

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

09 APR 16 PM 3:48
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Creighton University)
2500 California Plaza)
Omaha, Nebraska 68601)
)
RCRA I.D. No. NED053309332)
)
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))
_____)

**AMENDED CONSENT
AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2008-0004

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Creighton University (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 Amended 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 Amended Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated regulations found at Title 128, Chapter 4 and Chapter 9 of the Nebraska Administrative Code Regulations (hereinafter "128 Neb. Admin. Code"), 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 Solid Waste Pollution Prevention Branch in the Air and Waste Management Division of the EPA, Region VII.

4. The Respondent is Creighton University (Respondent), a non-profit corporation formed under the laws of Nebraska.

Statutory and Regulatory Framework

5. The State of Nebraska 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 Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management. 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 the 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 any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 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 Nebraska 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 Amended 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 Amended Consent Agreement and Final Order.

Factual Background

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

8. Respondent, located at 2500 California, Omaha, Nebraska, is an accredited Catholic Jesuit University offering undergraduate and graduate degrees. Respondent employs approximately 3,000 full time employees at its Omaha campus.

9. On or about February 9, 1986, Respondent notified the Nebraska Department of Environmental Quality that it is a small quantity generator of hazardous waste. EPA small quantity generators generate between 100 and 1,000 kilograms of hazardous waste per month.

10. Respondent has been assigned the following EPA ID Number: NED053309332.

11. On November 9, 1994, EPA conducted a compliance evaluation inspection at Respondent's facility. Based on information obtained during the November 1994 inspection, Respondent was issued a Notice of Violation for failing to make a hazardous waste determination on at least one waste stream, failing to close one satellite accumulation container, and failing to label containers of hazardous waste with the words "Hazardous Waste".

12. On September 11, 2002, EPA conducted a compliance evaluation inspection at Respondent's facility. Based on information obtained during the September 2002 inspection, Respondent was issued a Notice of Violation for failing to make a hazardous waste determination on at least one waste stream, failing to close one satellite accumulation container, failing to label two satellite accumulation containers as to their contents or with the words "Hazardous Waste", failing to label containers of hazardous waste with the words "Hazardous Waste", and failing to provide the date upon which each period of accumulation began for multiple containers.

13. On or about October 30-31, 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

14. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 13 above, as if fully set forth herein.

15. Pursuant to 40 C.F.R. § 262.11 and 128 Neb. Admin. Code, ch. 4 § 002, a generator of “solid waste,” as that term is defined in 40 C.F.R. § 261.2, and 128 Neb. Admin. Code, ch. 2 § 003, is required to determine if the solid waste is a hazardous waste.

16. At the time of the October 2007 inspection, Respondent had been generating spent mineral solvents used to clean brushes and rollers in the paint shop of the Jelinek Building. Respondent had not conducted a hazardous waste determination on the spent mineral solvents.

17. At the time of the October 2007 inspection, Respondent had been generating spent solvents used to clean brushes in art classes in the Lied Center. Respondent had not conducted a hazardous waste determination the spent solvents.

18. The spent mineral solvents in the Jelinek Building and the spent solvents in the Lied Center were hazardous waste.

19. 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 128 Neb. Admin. Code, ch. 4 § 002.

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

Failure to Meet Generator Requirements

20. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 19 above, as if fully set forth herein.

21. Respondent, as a small quantity generator of hazardous waste, may accumulate hazardous waste in containers on-site for one hundred and eighty (180) 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(d), as incorporated in 128 Neb. Admin. Code, ch. 9 § 007.03.

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

Failure to Close Satellite Accumulation Container

23. The regulations at 40 C.F.R. § 262.34(c)(1)(i) and 128 Neb. Admin. Code, ch. 9 007.04A require that a generator comply with the requirement set forth at 40 C.F.R. § 265.173(a) and 128 Neb. Admin. Code, ch 10, 004.01A2, respectively. 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.

24. At the time of the October 2007 inspection, Respondent failed to close a 30-gallon hazardous waste satellite accumulation container of spent developing solution in the Varsity Press in the Lied Center.

25. Respondent's failure to close a satellite accumulation container is a violation of 40 C.F.R. § 262.34(c)(1)(i) and 128 Neb. Admin. Code, ch. 9 007.04A.

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

26. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) and 128 Neb. Admin. Code, ch. 9, 007.04A2 require that a generator mark containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

27. At the time of the October 2007 inspection, Respondent failed to label the following hazardous waste satellite accumulation containers with the words "Hazardous Waste" or with other words that identify the contents of the containers: 1) one 16-gallon satellite accumulation container of spent solvents in the paint shop of the Jelinek Building, and 2) one 1-gallon satellite accumulation container of aqueous ethanol in Room 417 of the Criss Building.

