

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Midwest Division - RMC, LLC d/b/a)
Research Medical Center)
2316 East Meyer Boulevard)
Kansas City, Missouri 64132)

CONSENT AGREEMENT AND
FINAL ORDER

EPA ID No. MOD076252659)

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).)

Docket No. RCRA-07-2007-0013

I. PRELIMINARY STATEMENT

This administrative action is being conducted pursuant to Section 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 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Midwest Division - RMC, LLC, doing business as Research Medical Center, a for-profit corporation formed under the laws of the State of Missouri.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). 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

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set forth in this Consent Agreement and Final Order.

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, and the State of Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (“C.S.R.”), Chapter 25 (“10 C.S.R. 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 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 Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

II. FACTUAL ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6925 and the regulations found at 40 C.F.R. § 262.11.

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3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Respondent is a for-profit corporation organized in and authorized to operate in the State of Missouri and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
5. Respondent operates the Research Medical Center located in Kansas City, Missouri. This facility provides services in a variety of specialties, such as stroke treatment, transplants, oncology, cardiac care, surgery, radiology and rehabilitation.
6. Respondent has been in operation at this location since approximately 1963, and currently employs approximately 1600 full-time and part-time employees.
7. On or about April 14, 2004, Respondent notified the Missouri Department of Natural Resources that it was operating as a large quantity generator (more than 1000 kg/month) of hazardous waste.
8. Respondent has been assigned the facility identification number MOD076252659.
9. On June 6 and 7, 2006, EPA conducted a RCRA compliance evaluation inspection at Respondent’s facility. Based on a review of manifests and on information received from facility personnel, it was determined that Respondent was operating at that time as a small quantity generator (100 to 1000 kg/month) of D001, D002, D008, D009, D035, D039, F003 and F005 hazardous waste.
10. Based on information obtained during the June 2006 inspection, Respondent was issued a Notice of Violation for a number of requirements of RCRA.

COUNT I

OPERATING AS A HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR INTERIM STATUS

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 above, as if fully set forth herein.

A. Illegal Storage of Hazardous Waste

12. The regulations at 40 C.F.R. § 262.34(f), as incorporated in 10 C.S.R. 25-5.262(1), state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste for more than 180 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless he or she has been granted an extension to the 180-day period.

13. At the time of the June 2006 EPA inspection, Respondent had been storing at least one container of hazardous waste (paint related material) for more than 180 days in the paint area of the maintenance department.

14. At the time of the June 2006 EPA inspection, Respondent had been storing approximately 10 spent lead aprons for more than 180 days in a room in the radiology department.

15. By storing hazardous waste on-site for greater than 180 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265 and 270.

16. Respondent has not sought, or been granted, an extension to the 180-day storage period.

B. Failure to Meet Generator Requirements

17. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, provided that the generator complies with the requirements set forth in 40 C.F.R. §§ 262.34(d)(1) through (5).

Labeling and Dating of Hazardous Waste Containers

18. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(4), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 C.F.R. §§ 262.34(a)(2) and (a)(3).

19. The regulations at 40 C.F.R. § 262.34(a)(3) require that while being accumulated on-site, each hazardous waste container is labeled or marked clearly with the words, "Hazardous Waste."

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20. At the time of the June 2006 EPA inspection, Respondent had accumulated at least one container of hazardous waste (paint related material) in the paint area of the maintenance department and four containers of hazardous waste (outdated and partially used chemicals) in the Environmental Services storage room which were not labeled with the words, “Hazardous Waste.”

21. The regulations at 40 C.F.R. § 262.34(a)(2) require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection on each container.

22. At the time of the June 2006 EPA inspection, Respondent had accumulated at least one container of hazardous waste (paint related material) in the paint area of the maintenance department and four containers of hazardous waste (outdated and partially used chemicals) in the Environmental Services storage room which were not dated with the accumulation start date.

Weekly Inspections of Hazardous Waste Containers

23. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(2), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 C.F.R. Part 265 subpart I, except for §§ 265.176 and 265.178.

24. The regulations at 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, require that each owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

25. At the time of the June 2006 EPA inspection, Respondent had not been conducting inspections of four separate hazardous waste container storage areas.

