



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 05 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Cheryl Ramage Estes
Lewis Thomason
One Commerce Square 29th Floor
40 S. Main Street
Memphis, Tennessee 38103

SUBJ: Consent Agreement and Final Order
American Esoteric Laboratories
Docket No. RCRA-04-2014-4001(b)

Dear Ms. Estes:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC and the penalty due date is calculated from that date.

Feel free to contact Alan Newman, of my staff, at (404) 562-8589 or by email at newman.alan@epa.gov for technical questions and for legal questions please contact Greg Luetscher at (404) 562-9677 or by email at luetscher.greg@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "César A. Zapata".

César A. Zapata
Chief, RCRA and OPA Enforcement and
Compliance Branch
RCRA Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK

2014 SEP -5 AM 8:17

RECEIVED
EPA REGION IV

IN THE MATTER OF) DOCKET NO.: RCRA-04-2014-4001(b)
)
)
American Esoteric Laboratories)
1701 Century Center Cove) Proceeding Under Section 3008(a) of the
Memphis, Tennessee 38134) Resource Conservation and Recovery Act
) 42 U.S.C. § 6928(a)
)
EPA ID No.: TNR 000 036 368)
)
Respondent)

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action pursuant to the Tennessee Code Annotated (T.C.A.) §§ 68-212-101 et seq., as amended [Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921 – 6939(e)]. This action is seeking civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of T.C.A. and the regulations promulgated pursuant thereto, set forth at Tenn. Comp. R. & Regs. (Tennessee Rule, or “TR”), Chapter 0400-12-01, [40 Code of Federal Regulations (C.F.R.) Parts 260 - 266, 268, 270 and 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA) Region 4.
5. Respondent, American Esoteric Laboratories, Inc., is a Delaware for-profit corporation authorized to do business in the State of Tennessee (Tennessee or State). Respondent operates a medical laboratory, located at 1701 Century Center Cove, Memphis, Tennessee, (the "facility") that provides analytical testing.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Tennessee received final authorization from EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Tennessee authorized program are found at T.C.A. §§ 68-212-101 et seq. and TR Chapter 0400-12-01.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of their authorization status, and are implemented by EPA until a state is granted final authorization with respect to those requirements. The State of Tennessee received final authorization for certain portions of HSWA, including those recited herein.
8. Although EPA has granted the State of Tennessee authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Tennessee.
9. As the State of Tennessee's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Tennessee program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Tennessee before issuance of this CA/FO.
11. T.C.A. 68-212-101, et seq. [Section 3002 of RCRA, 42 U.S.C. § 6922] requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found in TR Chapter 0400-12-01-.03 [40 C.F.R. Part 262].

12. T.C.A. 68-212-101, *et seq.* [Section 3004 of RCRA, 42 U.S.C. § 6924] requires the promulgation of standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at TR Chapter 0400-12-01-.05 [40 C.F.R. Part 264].
13. T.C.A. 68-212-108, *et seq.* [Section 3005 of RCRA, 42 U.S.C. § 6925] sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at TR Chapter 0400-12-01-.05 (interim status) [40 C.F.R. Part 265] and 0400-12-01-.06 (permitted) [40 C.F.R. Part 264].
14. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “owner” means the person who owns a facility or part of a facility and “operator” means the person responsible for the overall operation of a facility.
15. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “person” includes, inter alia, an individual, firm, corporation, partnership, or association.
16. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “generator” is any person, by site, whose act or process produces hazardous waste identified or listed in TR 1200-1-11-.02 [40 C.F.R. Part 261] or whose act first causes a hazardous waste to be subject to regulation.
17. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “facility” means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
18. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “publically owned treatment works” or “POTW” means any device or system used in the treatment of municipal sewage or industrial waste of a liquid that is owned by a “State” or “municipality” (as defined by section 502(4) of the Clean Water Act). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.
19. Pursuant to TR 0400-12-01-.02(d)1.(i)(II) [40 C.F.R. § 261.4(a)(1)(ii)], any mixture of domestic sewage and other wastes that passes through a sewer system to a POTW for treatment is excluded from the definition of solid waste (hereinafter referred to as the “POTW Exclusion”).
20. As explained at TR 0400-12-01-.02(1)(d)1.(i)(II), [40 C.F.R. § 261.4(a)(1)(ii)], the POTW Exclusion does not exclude waste/wastewaters while they are being generated, collected, stored, or treated before entering the sewer system. This exclusion applies when the material enters the sewer system where it will mix with sanitary wastes at any point before reaching the POTW, whereupon this material is regulated under water pollution statutes and regulations. This material is subject to all applicable reporting, monitoring, and permitting requirements of T.C.A. §§ 68-221-101, 69-3-101, *et seq.* and associated regulations.

