 1, 2010, a number of laboratories were equipped with portable fire extinguishers that did not have inspection tags and the facility did not have other records indicating that the extinguishers were tested or inspected.
34. Six NYCRR § 373-3.4(c)(3) requires that a facility's contingency plan must contain a description of arrangements agreed to by the local police departments, fire departments, hospitals, contractors and State and local emergency teams.
35. As of at least February 1, 2010, Respondent's contingency plan did not contain a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency response teams to coordinate emergency services.
36. Six NYCRR § 373-3.4(c)(5) requires that a facility's contingency plan contain an up-to-date list of all emergency equipment at the facility (such as fire extinguishers, spill control equipment and communication and alarm systems) where this equipment is required. The plan must include the location of such equipment and a brief description of their capabilities.
37. As of at least February 1, 2010, Respondent's contingency plan did not contain an up-to-date list of all emergency equipment at the facility and the location of such equipment and their capabilities.
38. As of at least February 1, 2010, Respondent failed to satisfy all the conditions referenced in 6 NYCRR § 372.2(a)(8)(ii), including applicable conditions referenced above, which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 90 days.
39. As of at least February 1, 2010, Respondent failed to satisfy all the conditions referenced in 6 NYCRR § 372.2(a)(8)(iii) including applicable conditions referenced above which, if complied with, would have allowed Respondent to store limited amounts of hazardous waste (up to 6000 kilograms) without interim status or a permit for up to 180 days.
40. Respondent's storage of hazardous waste at its facility prior without interim status or a permit is a violation of Section 3005 of the Act, 42 U.S.C. § 6925.

### **CONSENT AGREEMENT**

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Commencing upon the effective date of this Consent Agreement and Final Order (CA/FO) and continuing thereafter, Respondent shall:
  - a. make hazardous waste determinations for each solid waste generated at its facility pursuant to 6 NYCRR § 372.2(a)(2),
  - b. maintain and operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 6 NYCRR § 373-3.3(b).
  - c. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including:
    - i. the provisions for small quantity generators set forth or referenced in 6 NYCRR § 372.2(a)(8)(iii) during each calendar month in which the Respondent generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste, provided Respondent neither accumulates hazardous waste in quantities exceeding more than 6000 kilograms nor accumulates hazardous waste for more than 180 days (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or
    - ii. the provisions for generators set forth or referenced in 6 NYCRR § 372.2(a)(8)(ii) provided hazardous waste is accumulated on site for 90 days or less;
  - d. as an alternative to compliance with the generator provisions identified in Paragraph 1.c.i. – ii. of this Consent Agreement, obtain and comply with a hazardous waste storage permit from the New York State Department of Environmental Conservation. However, Respondent must comply with the appropriate requirements cited in Paragraph 1.c. above until such permit is obtained.

Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing its present compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Mr. Abdool Jabar  
Environmental Engineer  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, NY 10007-1866

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.

3. Respondent shall pay a civil penalty to EPA in the total amount of fourteen thousand and two hundred and fifty dollars (\$14,250). Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Each check shall be identified with a notation thereon: **In the Matter of City University of New York** and shall bear thereon the Docket Number: **RCRA-02-2011-7109**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **City University of New York**
- 7) Case Number: **RCRA-02-2011-7109**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester  
Assistant Regional Counsel  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866



and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

Payment must be received on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the "Due Date."

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.
- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

4. Respondent agrees to, and shall accordance with the terms and conditions of this CA/FO, implement and perform a Supplemental Environmental Project ("SEP") that consists of the acquisition, operation, and maintenance of a Solvent Recovery System Unit ("SRS Unit") at its Queens College Campus. To implement this SEP, Respondent shall have a net expenditure of at least SIXTY ONE THOUSAND AND SEVENTY DOLLARS (\$61,070.00) over at least a three year period, which shall include an initial minimum expenditure of TWENTY NINE THOUSAND DOLLARS (\$29,000.00) in capital costs. (This net expenditure shall exclude any economic savings enjoyed by the Respondent attributable to its use of the SRS unit.)

