

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:)
)
Becton, Dickinson and Company)
Becton Dickinson Diagnostics)
150 South 1st Avenue)
Broken Bow, Nebraska 68822)
)
RCRA I.D. No. NED007263254)
)
and)
)
Becton, Dickinson and Company)
1329 West Highway 6)
Holdrege, Nebraska 68949)
)
RCRA I.D. No. NED047047543)
)
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))
)
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2008-0010

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Becton, Dickinson and Company (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent violated regulations found at Title 128, Chapters 4, 10, 12, 17 and 19 of the Nebraska Administrative Code Regulations (hereinafter “128 Neb. Admin. Code”), and Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 262.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region VII.

4. The Respondent is Becton, Dickinson and Company (Respondent), a domestic corporation formed under the laws of New Jersey and registered to do business in Nebraska.

Statutory and Regulatory Framework

5. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this CAFO.

Factual Background

7. Respondent is a New Jersey corporation authorized to conduct business in the State of Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent is a manufacturer of medical devices and operates manufacturing facilities at 150 South 1st Avenue, Broken Bow, Nebraska 68822 (hereinafter "Broken Bow Facility") and at 1329 West Highway 6, Holdrege, Nebraska 68949 (hereinafter "Holdrege Facility"). Respondent employs approximately 400 employees at its Broken Bow Facility and 640 employees at its Holdrege Facility.

9. On or about February 12, 1996, Respondent notified the Nebraska Department of Environmental Quality that its Broken Bow Facility is a conditionally exempt small quantity generator of hazardous waste. EPA conditionally exempt small quantity generators may generate less than 100 kilograms of hazardous waste per month and can accumulate no more than 1,000 kilograms of hazardous waste at any time.

10. Respondent has been assigned the following EPA ID Number for the Broken Bow Facility: NED007263254.

11. On or about August 16, 2004, Respondent notified the Nebraska Department of Environmental Quality that its Holdrege Facility is a large quantity generator of hazardous waste. EPA large quantity generators may generate 1,000 kilograms per month or more of hazardous waste, or more than 1 kilogram per month of acutely hazardous waste.

12. Respondent has been assigned the following EPA ID Number for the Holdrege Facility: NED047047543.

13. On October 3, 2006, EPA conducted a compliance evaluation inspection at Respondent's Holdrege Facility. Based on information obtained during the October 2006 inspection, Respondent was issued a Notice of Violation.

14. On May 14, 2007, EPA conducted a compliance evaluation inspection at Respondent's Broken Bow Facility. Based on information obtained during the May 2007 inspection, Respondent was issued a Notice of Violation.

Violations

COUNT I

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

15. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

16. Pursuant to 40 C.F.R. § 262.11 and 128 Neb. Admin. Code, ch. 4 § 002, a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, and 128 Neb. Admin. Code, ch. 2 § 003, is required to determine if the solid waste is a hazardous waste.

17. At the time of the October 2006 inspection, Respondent had been generating the following solid wastes at the Holdrege Facility that required hazardous waste determinations:

- a. Assorted aerosol cans (D001, D018, D019, D035, D039, D040)
- b. 1 one-pint container labeled as methyl ethyl ketone (D001, D035, U159)
- c. 3 four-liter containers labeled as chloroform (D022, U044)
- d. 2 four-liter containers labeled as methylene chloride (U080)
- e. 1 one-quart container labeled as trial adhesive (D001)
- f. 2 one-quart containers labeled as acetone (D001, U002)
- g. 3 one-quart containers of D001 waste
- h. 1 one-gallon container labeled as furane
- i. 1 one-gallon container of acetone, 1/2 full (D001, U002)
- j. 1 one-gallon container labeled as "Toluene Waste Only", containing approximately one pint (D001, U220)

18. The containers listed in Paragraph 17, Subparagraphs a through g, i and j, were hazardous waste.

19. At the time of the May 2007 inspection, Respondent had been generating the following solid wastes at the Broken Bow Facility that required hazardous waste determinations:

- a. Two one-pint containers labeled as UV ink
- b. One 16-ounce container labeled as primer (F002)
- c. Two one-pound containers labeled as graphite
- d. 1 one-pound container labeled as lead paste (D008)
- e. 1 one-quart container labeled as primer (D001, U239)
- f. 5 one-quart containers labeled as acid test (D001, U220, U239)
- g. 2 16-ounce containers labeled as nickel safe (D002)
- h. 1 100-milliliter container labeled as RTK retrofit (D001)
- i. 1 100-milliliter container labeled as neutralize solution, 1/2 full (D001)
- j. 1 one-gallon container labeled as plastic dip (D001, D035, U220)
- k. 1 one-gallon container labeled as enamel paint (D001)
- l. 1 one-gallon container labeled as roof path (D001)
- m. 1 twelve-ounce container labeled as gas line antifreeze, 3/4 full (D001)
- n. 1 32-ounce container labeled as contact cement (D001)
- o. 1 16-ounce container labeled as rust treatment, 3/4 full (D002)
- p. 1 12-ounce container labeled as silicone fluid, 1/4 full

