



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

PB  
JUN 29 2017.

H. Greg Peebles  
Director, Environmental and Regulatory Compliance  
Florida Institute of Technology  
150 W. University Blvd.  
Melbourne, Florida 32901-6982

SUBJ: Florida Institute of Technology (FIT), FLD 053 396 669  
Consent Agreement and Final Order, Docket No. RCRA-04-2017-4006(b)

Dear Mr. Peebles:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-reference matter. Please note that the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for your assistance in resolving this matter. If you should have any questions concerning this matter, please contact me at (404) 562-8590 or have your staff contact Héctor M. Danois, of my staff, at (404) 562-8556.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
RCR Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2017-4006(b)
	)	
Florida Institute of Technology	)	
150 W. University Blvd.	)	Proceeding under Section 3008(a) of the
Melbourne, Florida 32901-6982	)	Resource Conservation and
	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: FLD053396669	)	
	)	
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), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. § 403.702 *et seq* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g] and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated Rule (Fla. Admin. Code Ann. r.) 62-730 *et seq.* [Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270]. This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA for alleged violations of Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] and for violations of Fla. Admin. Code Ann. r. 62-730 *et seq.* [40 C.F.R. Parts 260 through 270].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* and which govern this action and are promulgated at 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) and (3).
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), the parties 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, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Florida Institute of Technology (FIT), a private research university organized under the laws of the State of Florida. This action pertains to the Florida Institute of Technology Campus, located at 150 W. University Blvd., Melbourne, Florida (the Facility). Respondent is the owner/operator of the Facility.

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Florida authorized program are found at Fla. Stat. § 403.702 *et seq.* and Fla. Admin. Code Ann. r. 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Florida has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the 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 the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. 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 before issuance of this CA/FO.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found at Fla. Admin. Code Ann. r. 62730.160 [40 C.F.R. Part 262].
12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)], sets forth the requirement that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180(1) (permitted) and Fla. Admin. Code Ann. r. 62-730.180(2) (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)].
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is listed “hazardous waste” if it is listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D].
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “facility” includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “person” includes, inter alia, a firm, corporation, partnership, individual or association.
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility and an “operator” is the person responsible for the overall operation of a facility.
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.11].
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG) and may accumulate hazardous waste on-site for 90 days or less, without a permit or without having interim status, as required by Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. §6925], provided that the generator complies with the conditions listed in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).
22. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(2)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.

23. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.171], and is a condition of the LQG Permit Exemption, if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements.
24. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.174], and is a condition of the LQG Permit Exemption, a generator is required, at least weekly, to inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors.
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.31], and is a condition of the LQG Permit Exemption, a generator is required to maintain and operate its facility 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.
26. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

29. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
30. Respondent is the “owner/operator” of a “facility,” located at 150 W. University Blvd., Melbourne, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].

31. Respondent is a “generator” of “hazardous waste” as those terms are defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.2 and 261.3].
32. Respondent is private research university offering undergraduate, masters and doctorate degrees in science, engineering, aeronautics, business, humanities, mathematics, psychology, communication and education.
33. On or about 1998, Respondent notified the Florida Department of Environmental Protection (FDEP) that it is a LQG of hazardous waste as that term is defined in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)].
34. On August 8-9, 2016, inspectors with the EPA and the FDEP (“the inspectors”) conducted a compliance evaluation inspection (CEI) at Respondent’s facility. The findings of the CEI were documented in a report mailed to Respondent, dated November 1, 2016.
35. At the time of the August 8-9, 2016 CEI (“the inspection”), the inspectors found that Respondent had failed conducted a waste determination on the following solid wastes, which were later determined to be hazardous wastes:
  - a. One 0.5-gal container of unknown material located in the Biochemistry Lab, Room 224;
  - b. A refrigerator full of old chemicals located in the Pharmaceutical Chemistry Lab, Room 320;
  - c. A refrigerator full of old chemicals located in the Physics Organic Lab, Room 321;
  - d. A refrigerator full of old chemicals located in the Knight Lab, Room 312;
  - e. Two glove boxes full of old chemicals located in the Physical Inorganic Chemistry Lab, Room 306;
  - f. A small container of chemicals that appeared old located in the Bio Organic Chemistry Lab, Room 325;
  - g. Several containers of chemicals that appeared old because the containers had peeling labels and residue forming on the lids, located in the Product/Chemical Storage; and
  - h. Three small cans of paint and a can of body filler located in the Ground/Vehicle Maintenance Area.
36. After the CEI, Respondent conducted a chemical cleanout and, as of November 2016, disposed of 2,021 lbs. of hazardous waste listed above.
37. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid waste generated at its Facility.
38. At the time of the inspection, Respondent was moving waste from one SAA to another SAA within the Molecular Cell Biology, Room 236. Specifically, Respondent was consolidating full 0.25 gallon buckets of hazardous waste, located at each point of generation within the Room, into a 5-gal container that was not located at the point of generation. As such, the 5-gallon container of hazardous waste should have been managed as a less than 90-day hazardous waste storage container.
39. At the time of the inspection, Respondent failed to mark the 5-gallon container of hazardous waste, described in Paragraph 38, with an accumulation start date.

40. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(2)].
41. At the time of the inspection, Respondent failed to address leaking or deformed containers that were used to store hazardous waste by either transferring the hazardous waste from the leaking or deformed container to a container that is in good condition, or managing the waste in some other way that complies with the requirements. The following containers of hazardous waste were observed to be leaking or were deformed:
  - a. One 1-gal container of waste formaldehyde that was deformed, located in the Biochemistry Plant Physiology Lab, Room 250;
  - b. One 1-gal container of waste bleach that was deformed, located in Room 247;
  - c. One 30-gal drum of biological stain waste that was deformed located in the Microbiology Genetics Lab, Room 247; and
  - d. One 5-gal container of alcohol/water waste that was leaking, located in the Physical Inorganic Chemistry Lab, Room 306.
42. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.171].
43. At the time of the inspection, it was discovered that from 2014 - 2016, Respondent failed to perform weekly inspections of containers used to store hazardous waste.
44. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], by not complying with the inspection requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.174].
45. At the time of the inspection, Respondent failed to prevent spills and releases of hazardous waste in the following areas:
  - a. Spilled material that was located inside a refrigerator that was full of chemicals located in the Pharmaceutical Chemistry Lab, Room 320;
  - b. Spilled material that was located in the bottom of the tray used to store old containers of hydrazine and piperidine located in the Pharmaceutical Chemistry Lab, Room 320;
  - c. Spilled material that was located inside of a SAA secondary containment area located in the Pharmaceutical Chemistry Lab, Room 320. The secondary containment was being used to store: a 5-gal container of halogenated waste; a 5-gal container of non-halogenated waste; a 1-gal container of oil waste; and a 1-gal container of general aqueous waste;
  - d. Spilled material that was located inside of the refrigerator that was full of chemicals located in the Physics Organic Lab, Room 321;

- e. Spilled material that was located inside of a SAA secondary containment located in the Knight Lab, Room 312. The secondary containment was being used to store: a 15-gal container of waste toxic solids; a 5-gal container of halogenated waste; a 5-gal container of waste mixed metals; a 1-liter container of chromic acid waste; a small container of xylene waste; a 5-gal container of organic solvent waste; and a 1-liter container of waste pump mechanical fluid;
  - f. Spilled material that was located inside of a SAA secondary containment located in the Organic Metallic Synthesis Lab, Room 311. The secondary containment was being used to store: a 5-gal container of general aqueous waste; a 5-gal container of halogenated solvent waste; a 5-gal container of contaminated solids; a 5-gal container of non-halogenated waste; a 1-gal container of non-halogenated waste; a 1-gal container of halogenated waste; a 1-liter container of pump oil waste; and 1-liter container of used oil;
  - g. Spilled material that was located inside of a SAA secondary containment located in the Physical Organic Chemistry Lab, Room 306. The secondary containment was being used to store a 5-gal container of alcohol/water waste; and
  - h. Waste paint material that was released onto the wall, originating from a 20-gal drum of hazardous waste that was equipped with an aerosol can puncturing device, located in a shed at the Ground/Vehicles Maintenance Area.
46. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.31].
47. At the time of the inspection, the inspectors found that Respondent failed to close the following SAA containers that were used to store hazardous waste:
- a. One 5-gal container of broken glass located in the Biochemistry Lab, Room 224;
  - b. Two 0.5-gal containers of contaminated solids located in the Biochemistry Lab, Room 224;
  - c. One 35-gal container of rinsate located in the Chemical Storage, Room 112;
  - d. One 15-gal container of toxic solids located in the Knight Lab, Room 312;
  - e. One 5-gal container of aqueous waste located in the Bio Organic Chemistry Lab, Room 325; and
  - f. One 15-gal container of broken glass located in the Organic Synthesis Lab, Room 221.
48. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)].
49. At the time of the inspection, the inspectors found that Respondent failed to label the following SAA containers that were being used to store hazardous waste:
- a. One 5-gal container of alcohol/water waste located in the Physical Inorganic Lab, Room 306;



