

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

AGENCY REGION 7  
2017 JUN 22 AM 8:20

IN THE MATTER OF: )

Wexford Labs, Inc. )

Respondent )

Proceeding under Sections 3008(a) and (g) )  
of the Resource Conservation and )  
Recovery Act as amended, )  
42 U.S.C. § 6928(a) and (g) )

Docket No. RCRA-07-2017-0152

**CONSENT AGREEMENT AND  
FINAL ORDER**

**I. PRELIMINARY STATEMENT**

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Wexford Labs, Inc. (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 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).

**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), and the Hazardous and Solid Waste Amendments of 1984, 42 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 Section 3005 of RCRA, 42 U.S.C § 6925.

### **Parties**

3. Complainant is the Branch Chief of the Waste Enforcement and Materials Management branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Regional Administrator and Administrator of EPA.

4. Respondent is Wexford Labs, Inc., a corporation in good standing under the laws of Missouri.

### **Statutory and Regulatory Framework**

5. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. 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(a) of RCRA, 42 U.S.C. § 6928(a).

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). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$95,284 for violations that occur after November 2, 2015. 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), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

7. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, R.S. Mo. 260.390.1(1), and the regulations at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

9. The regulations at 40 C.F.R. § 262.34(d), incorporated by reference at 10 C.S.R. 25-5.262, state that a generator may accumulate hazardous waste on-site for one hundred eighty days (180) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(d)(1)-(5) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at its facility for any length of time.

10. The regulation at 40 C.F.R. § 262.34(e), incorporated by reference at 10 C.S.R. 25-5.262, states that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of 40 C.F.R. § 262.34(d).

### **General Factual Background**

11. Respondent is a business and authorized to conduct business within the State of Missouri. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. Relevant to this Consent Agreement and Final Order, Respondent’s facility is located at 325 Leffingwell Avenue, St. Louis, Missouri 63122. Respondent is a manufacturer of hospital grade hard surface disinfectants and general purpose cleaners. Respondent employs approximately 10 full-time employees and 2 part-time employees.

13. On or about June 27, 2014, Respondent notified as a Small Quantity Generator (SQG) of D001 and D002 hazardous wastes pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. SQGs generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste per month.

14. Respondent has been assigned the following EPA ID Number for the facility: MOP000044529.

15. On or about October 27-28, 2015, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as an SQG.

16. At the time of the EPA inspection, the following solid wastes were present:

- a. One 50-gallon bucket of spent ink jet solvent containing methyl ethyl ketone (MEK);
- b. One full 55-gallon drum of a returned batch of R & D of Wexcide 128/acetic acid; and

- c. Three full 55-gallon drums of combined return waste, one of which contained Wexcide 128/acetic acid.
17. At the time of the EPA inspection, the following hazardous wastes were present:
- a. One 50-gallon bucket of spent ink jet solvent containing methyl ethyl ketone (MEK). This bucket contained F005 listed hazardous waste;
  - b. One full 55-gallon drum of a returned batch of R & D of Wexcide 128/acetic acid. This drum contained D002 characteristic hazardous waste; and
  - c. Three full 55-gallon drums of combined return waste, one of which contained Wexcide 128/acetic acid. These drums contained D002 characteristic hazardous waste.
18. Respondent transports its hazardous waste for treatment, storage or disposal to a RCRA facility located in Port Arthur, Texas, a distance of over 200 miles from the facility.

### Violations

19. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

#### Count 1 Failure to Conduct Hazardous Waste Determinations

20. Complainant hereby incorporates the allegations contained in Paragraphs 11 through 18 above, as if fully set forth herein.

21. Pursuant to 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.11 by reference, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

22. At the time of the inspection, it was determined that Respondent was generating the following solid waste streams at the facility.

- a. One 50-gallon bucket of spent ink jet solvent containing methyl ethyl ketone (MEK); and
- b. One full 55-gallon drum of a returned batch of R & D of Wexcide 128/acetic acid.

23. At the time of the inspection, Respondent had not conducted hazardous waste determinations on either of the solid waste streams described in Paragraph 22 above.

24. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste streams is a violation of 10 C.S.R. 25-5.262 which incorporates 40 C.F.R. § 262.11 by reference.

**Count 2**

**Operating as a Treatment, Storage or Disposal Facility  
Without a RCRA Permit or RCRA Interim Status**

25. Complainant hereby incorporates the allegations contained in Paragraphs 11 through 18 above, as if fully set forth herein.

26. Section 3005 of RCRA, 42 U.S.C. § 6925, R.S. Mo. 260.390.1(1), and the regulations at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

27. At the time of the inspection, Respondent did not have a permit or interim status for the facility.

28. The regulations at 10 C.S.R. 25-5.262 incorporate 40 C.F.R. § 262.34(d) by reference and state that a generator may accumulate hazardous waste on-site for one hundred eighty days (180) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(d)(1)-(5) are met. A generator of this size is considered a SQG of hazardous waste. If a SQG fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions at the facility.

**Generator Requirements**

*Failure to conduct weekly hazardous waste inspections*

29. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(2) by reference and requires that the generator comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

30. Pursuant to 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

31. The regulation at 10 C.S.R. 25-5.262(2)(C)2.C(I) states that in addition to the requirements in 40 C.F.R. Part 262, a generator shall also inspect his/her facility for malfunction, deterioration, or both, operator error and any evidence of discharges which may be causing or could cause the release of hazardous waste constituents to the environment or could pose a threat to human health. The owner/operator shall conduct these inspections often enough to identify and correct any problems of that nature before they cause harm to human health or the environment. 10 C.S.R. 25-5.262(2)(C)2.C(I)

32. At the time of the inspection it was determined that Respondent failed to conduct weekly inspections of containers of hazardous waste stored in its hazardous waste storage area.

*Storage of Incompatible Waste*

33. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(2) by reference and requires that the generator comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

34. Pursuant to 40 C.F.R. § 265.177(c), as found in 40 C.F.R. Part 265 Subpart I, a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

35. At the time of the inspection, containers of caustic wastes were stored alongside containers of acidic waste in the quarantine area of the hazardous waste storage area. Caustic waste and acidic waste are not compatible pursuant to 40 C.F.R. Part 265, Appendix V.

*Failure to date hazardous waste accumulation container*

36. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(4) by reference which further incorporates 40 C.F.R. § 262.34(a)(2).

37. Pursuant to 40 C.F.R. § 262.34(a)(2), the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

38. At the time of the inspection, Respondent failed to mark the date of accumulation on one 55-gallon container of combined return waste which contained Wexcide 128. This waste stream is considered D002 characteristic waste.

*Failure to label hazardous waste accumulation container*

39. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(4) by reference which further incorporates 40 C.F.R. § 262.34(a)(3).

40. Pursuant to 40 C.F.R. § 262.34(a)(3), while being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste".

41. At the time of the inspection, Respondent failed to label or mark with the words "Hazardous Waste" one 55-gallon container of combined return waste which contained Wexcide 128. This waste stream is considered D002 characteristic waste.

*Failure to Have Immediate Access to an Internal Alarm*

42. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(4) by reference which requires that the generator comply with the requirements of Subpart C in 40 C.F.R. § 265.

43. Pursuant to 40 C.F.R. § 265.34(a), as found in 40 C.F.R. § 265 Subpart C, whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee.

44. At the time of the inspection, an internal alarm or emergency communication device was not available in the hazardous waste storage area.

*Failure to Maintain Required Aisle Space*

45. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(4) by reference which requires that the generator comply with the requirements of Subpart C in 40 C.F.R. Part 265.

46. Pursuant to 40 C.F.R. § 265.35, as found in 40 C.F.R. § 265 Subpart C, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

47. At the time of the inspection, inadequate aisle space was observed in the hazardous waste storage area.

*Failure to make arrangements with local authorities*

48. The regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(d)(4) by reference which requires that the generator comply with the requirements of Subpart C in 40 C.F.R. Part 265.

