

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4004(b)
)	
Florida Department of Law Enforcement)	Proceeding under Section 3008(a) of the
Crime Laboratory Services)	Resource Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
)	
EPA ID Nos.: FLR 000 136 788)	
FLD 984 175 950)	
FLD 982 143 695)	
FLD 982 143 992)	
FLD 982 144 420)	
FLD 984 215 343)	
FLR 000 143 537)	
Respondent.)	

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HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq., and the Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403-701 et seq. (LEXIS 2006). This action is seeking injunctive relief and 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 (C.F.R.), Parts 260 through 270; and Sections 403-701, Florida Statutes, et seq., and regulations promulgated pursuant thereto and set forth at the Florida Administrative Code (F.A.C.), Chapters 62-710 and 62-730.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), 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 and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is the Crime Laboratory Services of the Florida Department of Law Enforcement ("FDLE").

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida (the State) 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. The requirements of the authorized State program are found in Sections 403.702, Florida Statutes, et seq. and F.A.C. Chapter 62-730. For purposes of this Order, citations herein to the requirements of RCRA shall constitute a citation to the equivalent requirements of the Florida Statutes and citations herein to the requirements of 40 C.F.R. Parts 124 and 260 through 270 shall constitute a citation to the equivalent requirements of the Florida Administrative Code.
7. Although EPA has granted the State of Florida 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). This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Florida.
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 State of Florida before issuance of this CA/FO.
9. Respondent is a State of Florida law enforcement agency doing business in the State of Florida.
10. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), sets forth standards applicable to generators of hazardous waste. The implementing regulations for generators of hazardous waste requirements are found in 40 C.F.R. Part 262 (F.A.C. Chapter 62-730.160), and became effective on September 10, 1992, and the Florida regulations became enforceable by EPA on February 12, 1985, when the State received final authorization for 40 C.F.R. Parts 124, 260 through 265 and 270.
11. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), sets forth the requirements for facilities that treat, store, or dispose of hazardous waste, and prohibits the treatment, storage, or disposal of hazardous waste without interim status or a permit issued pursuant to RCRA. The implementing regulations for this requirement are found in 40 C.F.R. Parts 124, 264,

265 and 270. The regulations became effective on November 19, 1980, and the Florida regulations became enforceable by EPA on February 12, 1985, when the State received final authorization for 40 C.F.R. Parts 124, 260 through 265 and 270.

12. Pursuant to 40 C.F.R. § 261.5(a) a facility that generates less than 100 kilograms of hazardous waste per month is considered a “conditionally exempt hazardous waste small quantity generator” (CESQG).
13. Pursuant to 40 C.F.R. § 261.5(g)(1), a CESQG is required to conduct a hazardous waste determination as required in 40 C.F.R. § 262.11.
14. Pursuant to 40 C.F.R. § 261.20 a solid waste that exhibits the characteristic of ignitability in 40 C.F.R. § 261.21 is a characteristic hazardous 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), and 40 C.F.R. § 260.10.
16. Respondent is the “operator” of seven “facilities” located in Florida as those terms are defined in 40 C.F.R. § 260.10. The facilities addresses are:
 - a. 4700 Terminal Drive, Suite 1, Fort Myers, Florida
 - b. 711A N Liberty Street, Jacksonville, Florida
 - c. 500 W Robinson Street, Orlando, Florida
 - d. 160 Government Center # 308, Pensacola, Florida
 - e. 2331 Phillips Road, Tallahassee, Florida
 - f. 1301 N Palafox Street, Pensacola, Florida
 - g. 4211 N Lois Avenue, Tampa, Florida
17. On March 1, 2007, and March 14, 2007, EPA and the Florida Department of Environmental Protection (FDEP) conducted RCRA compliance evaluation inspections at FDLE’s Tallahassee Regional Operations Center located at 2331 Phillips Road, Tallahassee, FL 32308 and the Fort Myers Regional Operations Center located at 4700-1 Terminal Drive, Fort Myers, Florida.
18. During the inspections, EPA and FDEP representatives noted that FDLE failed to conduct a proper hazardous waste determination on the spent gas chromatography-mass spectrometry (GC-MS) auto-sampler vials (spent sampler vials), as required in 40 C.F.R. § 262.11.
19. The spent sampler vials contain alcohols that exhibit the characteristic of ignitability in 40 C.F.R. § 261.21.
20. After the inspections, Respondent informed EPA that all seven laboratories generate spent sampler vials.