Emergency Information

26. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(5)(ii), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator posts, next to the telephone, the name and telephone number of the emergency coordinator; the location of fire extinguishers, spill control material, and, if present, the fire alarm; and the telephone number of the fire department.

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27. At the time of the June 2006 EPA inspection, Respondent failed to post the emergency coordinator's name and telephone number, as well as the location of emergency equipment and the telephone number of the fire department, next to the telephones in four separate hazardous waste container storage areas.

Personnel Training

28. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(d)(5)(iii), state that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator ensures that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

29. At the time of the June 2006 EPA inspection, Respondent had not been giving its employees training in the proper management of hazardous waste or in the procedures for responding to hazardous waste emergencies.

30. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(d), which is alleged in paragraphs 18 through 29, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

31. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA.

Satellite Accumulation Containers

32. The regulations at 10 C.S.R. 25-5.262(2)(C)3, which incorporate the requirements in 40 C.F.R. § 262.34(c), state in pertinent part that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 40 C.F.R. § 262.34(a), provided that the generator complies with 40 C.F.R. §§ 265.171, 265.172, and 265.173(a); and the containers are marked with the beginning date of satellite storage.

33. The regulations at 40 C.F.R. § 265.173(a) require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

34. At the time of the June 2006 EPA inspection, Respondent was storing at least one satellite accumulation hazardous waste container in the histology lab which was not marked with the beginning date of satellite storage.

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35. At the time of the June 2006 EPA inspection, Respondent was storing at least one satellite accumulation hazardous waste container in the histology lab which was not closed during storage.
36. By failing to comply with the required conditions of 40 C.F.R. § 262.34(c) and 10 C.S.R. 25-5.262.(2)(C)3, Respondent became subject to the requirements of having a permit or interim status for its storage of satellite accumulation hazardous waste and complying with the requirements of 40 C.F.R. § 262.34(a).
37. As discussed above in paragraphs 19 through 22, Respondent failed to comply with several requirements of 40 C.F.R. § 262.34(a) and therefore was required to have a permit or interim status, for its storage of hazardous waste.
38. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA.

III. CONSENT AGREEMENT

39. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
40. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
41. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
42. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order and agrees not to appeal the Final Order set forth below.
43. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.
44. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement

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action with respect to any other violations of RCRA or any other applicable law.

45. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge and after thorough investigation, it is presently in compliance with all requirements of Subchapter III of RCRA (Hazardous Waste Management). Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

46. Respondent agrees that, in settlement of the claims alleged in the Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of \$105,900 as set forth in paragraph 52 of the Final Order.

47. The effect of settlement described in paragraph 44 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in paragraph 45 above.

48. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.

49. This Consent Agreement and Final Order 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.

50. This Consent Agreement and Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 62 of the Final Order, that all requirements hereunder have been satisfied.

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

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 the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

52. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$105,900.

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

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2007-0013, on the check. A copy of the check shall also be mailed to:

Alex Chen
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

and to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101.

54. 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 rate of five percent (5%) per annum.

55. 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. Parties Bound

56. This Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. Reservation of Rights

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

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

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For the Respondent:

By: Kevin J. Hicks

Printed Name:

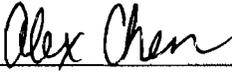
Title: Kevin J. Hicks, CEO

9/26/07

9/26/07
Date

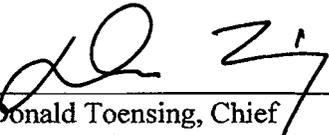
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For the Complainant:
The United States Environmental Protection Agency



Alex Chen
Assistant Regional Counsel

September 27, 2007
Date



Donald Toensing, Chief
RCRA Enforcement and State Programs Branch
Air, RCRA and Toxics Division

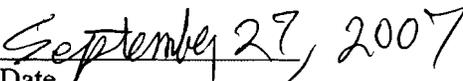
9-27-07
Date

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



Robert Patrick
Regional Judicial Officer



Date

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Respondent
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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:

Alex Chen
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:

Elsie A. Faciane
VP/Chief Legal Officer
HCA Midwest Division
903 E. 104th Street, 5th Floor
Kansas City, Missouri 64131

Dated: 9/28/07


Kathy Robinson
Hearing Clerk, Region 7