



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 14 2013

CERTIFIED MAIL 7009 1680 0000 7679 5951
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:
LR-8J

Mr. Joseph J. Kruse
Chief Administrative Officer
Mayo Clinic Health System
700 West Avenue South
La Crosse, Wisconsin 54601

Re: Consent Agreement and Final Order
Mayo Clinic Health System
EPA ID No.: WID079713459
Docket No.: **RCRA-05-2013-0006**

Dear Mr. Kruse:

Enclosed, please find a copy of the fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on May 14, 2014, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$98,200 in the manner prescribed in paragraphs 71-75 of the CAFO, and reference all checks with the docket number RCRA-05-2013-0006.

Your payment is due 30 days from your receipt of an executed copy of the CAFO.

Enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Gary J. Victorine
Chief,
RCRA Branch

Enclosures

cc: Pat Chabot – WDNR, Madison Central Office (w/ CAFO)
Steve Sisbach – WDNR, Madison Central Office (w/CAFO)

**NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY
TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	DOCKET NO. RCRA-05-2013-0006
)	
Mayo Clinic Health System)	Proceeding to Commence and Conclude
Franciscan Healthcare – La Crosse)	An Action to Assess a Civil Penalty
700 West Avenue South)	Under Section 3008(a) of the Resource
La Crosse, Wisconsin 54601)	Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
EPA ID: WID079713459)	
)	
Respondent)	
)	



Consent Agreement and Final Order
Preliminary Statement

1. This administrative action is commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and under Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Mayo Clinic Health System, Franciscan Healthcare - LaCrosse (herein referred to as "MCHS"), a corporation doing business in the State of Wisconsin.

5. Where parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA; 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k and the regulations at 40 C.F.R. Parts 260 – 279 at its healthcare facility located at 700 West Avenue South in La Crosse, Wisconsin 56401.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste pursuant to sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring after March 15, 2004 through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA occurring after January 12, 2009.

Factual Allegations and Alleged Violations

17. Respondent was and is a “person” as defined by Wisconsin Administrative Code (WAC) NR 660.10(90), 40 C.F.R. § 260.10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is the “owner” or “operator,” as those terms are defined under WAC NR 660.10(88) and (87) and 40 C.F.R. § 260.10, of a healthcare facility located at 700 West Avenue South in La Crosse, Wisconsin (Facility).

19. On July 13, 2011, U.S. EPA conducted an inspection of the facility.

20. The Facility consists of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

21. Respondent’s Facility is a “facility,” as that term is defined under WAC NR 660.10(43)(a) and 40 C.F.R. § 260.10.

22. At all times relevant to this CAFO, Respondent generated wastes at the facility, which were “solid wastes,” as defined in WAC NR 660.10(108) and 661.02 [40 C.F.R. § 261.2].

23. At all times relevant to this CAFO, Respondent generated “hazardous waste,” as that term is defined in WAC NR 660.10(52) and 661.03 [40 C.F.R. § 261.3].

24. At all times relevant to this CAFO, Respondent was an “individual generation site,” as that term is defined in WAC NR 660.10(59) [40 C.F.R. § 260.10].

25. At all times relevant to this CAFO, Respondent was a “generator,” as that term is defined in WAC NR 660.10(50) [40 C.F.R. § 260.10].

26. At all times relevant to this CAFO, Respondent accumulated hazardous waste in “containers,” as that term is defined in WAC NR 660.10(14) [40 C.F.R. § 260.10].

27. Respondent generated and managed hazardous waste at the Facility prior to and

after November 19, 1980.

28. Respondent is a small quantity handler of universal waste as that term is defined in WAC NR 673.09(9) [40 C.F.R. § 273.9].

29. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, or the analogous Wisconsin regulations as part of the applicable state hazardous waste management program for the state of Wisconsin, or both.

COUNT 1:

Failure to Complete Hazardous Waste Determinations

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as though set forth in this paragraph.

31. Pursuant to WAC NR 662.011 [40 CFR § 262.11], a person who generates a solid waste must determine if the waste is a hazardous waste.