20. The containers listed in Paragraph 19, Subparagraphs b and d through o, were hazardous waste.

21. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. §262.11 and 128 Neb. Admin. Code, ch. 4 § 002.

COUNT II
OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT
A RCRA PERMIT OR INTERIM STATUS

22. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

23. Respondent's Holdrege Facility, as a large quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for 90 days without a permit or without having interim status, provided that certain conditions are met. Those conditions are set forth in 40 C.F.R. §§ 262.34(a) and (c) as incorporated in 128 Neb. Admin. Code, ch. 10 § 004.01.

24. At the time of the October 2006 inspection, Respondent was not complying with the following regulatory requirements at the Holdrege Facility:

Failure to Close Satellite Accumulation Container

25. The regulations at 40 C.F.R. § 262.34(c)(1)(i) and 128 Neb. Admin. Code, ch. 10, § 005.01A require that a generator comply with the requirement set forth at 40 C.F.R. § 265.173(a) and 128 Neb. Admin. Code, ch 10, § 004.01A2, respectively. Pursuant to these regulations, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

26. At the time of the October 2006 inspection, Respondent failed to close a 7-gallon hazardous waste satellite accumulation container of pig press waste (F003/D001) in the Ink Cleaning Room at the Holdrege Facility.

27. Respondent's failure to close the satellite accumulation container is a violation of 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a), and 128 Neb. Admin. Code, ch 10, §§ 004.01A2 and 005.01A.

Failure to Date Hazardous Waste Containers

28. The regulations found at 40 C.F.R. § 262.34(a)(2) and 128 Neb. Admin. Code, ch. 10, § 004.01F require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection on each container.

29. At the time of the October 2006 inspection, Respondent had accumulated one five-gallon container of spent Genesolv (F001/D040) in the Ink Cleaner Room and one 5-gallon container of waste alcohol (D001) in the Chemical Storage Room at the Holdrege Facility, which were hazardous wastes that had not been dated with the accumulation start date.

30. Respondent's failure to close the satellite accumulation container is a violation of 40 C.F.R. § 262.34(a)(2) and 128 Neb. Admin. Code, ch. 10, § 004.01F.

Failure to Comply with Contingency Plan Requirements

31. The regulations at 128 Neb. Admin. Code, ch. 10, § 004.01H require, in part, that each owner or operator must have a contingency plan for his facility. The contingency plan must contain the elements described in 128 Neb. Admin. Code, ch. 18, § 003.

32. At the time of the October 2006 inspection, Respondent did not have a contingency plan containing the elements required by 128 Neb. Admin. Code, ch. 18, § 003.05 in that the contingency plan did not list the capabilities of the emergency equipment at the Holdrege Facility.

33. Respondent's failure to list the capabilities of the emergency equipment at the facility is a violation of 128 Neb. Admin. Code, ch. 10, § 004.01H.

Failure to Comply with Personnel Training Requirements

34. The regulations at 128 Neb. Admin. Code, ch. 10, § 004.01H require, in part, that the generator must follow the personnel training requirements of 128 Neb. Admin. Code, ch. 19.

35. The regulations at 128 Neb. Admin. Code, ch. 19, § 004.01 require that Respondent must maintain documents and records on-site describing the job title of each employee engaged in hazardous waste management and the name of the employee filling each job.

36. At the time of the October 2006 inspection, Respondent did not have documentation of the name of one of the employees engaged in hazardous waste management at the Holdrege Facility.

37. Respondent's failure to have documentation of the name of one of the employees engaged in hazardous waste management at the Holdrege Facility is a violation of 128 Neb. Admin. Code, ch. 10, § 004.01H.

38. Respondent's failure to comply with the conditions set forth in 40 C.F.R. §§ 262.34(a) and (c) and 128 Neb. Admin. Code, ch. 10 § 004.01, which are alleged in Paragraphs 22 through 37, subjects Respondent to the requirements of having a permit or interim status for on-site storage of hazardous waste at the Holdrege Facility, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 and 128 Neb. Admin. Code, ch. 12.

39. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility for the Holdrege Facility, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 128 Neb. Admin. Code, ch. 12 § 001.01.

COUNT III
OFFERING HAZARDOUS WASTES TO A TRANSPORTER/DISPOSAL FACILITY
WITHOUT AN EPA IDENTIFICATION NUMBER AND FAILING TO COMPLY WITH
THE MANIFEST SYSTEM

40. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

41. Pursuant to 128 Neb. Admin. Code, ch. 4 § 004.02 and 40 C.F.R. § 262.12(c), a generator of hazardous wastes who transports, or offers for transportation, hazardous wastes to an off-site treatment, storage, and disposal facility must offer such hazardous wastes only to

transporters or treatment, storage and/or disposal facilities with an assigned RCRA identification number.

42. The regulations contained at 128 Neb. Admin. Code, ch. 10 § 002 and 40 C.F.R. § 262.20 require, *inter alia*, a generator of hazardous waste which transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal to prepare a hazardous waste manifest and to designate on the hazardous waste manifest a facility which is permitted to handle the waste described on the hazardous waste manifest.

43. At the time of the October 2006 inspection, Respondent was generating waste aerosol cans with hazardous waste codes D001, D018, D019, D035, D039 and D040 and was disposing of the aerosol cans in the general trash.

44. Respondent was offering the hazardous waste identified in Paragraph 43 above for transportation by Orcutt Sanitation in Holdrege, Nebraska. Orcutt Sanitation does not have an assigned RCRA identification number. The hazardous waste identified in Paragraph 43 above was disposed of at the Prairie Hill Landfill in Holdrege, Nebraska. The Prairie Hill Landfill is not permitted to handle the hazardous waste identified in Paragraph 43 above.

45. Respondent's offering of hazardous waste for transportation to a transporter without an EPA Identification Number is in violation of 128 Neb. Admin. Code, ch. 4 § 004.02 and 40 C.F.R. § 262.12(c).

46. Respondent's failure to ship the hazardous waste using a hazardous waste manifest and failure to designate on the hazardous waste manifest a facility that is permitted to handle the hazardous waste is a violation of 128 Neb. Admin. Code, ch. 10 § 002 and 40 C.F.R. § 262.20.

III. CONSENT AGREEMENT

47. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

48. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO.

49. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

50. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of this CAFO.

51. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

52. This CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

53. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

54. Respondent certifies that by signing this CAFO that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

55. The effect of settlement described in Paragraph 52 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 54, above, of this CAFO.

56. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

57. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated civil penalty of \$45,351.80 as set forth in Paragraph 1 of the Final Order below.

58. The penalty specified in Paragraph 57, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

59. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 57, above.

60. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent

more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

61. Respondent understands that 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 applicable statutory rate.

62. This CAFO 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.

63. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 10 of the Final Order, that all requirements hereunder have been satisfied.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a mitigated civil penalty of \$45,351.80.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

EPA-Region VII
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

The Respondent shall reference the Docket Number, RCRA-07-2008-0010 on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

4. This Final Order portion of this CAFO shall apply to and be binding upon 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 CAFO.

C. Reservation of Rights

5. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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 (\$32,500.00) 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.

6. 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 CAFO.

7. Except as expressly provided herein, nothing in this CAFO 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.

8. Notwithstanding any other provisions of the CAFO, 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.

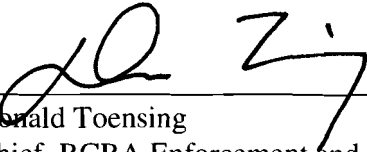
9. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

10. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Complainant:

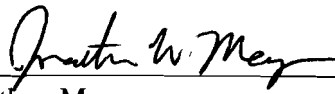
The United States Environmental Protection Agency

9-26-08
Date



Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region VII

9-26-08
Date

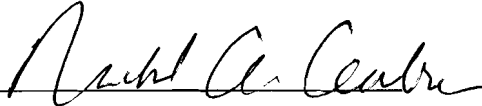


Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

For Respondent:

Becton, Dickinson and Company

9/24/08
Date


Signature

Richard A. Carbone
Printed Name

Associate General Counsel and Assistant Secretary
Title

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

September 26, 2008
Date

Robert Patrick
Robert Patrick
Regional Judicial Office

IN THE MATTER OF Becton, Dickinson and Company, Respondent
Docket No. RCRA-07-2008-0010

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
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Mary Gerdes, Senior Counsel
Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417

Dated: 9/29/08


Kathy Robinson
Hearing Clerk, Region 7