28. Respondent's failure to label the hazardous waste satellite accumulation containers with the words, "Hazardous Waste" or with other words that identify the contents of the container is a violation of 40 C.F.R. § 262.34(c)(1)(ii) and 128 Neb. Admin. Code, ch. 9, 007.04A2.

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

29. The regulations at 40 C.F.R. § 262.34(d)(4) and 128 Neb. Admin. Code, ch. 9, 007.03D refer to the requirements found at 40 C.F.R. § 262.34(a)(3) and 128 Neb. Admin. Code, ch. 10, 004.01G, respectively. Those regulations require that while being accumulated on-site, each container and tank be marked clearly with the words, "Hazardous Waste".

30. At the time of the October 2007 inspection, Respondent failed to label the following hazardous waste containers with the words "Hazardous Waste": 1) one 5-gallon container containing a broken thermometer; 2) one unlabeled black plastic trash bag containing a broken thermometer; and 3) eleven 1-gallon containers of heavy metal sulfides.

31. Respondent's failure to label the hazardous waste containers with the words, "Hazardous Waste" is a violation of 40 C.F.R. § 262.34(d)(4) and 128 Neb. Admin. Code, ch. 9, 007.03D.

Failure to Date Hazardous Waste Storage Containers

32. The regulations at 40 C.F.R. § 262.34(d)(4) and 128 Neb. Admin. Code, ch. 9 § 007.03D require that a generator comply with the requirement set forth at 40 C.F.R. § 262.34(a)(2) and 128 Neb. Admin. Code, ch. 10 § 004.01F, respectively. Pursuant to these regulations, a generator must clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

33. At the time of the October 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: 1) one 5-gallon container plastic tub containing a broken thermometer; 2) a plastic trash bag containing a broken thermometer; and 3) eleven 1-gallon containers of heavy metal sulfides.

34. 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(d)(4) and 128 Neb. Admin. Code, ch. 9 § 007.03D.

Failure to Post Emergency Information

35. The regulations at 40 C.F.R. § 262.34(d)(5)(ii) and 128 Neb. Admin. Code, ch. 9 § 007.09 require that a generator post the following information by the telephone: A) the name and telephone number of the emergency coordinator; B) the location of fire extinguishers and spill control material, and if present, the fire alarm; and C) the telephone number of the fire department, unless the facility has a direct alarm.

36. At the time of the February 2006 inspection, the aforementioned emergency information was not posted next to the telephone.

37. Respondent's failure to post emergency information by the telephone is a violation of 40 C.F.R. § 262.34(d)(5)(ii) and 128 Neb. Admin. Code, ch. 9 § 007.09.

III. CONSENT AGREEMENT

38. Respondent and EPA agree to the terms of this Amended Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Amended Consent Agreement and Final Order.

39. Respondent admits the jurisdictional allegations of this Amended 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 Amended Consent Agreement and Final Order set forth below.

40. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Amended Consent Agreement and Final Order.

41. 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 Amended Consent Agreement and Final Order.

42. Respondent and Complainant agree to conciliate the matters set forth in this Amended Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

43. This Amended 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.

44. Nothing contained in the Final Order portion of this Amended 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.

45. Respondent certifies that by signing this Amended 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.

46. The effect of settlement described in Paragraph 43 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 45, above, of this Amended Consent Agreement and Final Order.

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

48. 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 Two Thousand Five Hundred Sixty-Nine Dollars (\$2,569.00).

49. The penalty specified in Paragraph 48, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

50. Respondent consents to the issuance of this Amended Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 48, above, and to the performance of the Supplemental Environmental Project (SEP).

51. In response to the violations of RCRA alleged in this Amended 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 52-56 of the Amended Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

52. Respondent shall complete the following SEP: collect and properly dispose of approximately four hundred fifty (450) mercury containing thermometers from campus labs, approximately one thousand five hundred (1,500) mercury containing fever thermometers belonging to Respondent's employees, and approximately forty (40) mercury containing thermostats from buildings owned by Creighton. The Respondent shall replace all these items with mercury-free thermometers and Energy Star thermostats.

53. By May 16, 2009, Respondent shall: 1) replace approximately four hundred fifty (450) mercury containing thermometers used in various laboratories located throughout Respondent's campus with mercury-free thermometers; 2) replace approximately one thousand five hundred (1,500) mercury containing fever thermometers from the homes of Respondent's employees with mercury-free fever thermometers; 3) replace approximately forty (40) mercury containing thermostats located in buildings throughout Respondent's campus with mercury-free Energy Star thermostats; and 4) replace other mercury containing medical devices currently used by Creighton University if they are replaced by non-mercury devices. The fever thermometer exchange shall last no less than two full business days. Respondent shall manage all the hazardous waste collected in accordance with all requirements of RCRA, 42 U.S.C. § 6901 *et seq.* and all regulations promulgated thereunder. The value of the project shall not be less than Twelve Thousand Six Hundred Forty-Two Dollars (\$12,642.00).