32. Pursuant to WAC NR 662.040(3) [40 CFR § 262.40(c)], a “generator” must maintain records of any test results, waste analyses, or other determinations for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal.

33. During the Inspection, the inspectors identified the following materials being potentially hazardous when discarded:

- a. containers of used laboratory reagents that had been used in the analysis of human samples and were managed as non-hazardous infectious waste;
- b. chemotherapy chemicals and materials contaminated with those chemicals;
- c. pharmaceuticals (including the containers for potential p-listed pharmaceuticals that had not been triple rinsed) that are not eligible for credit in a reverse distribution arrangement;

- d. electrode leads for cardiac equipment; and,
- e. preparatory disinfection wands containing chlorhexadiene.

34. At all times relevant to this CAFO, Respondent was a generator of all of the solid wastes identified in paragraph 33.

35. Respondent failed to conduct hazardous waste determinations for the solid wastes identified in paragraph 33.

36. Respondent's failure to conduct hazardous waste determinations prior to the Inspection violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 662.011 [40 C.F.R. § 262.11], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

COUNT 2:

Failure to Follow Conditions for an Operating License Exemption

37. Complainant incorporates paragraphs 1 through 29 of this CAFO as though set forth in this paragraph.

38. Except as otherwise provided, a generator may accumulate hazardous waste that is generated on-site without a Wisconsin hazardous waste license, provided that the conditions of WAC NR 662.192 [40 C.F.R. § 262.34(d)] are met.

39. If the conditions of WAC NR 662.192 [40 C.F.R. § 262.34(d)] are not met, then the generator must apply for an operating license under WAC NR 670.001(3); 670.010(1) [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

40. In order to avoid the need for an operating license, a generator must label satellite containers of hazardous waste with the words "Hazardous Waste" or with other words that describe the waste. WAC NR 662.192(4)(a)2. [40 C.F.R. § 262.34(c)(1)(ii)].

41. At the time of the Inspection, Respondent stored two 55-gallon containers of crushed lamps in the basement waste storage room.

42. One of the containers mentioned in the previous paragraph was still attached to the lamp-crushing mechanism and was a satellite accumulation container.

43. Respondent failed to label the container of discarded crushed lamps identified in the previous paragraph with the words "Hazardous Waste" or with other words identifying the waste.

44. In order to avoid the need for a hazardous waste storage license, a generator must mark each container holding hazardous waste with the words "Hazardous Waste." WAC NR 662.192(1)(d)2. [40 C.F.R. §§ 262.34(d)(4); 262.34(a)(3)].

45. One of the containers mentioned in paragraph 41 was full of crushed lamps and was in storage status.

46. The full container of crushed lamps identified in paragraph 41 was not labeled with the words "Hazardous Waste."

47. In order to avoid the need for an operating license, the generator must mark the date upon which each period of accumulation begins on each container of hazardous waste. WAC NR 662.192(1)(d)1. [40 C.F.R. §§ 262.34(d)(4); 262.34(a)(2)].

48. Respondent failed to mark an accumulation start date on the full container of crushed lamps identified in paragraph 41.

49. At the time of the Inspection, Respondent was storing two 55-gallon drums of spent xylenes in a hazardous waste storage room on the same floor as the histology and cytology laboratories.

50. Respondent failed to mark an accumulation start date on one of the containers of xylenes identified in the previous paragraph.

51. As set forth above, Respondent did not meet the conditions of WAC NR 662.192 [40 C.F.R. § 262.34(d)] necessary to exempt it from the requirement to obtain an interim licenses or apply for and obtain an operating license for the storage of hazardous waste; therefore, Respondent stored hazardous waste without an interim license or operating license in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at WAC NR 670.001(3), 670.010(1) and (4), and 670.013 [40 C.F.R. Part 265, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

COUNT 3:

Failure to Conduct Weekly Inspections

52. Complainant incorporates paragraphs 1 through 29 of this CAFO as though set forth in this paragraph.

53. Pursuant to WAC NR 665.0174 [40 C.F.R. § 265.174], an owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored.

54. At all times relevant to this CAFO, Respondent stored containers of hazardous waste in the basement waste storage room at MCHS.