49. Pursuant to 40 C.F.R. § 265.37, as found in 40 C.F.R. § 265 Subpart C, the owner or operator must attempt to make arrangements with local authorities including police, fire departments, emergency response teams, and local hospitals.

50. At the time of the inspection, the Respondent had not made arrangements with the police and local hospitals.

*Satellite Accumulation*

51. The regulations at 40 C.F.R. § 262.34(c)(1) allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates,

which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as “satellite accumulation”. At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

*Failure to close satellite accumulation container*

52. The regulation at 10 C.S.R. 25-5.262(1) incorporates by reference 40 C.F.R. § 262.34(c)(1)(i), referencing 40 C.F.R. § 265.173(a), and allows a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

53. At the time of the inspection, one 2-gallon satellite accumulation container of spent F005 ink jet solvent located next to the ink jet printer was open.

*Failure to label satellite accumulation container*

54. The regulation at 10 C.S.R. 25-5.262(1) incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii), and allows a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the generator marks the containers either with the words, “Hazardous Waste,” or with other words that identify the contents of the container.

55. At the time of the inspection, one 2-gallon satellite accumulation container of spent F005 ink jet solvent located next to the ink jet printer was not labeled with the words, “Hazardous Waste” or other words to identify the contents of the container.

*Failure to date satellite accumulation container*

56. The regulation at 10 C.S.R. 25-5.262(2)(C)3 additionally requires the generator to label satellite accumulation containers with the beginning date of satellite storage.

57. At the time of the inspection, one two-gallon satellite accumulation container of spent F005 ink jet solvent located next to the ink jet printer was not dated.

58. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 29 through 57 above, Respondent was not authorized to store hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA.

**Storage Over 270 Days**

59. The regulations at 40 C.F.R. § 262.34(f) state that a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month



and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265 and 267, and the permit requirements of 40 C.F.R. Part 270.

60. Pursuant to the Missouri Revised Statute, hazardous waste facility owners or operators shall not operate a hazardous waste facility without first obtaining a hazardous waste facility permit from the Missouri Department of Environmental Resources. R.S. Mo. 260.390.1(1).

61. The term “hazardous waste facility” is defined as any property that is intended or used for hazardous waste management including, but not limited to, storage, treatment and disposal sites. R.S. Mo. 260.360(12).

62. At the time of the inspection, one 55-gallon drum of R&D waste which was generated on December 10, 2013, and considered D002 hazardous waste was in storage.

63. Respondent offers its hazardous waste for transportation over a distance of 200 miles or more.

64. By storing hazardous waste on-site for greater than 270 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265, 267 and the permit requirements of 40 C.F.R. Part 270.

65. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. § 270.1(b) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

66. Respondent’s failure to obtain a hazardous waste storage permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and R.S. Mo. 260.390.1(1).

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

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

68. Pursuant to the Missouri Revised Statute, hazardous waste facility owners or operators shall not operate a hazardous waste facility without first obtaining a hazardous waste facility permit from the Missouri Department of Environmental Resources. R.S. Mo. 260.390.1(1).

69. The term “hazardous waste facility” is defined as any property that is intended or used for hazardous waste management including, but not limited to, storage, treatment and disposal sites. R.S. Mo. 260.360(12).

70. At the time of the inspection, Respondent had been allowing ink jet solvent to evaporate in a 2-gallon container prior to disposal.

71. By allow excess liquid to evaporate, Respondent was engaged in "treatment" of a hazardous waste as that term is defined at 40 C.F.R. § 260.10.

72. Respondent never obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA and R.S. Mo. 260.390.1(1).

73. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and R.S. Mo. 260.390.1(1).

### **CONSENT AGREEMENT**

74. 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.

75. 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.

76. Respondent neither admits nor denies the factual allegations set forth in this Consent Agreement and Final Order.

77. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

78. 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.

79. 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.

80. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for the violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

81. Full payment of the penalty proposed in this CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief

or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

82. The effect of settlement described in Paragraph 80 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 83, below, of this Consent Agreement and Final Order.

83. Respondent certifies that by signing this Consent Agreement and Final Order that to the 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.

84. 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.

85. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated penalty of Four Thousand Five Hundred and Two Dollars (\$4,502) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

86. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

87. 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 above.

88. **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 attorney 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).

89. 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.

#### **Effective Date**

90. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time

periods stated herein shall be calculated in calendar days from such date.

### **Reservation of Rights**

91. 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 Fifty-Seven Thousand Three Hundred Ninety-One Dollars (\$57,391) 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

### **FINAL ORDER**

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

#### **A. Payment of Civil Penalty**

1. EPA has considered the seriousness of the violations and any good faith efforts to

comply with the applicable requirements pursuant to Section 3008(a)(3), and has determined that the appropriate penalty for the violations is \$24,014. However, ability to pay is considered a mitigating factor in EPA's RCRA Civil Penalty Policy (June 2003). Respondent has demonstrated that it is unable to pay the entire penalty in this matter. Because of Respondent's inability to pay the entire penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein. Within ninety (90) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a mitigated civil penalty of Four Thousand Five Hundred Two Dollars (\$4,502).

2. Payment of the penalty shall identify Respondent by name and docket number, and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at [www.epa.gov/financial/makepayment](http://www.epa.gov/financial/makepayment).

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

4. 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.

### **B. Compliance Actions**

5. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

6. Within sixty (60) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit documentation to EPA, in accordance with Paragraph 8 below, compiling a waste inventory and demonstrating that an accurate hazardous waste determination

has been performed for each solid waste stream generated at Respondent's facility. This documentation will include, but is not limited to, the following information:

- a. A description of the waste stream which includes a detailed description of the process or processes that generated the waste;
- b. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
- c. A determination of whether or not the waste has been listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261; and
- d. A determination of whether or not the waste is identified in 40 CFR Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using one of the methods found in Subpart C of Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA.

7. Respondent shall submit two Compliance Reports to EPA, in accordance with Paragraph 8 below. The first Compliance Report is due within ninety (90) days of the Effective Date of this Consent Agreement and Final Order. The second Compliance Report is due within one hundred eighty (180) days of the Effective Date of this Consent Agreement and Final Order. The Compliance Reports shall include the following:

- a. A narrative description with supporting documentation of Respondent's per month generation rate.
- b. A narrative description with supporting documentation, including photographs, to show all hazardous waste accumulation containers and satellite accumulation containers are properly managed pursuant to 40 C.F.R. § 262.34(d)(4) as it references 40 C.F.R. §§ 262.34(a)(2)-(3) and 40 C.F.R. § 262.34(c).
- c. A narrative description with supporting documentation, including photographs, to show adequate aisle space pursuant to 40 C.F.R. § 262.34(d)(2) as it references 40 C.F.R. § 265.35.
- d. Copies of each weekly inspection check list conducted on hazardous waste accumulation areas located within the facility pursuant to 40 C.F.R. §§262.34(d)(2) as it references 40 C.F.R. § 265.174.

8. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraphs 6 and 7 above to the following address:

Marc Matthews, AWMD/WEMM  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

### **C. Parties Bound**

9. The 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.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

15 Jun 2017  
Date

Mary Goetz  
Mary Goetz, Branch Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

6/15/17  
Date

Kelley Catlin  
Kelley Catlin  
Office of Regional Counsel



For Respondent, Wexford Labs, Inc.

6/12/17  
Date

Mary Jo Thiery  
Signature

Mary Jo Thiery  
Printed Name

Chief Operating Officer  
Title

IT IS SO ORDERED. This Final Order shall become effective upon filing.

June 20, 2017  
Date

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

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 delivered to Attorney for Complainant:

Britt Bieri and Kelley Catlin (e-copy)

Copy delivered to Respondent:

Ms. Mary Jo Theirry, Executive Vice President (e-copy)

Copy delivered to the State of Missouri:

Steve Sturgess, Director (e-copy)  
Hazardous Waste Program  
Missouri Department of Natural Resources

Nicole Eby, Unit Chief (e-copy)  
Hazardous Waste Enforcement  
Department of Natural Resources

6/22/17  
Date

  
\_\_\_\_\_  
Kathy Robinson  
Regional Hearing Clerk