54. Respondent shall ensure and oversee the replacement and proper disposal of all mercury containing thermometers and thermostats described in Paragraph 53 of this Amended Consent Agreement and Final Order by May 16, 2009.

55. Within three (3) months of the effective date of this Amended Consent Agreement and Final Order, Respondent shall submit an Interim SEP Report to EPA. The Interim SEP Report shall confirm the number of mercury containing thermometers and thermostats replaced pursuant to Paragraph 53 of this Amended Consent Agreement Final Order.

56. By June 17, 2009, Respondent shall submit a Final SEP Report to EPA. The SEP Completion Report shall contain the following information:

- a) A detailed description of the SEP as implemented;
- b) A description of any problems encountered in implementation of the project and the

solution thereto;

c) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

d) Certification that the SEP has been fully implemented pursuant to the provisions of this Amended 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:

Deborah Finger, AWMD
Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

60. 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.*

61. Respondent hereby certifies that, as of the date of this Amended Consent Agreement and Final Order, 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.

62. 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.

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

a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP as set forth in Paragraphs 52-56, above, and/or to the extent that the actual expenditures for the SEP does not equal or exceed the cost of the SEP described in Paragraph 53, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i) Except as provided in subparagraphs (ii) through (v) immediately below, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraphs 52-56, or if Respondent certifies, with supporting documentation, that less than 50 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Ten Thousand Two Hundred Seventy-Five Dollars (\$10,275);
- ii) If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraphs 55-58, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted;
- iii) If the SEP is not completed in accordance with Paragraphs 52-56, but EPA determines that the 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 money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

- iv) If the SEP is not completed in accordance with Paragraphs 52-56, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 70-90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Two Thousand Three Hundred Twenty-Eight Dollars (\$2328); or
 - v) If the SEP is not completed in accordance with Paragraphs 52-56, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 50-70 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Three Thousand Eight Hundred Eighty Dollars (\$3880).
- ii) If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraphs 55-58, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted; and
- iii) If the SEP is not completed in accordance with Paragraphs 52-56, but EPA determines that the 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 money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- b) The determination 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 in the sole discretion of EPA.
- c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 2 of the Final Order portion of this Amended Consent Agreement and Final Order, below.

64. Respondent agrees that, in settlement of the claims alleged in this Amended Consent Agreement and Final Order, Respondent shall pay a penalty of Two Thousand Five

Hundred Sixty-Nine Dollars (\$2,569.00) as set forth in Paragraph 1 of the Final Order portion of this Amended Consent Agreement and Final Order, below.

65. 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).

66. 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.

67. This Amended 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.

68. This Amended 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 Amended 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 Amended Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of Two Thousand Five Hundred Sixty-Nine Dollars (\$2,569.00).

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-07-2008-0004 on the check. A copy of the check shall also be mailed to:

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

and

Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Amended 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 Amended Consent Agreement and shall be liable for any stipulated penalty for failure to complete the project as specified in the Amended Consent Agreement.

B. Parties Bound

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

C. Reservation of Rights

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

8. Except as expressly provided herein, nothing in this Amended 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 Amended 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 Amended Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Amended Consent Agreement and Final Order.

11. The provisions of this Amended 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.

B. Compliance Actions

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

- a. Respondent shall document how it will conduct hazardous waste

determinations for all spent solvents generated during art classes.

b. Respondent shall document how it will manage pharmaceutical materials that are returned to the reverse distributor so that it is in compliance with RCRA 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

13. Respondent shall submit all documents produced to comply with Paragraph 12(a) and (b) of the Final Order above to the address listed in Paragraph 59 above.

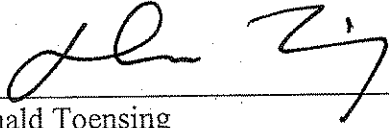
In the matter of Creighton University
Docket No. RCRA-07-2008-0004

For the Complainant:

The United States Environmental Protection Agency

4-14-09

Date



Donald Toensing
Chief, Solid Waste Pollution Prevention Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region VII

4/13/09

Date




Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

In the matter of Creighton University
Docket No. RCRA-07-2008-0004

For Respondent:
Creighton University

4/6/09
Date


Signature

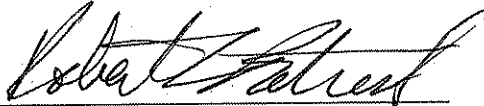
Daniel E. Burkey
Printed Name Vice President for Administration and Finance

Title

In the matter of Creighton University
Docket No. RCRA-07-2008-0004

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

Apr. 16, 2009
Date



Robert Patrick
Regional Judicial Office

IN THE MATTER OF Creighton University, Respondent
Docket No. RCRA-07-2008-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Amended Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John T. Baxter
Director Environmental Health and Safety
Creighton University
2500 California Plaza
Omaha, Nebraska 68601

Dated: 4/17/09



Kathy Robinson
Hearing Clerk, Region 7