

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
University of Kansas)
2301 Crowell Drive)
Lawrence, Kansas 66045)
)
RCRA I.D. No. KSD980852669)
)
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-07-2008-0011

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and the University of Kansas (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 serves as notice that the EPA has reason to believe that Respondent violated regulations found at Title 28, Article 31 of the Kansas Administrative Regulations and Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 262 and 265.

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 the University of Kansas (Respondent), an agency of the State of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas 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 Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). 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 a hazardous waste program pursuant to Sections 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 Kansas 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 Consent Agreement and Final Order 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 Consent Agreement and Final Order.

Factual Background

7. Respondent is an agency of the State of Kansas and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
8. Respondent, located at 2301 Crowell Drive in Lawrence, Kansas, is a public university offering undergraduate and graduate degrees. Respondent employs approximately 9,600 faculty and staff at its Lawrence campus.
9. In 1983, Respondent notified the Kansas Department of Health and the Environment (KDHE) that it is a large quantity generator of hazardous waste. EPA large quantity generators generate 1,000 kilograms or more of hazardous waste per month.
10. Respondent has been assigned the following EPA ID Number: KSD980852669.
11. On May 17-20, 2005, EPA conducted a compliance evaluation inspection at the Respondent’s facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.
12. On or about December 12-14, 2007, an EPA representative conducted a compliance evaluation inspection at the Respondent’s facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violations

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

13. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 12 above, as if fully set forth herein.
14. Pursuant to 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b), a generator of “solid waste,” as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.
15. At the time of the December 2007 inspection, Respondent had been generating eight solid waste streams: Collodion, n-Butyllithium, 50% methanol solution, casting resin, two-part coating, and three unknown hazardous wastes.
16. Respondent had not conducted a hazardous waste determination on the eight solid waste streams at that time.

17. 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 K.A.R. 28-31-4(b).

COUNT 2
OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT
A RCRA PERMIT OR INTERIM STATUS

Failure to Meet Generator Requirements

18. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 12 above, as if fully set forth herein.

19. Respondent, as a large quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without having interim status, provided that certain conditions are met. Those conditions are listed in 40 C.F.R. § 262.34(a).

20. At the time of the December 2007 inspection, Respondent was not complying with the following regulatory requirements:

Failure to Mark Waste Accumulation Containers with the Date Accumulation Began

21. The regulations at 40 C.F.R. § 262.34(a)(2) and KAR 28-31-4(g)(2) require that a generator must clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

22. At the time of the December 2007 inspection, Respondent failed to mark the accumulation start date on the following storage containers containing hazardous waste located in various locations of the facility: one 30-milliliter vial in Burt 110, seven 1-gallon containers in the Hazardous Waste Storage Building.

23. Respondent's failure to label the hazardous waste containers with the date upon which the accumulation began is a violation of 40 C.F.R. § 262.34(a)(2) and KAR 28-31-4(g)(2).

Failure to Label Containers of Hazardous Waste with the words "Hazardous Waste"

24. The regulations at 40 C.F.R. § 262.34(a)(3) and KAR 28-31-4(g)(3) require that while being accumulated on-site, each container and tank be marked clearly with the words, "Hazardous Waste".

25. At the time of the December 2007 inspection, Respondent failed to label the following hazardous waste containers with the words "Hazardous Waste": one 30-milliliter vial in Burt 110, seven 1-gallon containers in the Hazardous Waste Storage Building.

26. Respondent's failure to label the hazardous waste containers with the words, "Hazardous Waste" is a violation of 40 C.F.R. § 262.34(a)(3) and KAR 28-31-4(g)(3).

Failure to Keep Satellite Accumulation Containers Closed

27. The regulations at 40 C.F.R. § 262.34(c)(1)(i) and KAR 28-31-4(j)(1)(A) require that a generator comply with the requirement set forth at 40 C.F.R. § 265.173(a). 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.

28. At the time of the December 2007 inspection, Respondent failed to close two 4-liter containers in Malott 4007.

29. Respondent's failure to close a satellite accumulation container is a violation of 40 C.F.R. § 262.34(c)(1)(i) and KAR 28-31-4(j)(1)(A).

