

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

10 MAY 12 PM 3:42
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Recovery Management Corporation, Inc.)
d/b/a Cargo Largo)
)
1600 North 291 Highway, Unit #80)
Independence, Missouri 64058)
)
RCRA I.D. No. MOR000011395)
)
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-07-2010-0026

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Recovery Management Corporation, Inc., d/b/a Cargo Largo (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).

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 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

3. The Complainant is the 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 Administrator of EPA.

4. The Respondent is Recovery Management Corporation, Inc., d/b/a Cargo Largo (Cargo Largo), a company incorporated under the laws of Missouri.

Statutory and Regulatory Framework

5. The State of Missouri (Missouri) has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and Missouri has adopted by reference the federal regulations cited herein at pertinent parts of 10 C.S.R. Title 25. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the 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.

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 occurred between March 15, 2004, and January 12, 2009. For violations occurring after January 12, 2009, penalties of up to \$37,500 per day are authorized.

Factual Background

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

8. Respondent, located at 1600 North 291 Highway, Unit #800, Independence, Jackson County, Missouri, buys abandoned, unclaimed and/or damaged materials from commercial shipping companies and resells these materials at its Independence, Missouri location. Cargo Largo employs approximately 300 people and has been at its present location since approximately 1996.

9. As part of its operations, Respondent generates hazardous waste. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in paragraph 10. Hazardous wastes generated by Respondent, along with their waste codes, have

included: pharmaceutical wastes (D001, D005, D011, D022, U122, U154, and U248), and spent solvent rags (F002). Respondent also generates used oil and spent mercury-containing fluorescent lamps.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-3.260 and 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Parts 260 and 261. The wastes listed in paragraph 9 are "solid wastes" and all of the wastes except the used oil are also "hazardous wastes" within the meaning of these regulations.

11. Respondent filed a notification of hazardous waste activity on June 30, 1999. This notification was updated April 14, 2003. The notification stated that the facility was a "small quantity generator," i.e., that the facility generated between 100 kilograms and 1,000 kilograms of hazardous waste per month.

12. On or about July 30 through August 1, 2008, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility (hereinafter "the July 2008 inspection").

13. During the inspection, Respondent had generated and had in storage at the facility the hazardous wastes listed in paragraph 9.

14. During the July 2008 inspection, the inspector observed several violations of RCRA, which are set forth below.

Violations

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

I. Failure to Perform A Hazardous Waste Determination

16. 10 C.S.R. 25-5.262(1) requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

17. At various times during the past five years, Respondent has accepted the following pharmaceuticals:

Silver Sulfadiazine – D011
SSD Cream (Silver) – D011
Barobag Enema Kit (Barium) – D005
Silver Sulfadiazine – D011
Baricon Barium Sulfate – D005
Formaldehyde – D001, U122
Warfarin Sodium – U248
Barium Sulfate – D005
Acetic Acid, Glacial – D001, D002
Barium Sulfate – D005
Methyl Alcohol – D001, U154
Barium Sulfate Suspension – D005
Isopropyl Alcohol – D001
Entero Vu Barium Sulfate – D005
Chloroform – D022

In addition, Respondent was generating rags saturated with spent solvents (F002, D039).

18. As of the date of the July 2008 inspection, Respondent had been shipping the waste pharmaceuticals to a medical waste incinerator rather than a hazardous waste disposal facility, and Respondent was sending its solvent-contaminated rags to a solid waste landfill.

19. The wastes listed in paragraph 17 are hazardous wastes carrying the waste codes identified in paragraph 17.

20. Respondent failed to characterize the wastes listed in paragraph 17 as hazardous wastes in violation of 10 C.S.R. 25-5.262(1).

II. Operation of a Hazardous Waste Storage Facility Without a RCRA Permit

21. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 260.390.1(1) of the Revised Statutes of Missouri (RSMo), require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

A. Illegal Treatment of Hazardous Waste

22. At the time of the July 2008 inspection, Respondent was engaging in the practice of allowing rags saturated with spent solvent (F002/D039) to evaporate prior to placing the rags in the trash for disposal.

23. Allowing the waste solvents to evaporate is "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10, which is incorporated by reference at 10 CSR 25-3.260.

24. At the time of the July 2008 inspection, Respondent was disposing of spent mercury-containing fluorescent lamps by breaking the lamps and placing the broken pieces in a 55 gallon drum.

25. Breaking fluorescent lamps prior to disposal is "treatment" within the meaning of 40 C.F.R. § 260.10, which is incorporated by reference at 10 CSR 25-3.260.

26. Given the rate at which Respondent generated the spent solvent rags and spent fluorescent lamps at the time of the July 2008 inspection, Respondent would be permitted to treat these wastes at its facility if the treatment met certain conditions. However, Respondent's treatment methods do not meet the conditions set forth at 40 C.F.R. § 261.5, as incorporated by reference at 10 CSR 25-4.261, and therefore a permit would be required in order for Respondent to treat solvent-contaminated rags and spent fluorescent lamps as set forth above.

B. Accepting And Storing Hazardous Waste Without A Permit

27. At least since 2005, Respondent was accepting hazardous waste pharmaceuticals for storage at its facility prior to the ultimate disposal of these materials.

28. After August 2006, and prior to the July 2008 inspection, Respondent was storing broken mercury-containing fluorescent lamps at its facility.

29. Accepting hazardous waste for storage from outside parties requires a permit pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo § 260.390.1(1).