- b. One 1-gal container of hazardous waste pump oil located in the Physical Inorganic Lab, Room 306; and
  - c. One 5-gal container of atomic absorption instrument waste located in the Instrument Lab, Room 206.
50. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(ii)].

## V. TERMS OF AGREEMENT

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

- 51. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
- 52. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
- 53. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
- 54. 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, 44 U.S.C. § 3501 *et seq.*
- 55. 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.
- 56. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- 57. 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.
- 58. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
- 59. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
- 60. Each party will pay its own costs and attorneys' fees.

## VI. PAYMENT OF CIVIL PENALTY

61. Respondent consents to the payment of a civil penalty in the amount of **SIXTY FOUR THOUSAND ONE HUNDRED DOLLARS (\$64,100)**, which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
62. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091

REX (Remittance Express): 1-866-234-5681

63. Respondent shall submit a copy of the payment to the following individuals:

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

and to:

Héctor M. Danois, Environmental Engineer  
Hazardous Waste Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

64. If Respondent fails to remit the civil penalty as agreed to herein, the 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 or stipulated 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 fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$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 or a stipulated penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) 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).
65. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

## VII. PARTIES BOUND

66. This CA/FO shall be binding on 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.

67. 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.
68. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

### **VIII. RESERVATION OF RIGHTS**

69. 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 Facility may present an imminent and substantial endangerment to human health or the environment.
70. 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.
71. 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 storage, 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.

### **IX. OTHER APPLICABLE LAWS**

72. 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.

### **X. SERVICE OF DOCUMENTS**

73. 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 this proceeding:

Joan Redleaf Durbin, Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
redleaf-durbin.joan@epa.gov  
404-562-9544

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

T. Dwayne McCay  
President, Florida Institute of Technology  
150 W. University Blvd.  
Melbourne, Florida 32901-6982

#### **XI. SEVERABILITY**

75. 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.


#### **XII. EFFECTIVE DATE**

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

*In the matter of Florida Institute of Technology DOCKET NO.: RCRA-04-2017-4006(b)*

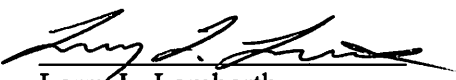
#### **AGREED AND CONSENTED TO:**

#### **Florida Institute of Technology**

By:   
T. Dwayne McCay  
President, Florida Institute of Technology

Dated: 1 June '17

#### **United States Environmental Protection Agency**

By:   
Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Dated: 06/20/17

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2017-4006(b)
	)	
Florida Institute of Technology	)	
150 W. University Blvd.	)	Proceeding under Section 3008(a) of the
Melbourne, Florida 32901-6982	)	Resource Conservation and
	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: FLD053396669	)	
	)	
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 27<sup>th</sup> day of June, 2017.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the case of Florida Institute of Technology, Docket Number: RCRA-04-2017-4006(b), and have served the parties listed below in the manner indicated:

Joan Redleaf Durbin  
Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Héctor M. Danois  
Hazardous Waste Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
Environmental Protection Specialist  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

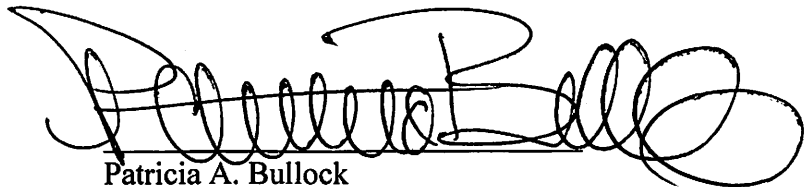
(Via EPA's electronic mail)

T. Dwayne McCay  
President  
Florida Institute of Technology  
150 W University Blvd  
Melbourne, Florida 32901-6982

(Via Certified Mail-Return Receipt  
Requested)

Date:

6-29-17



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511