Failure to Label Satellite Accumulation Containers with the Words "Hazardous Waste"

30. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) and KAR 28-31-4(j)(1)(B) require that a generator mark containers with the words "Hazardous Waste."

31. At the time of the December 2007 inspection, Respondent failed to label the following hazardous waste satellite accumulation containers with the words "Hazardous Waste": two 4-liter containers in Malott 4007 and one 2-gallon safety can in McCollum 115.

32. Respondent's failure to label the hazardous waste satellite accumulation containers with the words, "Hazardous Waste" is a violation of 40 C.F.R. § 262.34(c)(1)(ii) and KAR 28-31-4(j)(1)(B).

Treatment of Hazardous Waste Without a Permit

33. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a RCRA permit.

34. Pursuant to the Kansas Statutes Annotated, a permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in KAR 28-31-3.

35. At the time of the December 2007 inspection, Respondent had been allowing solvents and 2 to 3 solvent soaked rags per month to evaporate under a hood in an equipment repair and fabrication room prior to disposal as solid waste.

36. By allowing excess liquid to evaporate, Respondent was engaged in "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10.
37. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA and KSA Section 65-3437.
38. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and KSA Section 65-3437.

CONSENT AGREEMENT

39. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
40. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.
41. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
42. 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 the Consent Agreement and Final Order.
43. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
44. This Consent Agreement and Final Order 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.
45. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
46. Respondent certifies that by signing this Consent Agreement and Final Order 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.

47. The effect of settlement described in Paragraph 44 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 46, above, of this Consent Agreement and Final Order.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

49. Pursuant to Section 3008 of the Solid Waste Disposal Act, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Thirty-Nine Thousand Four Hundred and Thirty-One dollars (\$39,431.00).

50. The penalty specified in Paragraph 49, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, state and local taxes.

51. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 49, above, and to the performance of the Supplemental Environmental Project (SEP).

52. In response to the violations of RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in Paragraphs 53-54 of the Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

53. Respondent agrees to implement the "Laboratory Waste Stream Identification and Waste Minimization/Pollution Prevention Assessment Project" for 301 laboratories at the Lawrence Campus in the Chemistry, Biology, Museum of Natural History, Medicinal Chemistry, Pharmaceutical Chemistry and Pharmacology and Toxicology Departments. The purpose of the SEP is to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. It is anticipated that this SEP will require two (2) years to complete. Respondent agrees that this SEP will also include the following components:

- a) Development of an assessment tool to gather data and evaluate 301 laboratories located in the departments of Chemistry, Biology, the Museum of Natural History, Medicinal Chemistry, Pharmaceutical Chemistry, and Pharmacology and Toxicology.
- b) The assessment tool will collect information regarding the location, responsible person,

unit contact information, activities and processes undertaken at each location, types of hazardous materials present, the presence of inventories, the current known waste streams being generated at each location, and survey for potential additional waste streams at each location.

- c) Respondent will use EPA's "Guides to Pollution Prevention: Research and Educational Institutions" guidance document in developing the assessment tool.
- d) In the event that the existing "EHAssist" system is unable to accommodate the data, Respondent will create a supplemental electronic database for this purpose.
- e) The information collected in each lab will be confirmed with personnel working in those labs. The information will be used to develop individual reports for each laboratory assessed. These reports will document the information provided to EHS and identify generated waste streams and pollution prevention and waste minimization opportunities. The information collected will also enable Respondent to better identify ways to prevent unnecessary disposal of still useable chemicals and unnecessary ordering of new chemicals and to identify opportunities to improve participation in the chemical surplus program.
- f) EHS personnel will conduct two 1-hour seminar training sessions, for a total of twelve (12) sessions, for personnel in each of the departments listed above, to provide education and information regarding waste minimization, pollution prevention, and waste stream handling.

54. Respondent shall expend a minimum of \$41,585 in approvable costs to perform the SEP. Respondent agrees to fully implement the SEP within a period of two years from the effective date of this Final Order. These costs must include \$5088 for planning, organization and project management of the SEP; \$33,774 for review/confirmation of the data, data input, drafting of the individual assessment reports and electronic submittal of reports to responsible persons for each lab; and \$1,305.00 to conduct the training and education sessions for staff in the six departments listed above. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. The costs associated with paragraph 53.b. above (estimated at \$13,833 for 1.5 hours at each of 301 labs for collection of data on sources and quantities of waste generation) are not to be included with the approved SEP costs.