30. Respondent has not obtained a permit to operate a hazardous waste treatment and storage facility pursuant to Section 3005 of RCRA or RSMo § 260.390.1(1).

31. Respondent's treatment and storage 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 RSMo § 260.390.1(1).

III. Offering Hazardous Waste For Shipment To A Transporter Without A Hazardous Waste Manifest

32. 40 C.F.R. § 262.20, as incorporated by reference at 10 CSR 25-5.262, requires a generator who offers hazardous waste for transportation to an off-site treatment, storage or disposal facility to prepare a hazardous waste manifest and ship the wastes accompanied by the manifest.

33. Prior to the July 2008 inspection, Respondent was shipping waste pharmaceuticals to a medical waste incinerator without using a hazardous waste manifest.

34. Prior to the July 2008 inspection, Respondent was shipping rags contaminated with spent solvent for disposal without using a hazardous waste manifest.

35. Prior to August 2006, Respondent was shipping spent mercury-containing fluorescent lamps for disposal without a manifest.

36. Respondent's failure to prepare a hazardous waste manifest when offering hazardous waste for transportation to an off-site disposal facility is a violation of 40 C.F.R. § 262.20, as incorporated by reference at 10 CSR 25-5.262.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

2. Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

4. 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 CA/FO.

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

6. This CA/FO 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.

7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

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

9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$98,520.00 as set forth in Paragraph 1 of the Final Order.

10. 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.

11. This CA/FO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

12. 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 12 of the Final Order, that all requirements hereunder have been satisfied.

13. By its signature on this Consent Agreement, Respondent certifies that it is currently in compliance with RCRA.

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 CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of \$98,520.00.
2. Payment of the penalty shall be made either by cashier or certified check or by wire transfer. If made by cashier or certified check, the check shall be 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.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

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

The Respondent shall reference the Docket Number on the check or transfer. A copy of the check or transfer shall also be mailed to EPA's representative identified in paragraph 5 below.

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

B. Compliance Actions

4. Within thirty days of the effective date of this Final Order, Respondent shall:
 - a. provide documentation demonstrating that Respondent has performed hazardous waste determinations on all solid waste streams generated by Respondent, in accordance with 40 C.F.R. § 262.11;
 - b. provide documentation outlining how Respondent will ensure future performance of hazardous waste determinations for materials entering Respondent's facility that complies with 40 C.F.R. § 262.11;
 - c. provide documentation that demonstrates that Respondent is no longer treating mercury-containing fluorescent lamps and solvent-contaminated rags at its facility; and
 - d. provide a plan describing what steps the Respondent will take to ensure, to the maximum extent possible, that Respondent's customers do not send hazardous waste to Respondent's facility. The plan will be subject to review and approval by the EPA representative identified in Paragraph 5 of this Final Order. Any

comments provided by EPA's representative must be addressed and/or incorporated into a new plan, which shall be resubmitted to EPA's representative. Failure to address EPA's comments will be deemed a violation of this Final Order.

Within fourteen days of the effective date of this Final Order:

- e. Respondent shall provide a written description of the steps Respondent will take to examine incoming shipments to their facility and to immediately dispose of any materials the facility determines to be hazardous waste.

Within fourteen days of the effective date of this Final Order, and thereafter once quarterly for a period of one year:

- f. Respondent shall provide documentation (hazardous waste manifests) demonstrating that Respondent is shipping hazardous waste to a facility authorized to receive hazardous waste and that such waste is being shipped under a hazardous waste manifest.

5. All documentation required by this Final Order and any correspondence related to this CAFO shall be sent to:

Deborah Bredehoft
Environmental Scientist
AWMD/WEMM
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

C. Parties Bound

6. This Final Order portion of this CA/FO 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 CA/FO.

D. Reservation of Rights

7. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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-seven Thousand Five Hundred Dollars (\$37,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.
8. 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 CA/FO.
9. Except as expressly provided herein, nothing in this CA/FO 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.
10. Notwithstanding any other provisions of the CA/FO, 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.

11. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

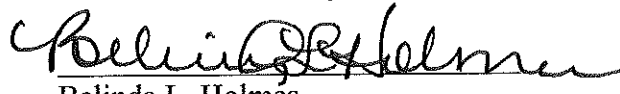
12. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

4/30/10
Date


Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

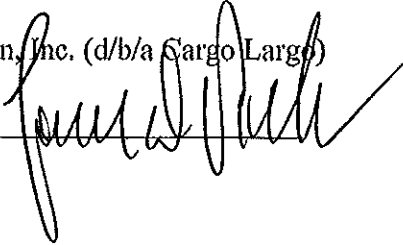
Apr. 30/2010
Date


Belinda L. Holmes
Senior Counsel
Chemical Management Branch
Office of Regional Counsel

In the matter of
Recovery Management Corporation,
d/b/a Cargo Largo
Docket No: RCRA 07-2010-0026
Page 15 of 16

For Respondent Recovery Management Corporation, Inc. (d/b/a Cargo Largo)

4/30/10
Date


Signature 

LOUIS D. PAEK
Printed Name

*In the matter of
Recovery Management Corporation,
d/b/a Cargo Largo
Docket No: RCRA 07-2010-0026
Page 16 of 16*

IT IS SO ORDERED. This Final Order shall become effective immediately.

Aug 12, 2010
Date


Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Recovery Management Corporation, Inc. D/b/a Cargo Largo, Respondent
Docket No. RCRA-07-2010-0026

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:

Belinda Holmes
Senior Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Charles F. Miller
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106

Dated: 5/13/10


Kathy Robinson
Hearing Clerk, Region 7