55. At the time of the Inspection, Respondent was storing one 55-gallon container of crushed lamps in the basement waste storage room.

56. Respondent had not performed inspections in the basement waste storage room.

57. Respondent's failure to conduct weekly container inspections violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 665.0174 [40 C.F.R.

§ 265.174], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

COUNT 4:

Failure to Comply with Universal Waste Regulations

58. Complainant incorporates paragraphs 1 through 29 of this CAFO as though set forth in this paragraph.

59. At the time of the Inspection, Respondent was accumulating used lamps and batteries in the waste storage room and in a maintenance cart outside of the waste storage room.

60. A small quantity handler of universal waste must contain any used lamps in containers that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and lack evidence of leakage, spillage, or damage. WAC NR 673.13(4)(a) [40 CFR § 273.13(d)(1)].

61. A small quantity handler of universal waste must label or mark universal waste batteries or containers with one of the following phrases: “Universal Waste – Batteries,” “Waste Batteries,” or “Used Batteries.” WAC NR 673.14(1) [40 CFR § 273.14(a)].

62. A small quantity handler of universal waste must also label or mark containers of universal waste lamps with one of the following phrases: “Universal Waste – Lamps,” “Waste Lamps,” or “Used Lamps.” WAC NR 673.14(5) [40 CFR § 273.14(e)].

63. A small quantity handler of universal waste is responsible for informing all employees who handle or manage universal waste of proper handling and emergency procedures appropriate to the types of universal waste handled at the facility. WAC NR 673.16 [40 CFR § 273.16].

64. Respondent was accumulating one 5-gallon bucket and one box of used batteries in the waste storage room.

65. The containers identified in the previous paragraph were not labeled.

66. In the waste storage room, Respondent was accumulating lamps that were either not in containers or were in containers that were not closed.

67. In a maintenance cart outside of the waste storage room, Respondent was accumulating lamps that were not in containers.

68. The lamps identified in paragraphs 66 and 67 were not labeled.

69. At the time of the Inspection, training for universal waste management had not been conducted at the Facility.

70. Respondent's failure to comply with universal waste requirements violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC NR 673.13(4)(a); 673.14(1); 673.14(5); and 673.16 [40 C.F.R. §§ 273.13(d)(1); 273.14(a); 273.14(e); and 273.16], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

CIVIL PENALTY

71. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$98,200. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

72. Within 30 days after the effective date of this CAFO, Respondent must pay a \$98,200 civil penalty for the RCRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Mayo Clinic Health System and the docket number of this CAFO.

73. This civil penalty is not deductible for federal tax purposes.

74. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

75. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge for each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

76. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

77. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

78. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, and local laws or permits.

79. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

80. The terms of this CAFO bind Respondent, its successors, and assigns.

81. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

82. Each party agrees to bear its own costs and attorney's fees in this action.

83. This CAFO constitutes the entire agreement between the parties.

Mayo Clinic Health System, Respondent

Dated this 10th day of April, 2013

Joseph J. Kruse
Name (Signature)

Joseph J. Kruse
Name (Printed)

Chief Admin. Officer
Title

U.S. Environmental Protection Agency, Complainant

Dated this 2nd day of May, 2013

Margaret M. Guerriero

Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Mayo Clinic Health System**

Docket No.: RCRA-05-2013-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-7-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



IN THE MATTER OF: **RCRA-05-2013-0006**
Mayo Clinic Health System
La Crosse, Wisconsin

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.

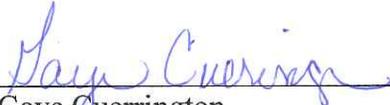
I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Certified Mail # **7009 1680 0000 7679 5951**

Mr. Joseph J. Kruse
Chief Administrative Officer
Mayo Clinic Health System
700 West Avenue South
La Crosse, Wisconsin 54601



Dated: 5/14/, 2013



Gaye Cuerrington
Administrative Program Assistant
RCRA Branch
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590