55. Respondent shall submit a SEP status report to EPA twelve (12) months from the effective date of this Final Order. The status report shall provide the status of the project, along with any encountered problems and/or expected delays. The report shall also provide a reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved to date as a result of the project (i.e., quantify the amount of chemicals that are reused

by other laboratories within Respondent's facility; quantify the amount of unused chemicals that are returned to the manufacturer, thereby avoiding unnecessary chemical purchases and/or waste disposal; and quantify the amount of unused chemicals that entered and exited the chemical surplus program over the duration of the SEP to date), and specific examples of the improved waste handling procedures implemented at some of the laboratories where assessments have been completed.

56. Within sixty (60) days after completion of the SEP, Respondent shall submit to EPA a Final SEP Report. The SEP Completion Report shall contain the following information:

- a) A detailed description of the SEP as implemented;
- b) The number and location of labs where assessments were completed (including the department where the lab is located);
- c) Documentation of all approvable costs incurred during the implementation of the SEP;
- d) A reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved over the duration of the project (i.e., quantify the amount of chemicals that are reused by other laboratories within Respondent's facility; quantify the amount of unused chemicals that are returned to the manufacturer, thereby avoiding unnecessary chemical purchases and/or waste disposal; and quantify the amount of unused chemicals that entered and exited the chemical surplus program over the duration of the SEP);
- e) Specific examples of the improved waste handling procedures implemented at ten percent (10%) of the laboratories where assessments were completed;
- f) Copies of individual assessment reports for five percent (5%) of the labs where assessments were completed; and
- g) Documentation of attendance at the training sessions by Chemistry, Biology, the Museum of Natural History, Medicinal Chemistry, Pharmaceutical Chemistry, and Pharmacology and Toxicology department faculty, staff and students;
- h) A description of any problems encountered in implementation of the project and the solutions thereto;
- i) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

- j) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

57. In itemizing its costs in the Interim SEP Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

58. The Interim SEP Report and the SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

59. The Interim SEP Report and the SEP Completion Report shall be submitted on or before the due date to:

Elizabeth Koesterer, AWMD
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

60. Respondent agrees that failure to submit the SEP status report and the Final SEP Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 67, below.

61. After receipt of the Final SEP Report described in paragraph 56 above, EPA will do one of the following:

- a) Notify Respondent in writing of any deficiencies in the Final SEP Report, in which case Respondent shall have an additional thirty (30) days to correct any

deficiencies and resubmit the report;

b) Inform Respondent that the project has been completed in accordance with the requirements of this Consent Agreement and Final Order; or

c) Determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and seek stipulated penalties pursuant to paragraph 67 below.

62. If Respondent receives notice that the Final SEP Report is deficient pursuant to paragraph 61.a., above, Respondent shall correct the deficiencies and resubmit the report within the thirty (30) day time period. If, upon resubmission, the deficiencies identified in the Final SEP Report have not been corrected, EPA reserves the right to determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and to seek stipulated penalties pursuant to paragraph 67 below.

63. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et. seq.*

64. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times, to monitor Respondent's implementation of the SEP. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

65. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, with the exception of the hazardous waste determination activities intrinsic to paragraph 53.b. above, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