5. Respondent shall purchase, install and initiate the recovery of certain solvents in the SRS Unit at its Queens College Campus within 90 days of the effective date of this CA/FO. The SRS Unit at a minimum must be designed, installed, operated and maintained to comply with the following requirements:

- a. The SRS Unit shall consist of an eight-gallon (or larger) air cooled recovery still which shall be capable of recycling through distillation solvent wastes from research and teaching laboratories. At a minimum, the solvents to be recycled in the SRS Unit shall include: acetone; ethanol; ethyl acetate; and hexane.
- b. The SRS Unit shall be equipped with a programmable microprocessor that will contain instructions to recover each of the waste streams (used solvents) to be recovered.
- c. A qualified lab technician shall oversee operation of the SRS Unit and complete all critical tasks, such as pumping appropriate volumes of solvent in the still pot, monitoring the still for safety and emptying the distillate receiver.
- d. The SRS Unit shall be placed in Remsen Hall, Room 019. Remsen Hall, Room 019 shall be equipped with adequate electrical power, a shower and eye wash station, spill containment system, a grounding system and adequate ventilation via a fan unit, and all appropriate Fire Department of New York laboratory permits shall be maintained.
- e. Spent solvents shall be transported from points of generation to the SRS Unit in labeled and closed containers placed in a utility cart with a secondary containment system.
- f. Any hazardous wastes generated in the distillation process shall be managed and disposed of pursuant to all applicable federal and/or state hazardous waste laws and regulations.

6. Fifteen months from the effective date of this CA/FO, Respondent shall submit a SEP Operational Report to EPA for approval, to the addressee set forth in Paragraph 1 of this section, which shall:

- a. Review and detail all actions taken to implement solvent recovery at the Queens College Campus with the SRS Unit;
- b. Review and detail the effectiveness of the SRS Unit in recovering solvents, including the types and amounts of solvents being recovered; to what extent and how these recovered solvents are being reused by CUNY; avoided costs in solvent purchase and hazardous waste disposal; any problems in the implementation of this SEP and how those problems were resolved; and how well the SRS Unit achieves the objectives for which it has been obtained;
- c. Summarize all periods when the SRS Unit is not in use, the reasons for such disuse (e.g., mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s);

- d. Provide documentation attesting to the (gross and net) itemized costs and expenditures Respondent has incurred in its implementation of the SEP to date; and
  - e. Include an acquisition cost report certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least \$29,000 was spent by the Respondent in the purchase of the SRS Unit and related capital costs (such as those detailed in Paragraph 4).
7. Twenty-seven (27) months from the effective date of this CA/FO, Respondent shall submit a second SEP Operational Report to EPA for approval which shall provide all of the information required in Paragraph 6a-d covering the twelve months since the filing of the first SES Operational Report. This Report shall be submitted to the addressee set forth in Paragraph 1 of this section above.
8. Following its receipt of each of the SEP Operational Reports described above, EPA will either (a) accept the SEP Operational Report or (b) reject the SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Operational Report.
9. Thirty-nine (39) months after the effective date of this CA/FO, Respondent shall submit Final SEP Operational Report, to the addressee set forth in Paragraph 1 of this section above, which shall include all of the information set forth in Paragraph 6a-d above covering the twelve months since the filing of the second SES Operational Report. Additionally, the Final SEP Operational Report shall include:
- a. A certification under penalty of perjury by a responsible corporate official that the net sum of at least \$61,070.00 was spent implementing this SEP over a three year period, and that the SEP was performed in accordance with the terms of this CA/FO. Documentation should be submitted verifying the net costs incurred in implementation of the SEP unless Respondent has submitted the documentation in prior SEP Operational Reports.
  - b. An overall assessment of the value of the SRS unit, including the amount of solvent purchase and hazardous waste disposal avoided over the three year period, and whether CUNY expects to continue using the SRS unit at Queens College and/or to expand the solvent recovery system at Queens College and/or at other CUNY locations.
10. Following receipt of the Final SEP Operational Report described in the paragraph above, EPA will either (i) accept the Final SEP Operational Report and issue a Notice of Accomplishment, or (ii) reject the Final SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Operational Report.

11. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of any of the SEP as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to the SEP as herein required shall be solely determined by EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any of the deficiency(ies). If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

12. Respondent agrees that EPA (including authorized representatives of EPA) may inspect the Facility during reasonable business hours in order to confirm that the SEP is being implemented properly and in conformity with the terms and conditions set forth in this CA/FO, provided, however, this paragraph is not intended or is to be construed to deny, limit or waive any right of EPA pursuant to applicable law, including the provisions of RCRA, to conduct an inspection of the Facility for any purpose prescribed by any applicable law.

13. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of the SEP, and documentation supporting information in the reports required to be submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA (including authorized representatives of EPA) access to such documentation and shall provide copies of such documentation to EPA within twenty (20) days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO, or two years after the completion of the SEP, whichever date is later.

14. The SEP to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, state or local permit.

15. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, State or local law, or other requirement including federal or State rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that Respondent had not instituted before October 2011 any of the work that is part of this SEP.

16. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the aforementioned SEP and that Respondent in good faith believes that the SEP is in accordance with the provisions of EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).

17. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as the SEP, nor has the same activity as the SEP been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

18. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, perform and/or operate any aspect or any portion of any of the aforementioned SEP.

19. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of requirements for the SEP, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing.

20. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions of this CA/FO including the performance, implementation, completion and operation of the SEP as set forth below in this paragraph:

- a. If the SRS Unit SEP is not undertaken, Respondent shall pay a stipulated penalty \$61,070.00;
- b. If EPA determines that the SEPs is satisfactorily completed, and Respondent has spent at least 90 percent of the total amount of money that it was required to expend for the SEP on expenditures that EPA determines are creditable toward the SEP (*i.e.* Respondent has spent \$54,960.00 (90% of \$61,070.00), provided EPA has determined said amount is creditable toward the SEP), Respondent shall not pay stipulated penalty for not having spent the full amount specified herein for the SEP.
- c. If EPA determines that the SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for the SEP on expenditures that EPA determines are creditable toward the SEP, Respondent shall pay a stipulated penalty equal to two hundred (200) percent of the difference between the required amount to be spent (\$61,070.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP.
- d. For any failure to timely submit any SEP Operational Report or any other report required by this CA/FO, Respondent shall pay a stipulated penalty in the amount of \$150.00 for each day any such report is late up to the 30<sup>th</sup> day, and Respondent shall pay a stipulated penalty in

the amount of \$500 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA

21. Unless Respondent provides EPA with a written explanation pursuant to the Paragraph below, all stipulated penalties are due and payable within thirty (30) days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of Paragraph 3 of this section above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in Paragraph 3, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

22. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

23. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. (EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.

24. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

25. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

26. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

27. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

28. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.

29. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the specific civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

30. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

31. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.

32. Each party shall bear its own costs and fees in this matter.

33. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

34. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

35. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

City University of New York  
Queens College

BY:

NAME:

  
James Muyskens

TITLE:

President

DATE:

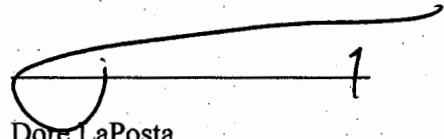
09-24-2012



COMPLAINANT:

United States Environmental Protection  
Agency – Region 2

BY:



NAME:

Dore LaPosta

TITLE:

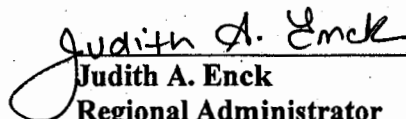
Director, Division of  
Enforcement & Compliance  
Assistance

DATE:

SEPTEMBER 26, 2012

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

  
\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
EPA-Region 2

DATE: 9-26-12

**CERTIFICATE OF SERVICE**

I hereby certify that on the Sept. 28, 2012 I caused a copy of the Consent Agreement and Final Order entered in In the Matter of: City University of New York, Docket No.: RCRA-02-2011-7109 to be sent to the following persons in the manner indicated:

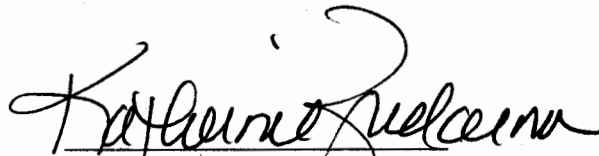
**By United States First Class Mail:**

Jane Sovern  
Deputy General Counsel  
Office of the General Counsel  
City University of New York  
535 East 80<sup>th</sup> Street  
New York, New York 10075

**By Hand Delivery:**

Karen Maples  
Regional Hearing Clerk  
U.S. EPA – Region 2  
290 Broadway, 16th Floor  
New York, New York 10007

Date: Sept 28, 2012

  
Katherine Zuckerman  
Secretary, ORC, Air Branch