21. Respondent failed to determine that the spent sampler vials exhibit the characteristic of ignitability.
22. Pursuant to 40 C.F.R. § 261.5(g)(1), and F.A.C. Chapter 62-730.030, a CESQG is required to conduct a hazardous waste determination as required in 40 C.F.R. § 262.11, and F.A.C. Chapter 62-730.030. By failing to conduct this hazardous waste determination, EPA alleges that Respondent has violated 40 C.F.R. § 261.5(g)(1), and F.A.C. Chapter 62-730.030.

V. TERMS OF AGREEMENT

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

23. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
24. The Respondent neither admits nor denies the factual allegations set out above.
25. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.
26. 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.
27. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
28. 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.
29. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
30. Each party will pay its own costs and attorney's fees.

A. PAYMENT OF CIVIL PENALTY

31. Respondent consents to the payment of a civil penalty in the amount of THREE THOUSAND SIX HUNDRED SEVEN Dollars (\$3,607) within 30 calendar days of the effective date of this CA/FO.

Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. EPA's Employer ID Number is 52-0852695. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box 979077
St. Louis, Missouri 631971-9000

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

and to:

Frank Ney, Acting Chief
South Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

32. 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 thirty (30) calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.

- (c) Non-Payment Penalty. On any portion of a civil penalty more than ninety (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).

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

B. INJUNCTIVE RELIEF

34. Within 30 calendar days of the effective date of this CA/FO, Respondent shall submit to the EPA and the FDEP proof that it is handling the spent sample vials at its seven facilities as hazardous waste.

C. SUBMISSIONS/EPA APPROVAL

35. The information required to be submitted under this CA/FO shall be mailed to:

Frank Ney, Acting Chief
 South Section
 RCRA and OPA Enforcement and Compliance Branch
 RCRA Division
 U.S. EPA - Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

and to:

Timothy J. Bahr, Administrator
 Hazardous Waste Regulation Section
 Florida Department of Environmental Protection
 2600 Blair Stone Road
 Tallahassee, Florida 32399-2400

VI. RESERVATION OF RIGHTS

36. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facilities may present an imminent and substantial endangerment to human health or the environment.
37. If EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any

of the work ordered, EPA may order Respondent to stop further implementation of this CA/FO for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

38. 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.
39. 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 facilities.
40. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. OTHER APPLICABLE LAWS

41. 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.

VIII. PARTIES BOUND

42. 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.
43. 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.
44. 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. SERVICE OF DOCUMENTS

45. 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:

Joan Redleaf Durbin, Associate Regional Counsel
OEA – 13th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9567

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

Michael Ramage, General Counsel
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32302
(850) 410-7676

X. SEVERABILITY

47. 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.



XI. EFFECTIVE DATE

48. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk. A copy of the CA/FO will be served upon Respondent once it is effective.

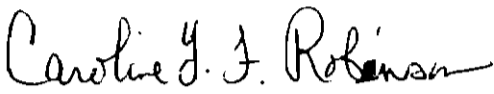
(Signatures on next page)

AGREED AND CONSENTED TO:

Florida Department of Law Enforcement

By:   Dated: 4/8/08
Ken Tucker, Assistant Commissioner

U.S. Environmental Protection Agency

By:  Dated: 4/18/08
Caroline Y.F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

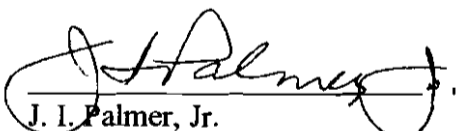
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4004(b)
)	
Florida Department of Law Enforcement)	Proceeding under Section 3008(a) of the
Crime Laboratory Service)	Resource Conservation and Recover Act,
)	42 U.S.C. § 6928(a)
)	
EPA ID Nos.: FLR 000 136 788)	
FLD 984 175 950)	
FLD 982 143 695)	
FLD 982 143 992)	
FLD 982 144 420)	
FLD 984 215 343)	
FLR 000 143 537)	
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 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 23rd day of April, 2008.

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Florida Department of Law Enforcement, Docket Number: RCRA-04-2008-4004(b) on the parties listed below in the manner indicated:

Joan Redleaf Durbin
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Michael Ramage
General Counsel
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32302
(850) 410-7676

(Certified Mail, Return Receipt Requested)

Date 5-13-08



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