66. Respondent agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for the purpose of federal, state, or local taxes.

67. Respondent agrees to the payment of stipulated penalties as follows:

- a) In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 53 through 54 above, then pursuant to EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$33,268. If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of the money required to be spent was expended on the SEP, then no stipulated penalty is necessary.
 - b) In the event the Respondent satisfactorily completes the SEP, but fails to spend at least \$41,585 in approvable costs in performance of the SEP, stipulated penalties will be owed as follows:
 - i. if Respondent spends fifty (50) percent or less of \$41,585 in approvable costs, a stipulated penalty of \$16,634 shall be paid to EPA;
 - ii. if Respondent spends between fifty-one (51) percent and seventy-five (75) percent of \$41,585 in approvable costs, a stipulated penalty of \$8,317 shall be paid to EPA;
 - iii. if Respondent spends between seventy-five (75) percent and ninety (90) percent of \$41,585 in approvable costs, a stipulated penalty of \$4,159 shall be paid to EPA;
 - iv. if Respondent spends at least ninety (90) percent of \$41,585 in approvable costs, no stipulated penalty is required,
 - c) In the event Respondent fails to timely submit the SEP status report required by paragraph 55 above or the Final SEP Report required by paragraph 56 above, Respondent shall pay a stipulated penalty of \$500 per day for each day the report is overdue, until the report is finally submitted.
 - d) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.
 - e) Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be made in accordance with the provisions of paragraph 2 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 69 of the Consent Agreement.
68. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and

Final Order, Respondent shall pay a penalty of Thirty-Nine Thousand Four Hundred and Thirty-One dollars (\$39,431.00) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

69. 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).

70. 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.

71. This Consent Agreement and Final Order 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.

72. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 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 Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of Thirty-Nine Thousand Four Hundred and Thirty-One dollars (\$39,431.00).

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

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

The Respondent shall reference the Docket Number, RCRA-07-2008-0011 on the check. A copy of the check shall also be mailed to:

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

and

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101.

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

4. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete the project as specified in the Consent Agreement.

B. Parties Bound

5. This Final Order portion of this Consent Agreement and Final Order 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 Consent Agreement and Final Order.

C. Reservation of Rights

6. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order 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.

7. 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 Consent Agreement and Final Order.

8. Except as expressly provided herein, nothing in this Consent Agreement and Final Order 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.

9. Notwithstanding any other provisions of the Consent Agreement and Final Order, 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.

10. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

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

D. Compliance Actions

12. Respondent shall take the following action within the time periods specified, according to the terms and conditions specified below:

- a) Within thirty (30) days of the effective date of this Consent Agreement and Final

Order, Respondent shall submit an affidavit stating that all of the chemicals and wastes in the Haworth 8051 laboratory have been removed for appropriate disposal as solid or hazardous waste, returned to the chemical surplus program, or returned to Dr. Yamshchikov.

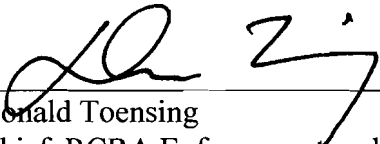
13. Respondent shall submit all documents produced to comply with Paragraph 12 of the Final Order above to Elizabeth Koesterer at the address listed in Paragraph 59 above.

In the matter of The University of Kansas
Docket No. RCRA-07-2008-0011

For the Complainant:

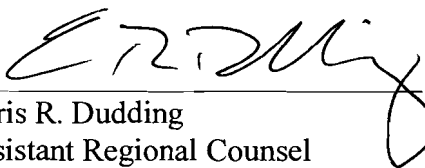
The United States Environmental Protection Agency

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



Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

In the matter of The University of Kansas
Docket No. RCRA-07-2008-0011

For Respondent:
The University of Kansas

Date



Signature

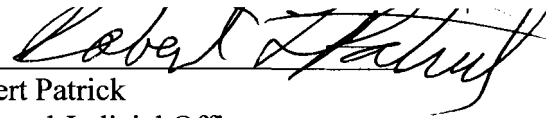
Don W. Steeples
Printed Name

Senior Vice Provost
Title

In the matter of The University of Kansas
Docket No. RCRA-07-2008-0011

September 29, 2008

Date



Robert Patrick
Regional Judicial Officer

IN THE MATTER OF University of Kansas, Respondent
Docket No. RCRA-07-2008-0011

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:

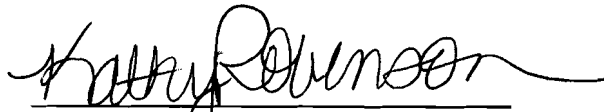
Copy hand delivered to
Attorney for Complainant:

Chris R. Dudding
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:

Lisa E. Hoebelheinrich
Associate General Counsel
Office of General Counsel
1450 Jayhawk Blvd., Room 245
Lawrence, Kansas 66045

Dated: 9/29/08



Kathy Robinson
Hearing Clerk, Region 7