Management of this material must be in compliance with all applicable authorization (permits, etc.) associated with disposal into a POTW for subsequent treatment.

21. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “*small quantity generator*” means a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.
22. Pursuant to TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “*treatment*” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous, safer to transport, store, or dispose of, or amenable for recovery, amenable for storage, or reduced in volume.
23. Pursuant to TR 0400-12-01-.02(1)(b)1.(i) [40 C.F.R. § 261.2], a “*solid waste*” is any “discarded material” that is not otherwise excluded by regulation.
24. Pursuant to TR 0400-12-01-.02(1)(b)1.(ii) [40 C.F.R. § 261.2(a)(2)(i)], a “*discarded material*” is any material which, inter alia, is “*abandoned*.”
25. Pursuant to TR 0400-12-01-.02(1)(c)1. [40 C.F.R. § 261.3(a)], a solid waste is a “*hazardous waste*” if it is not excluded from regulation as a hazardous waste under TR 0400-12-01-02(1)(d)(2) [40 C.F.R. § 261.4(b)], and it meets any of the criteria specified in TR 0400-12-01-.02(1)(c)1.(ii) [40 C.F.R. § 261.3(a)(2)].
26. Pursuant to TR 0400-12-01-.02(3)(e)2. [40 C.F.R. § 261.21(b)], a solid waste that exhibits the characteristic of ignitability has the hazardous waste code D001.
27. Pursuant to TR 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31(a)], waste xylene, as a spent non-halogenated solvent from non-specific sources, is an F003 hazardous waste listed for the characteristic of ignitability.
28. Pursuant to TR 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11], any person who generates a solid waste must determine if the waste is a hazardous waste using a method prescribed in the regulations.
29. Pursuant to TR 0400-12-01-.03(1)(c)(1) [40 C.F.R. § 262.12], a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an Installation Identification Number from the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC” or “the Department”) or his authorized representative (“Commissioner”).
30. Pursuant to TR 0400-12-01-.03(4)(e)6. [40 C.F.R. § 262.34(d)], a small quantity generator who generates greater than 100 kilograms but less than 1,000 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 the generator complies with the requirements in TR 0400-12-01-.03(4)(e)6.(i)-(vii) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the "Small Quantity Generator Permit Exemption").

31. Pursuant to TR 0400-12-01-.03(4)(e)6.(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)], a condition of the Small Quantity Generator Permit Exemption requires a facility to have an emergency coordinator who is responsible for coordinating all emergency response measures specified in subitem (IV) of TR 0400-12-01-.03(4)(e)6.(vii) [paragraph (d)(5)(iv) of 40 C.F.R. § 262.34].
32. Pursuant to TR 0400-12-01-.03(4)(e)6.(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)], a condition of the Small Quantity Generator Permit Exemption requires a facility to have a modified contingency plan next to the telephone.
33. Pursuant to TR 0400-12-01-.03(4)(e)6.(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)], a condition of the Small Quantity Generator Permit Exemption requires a generator to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.
34. Pursuant to TR 0400-12-01-.03(4)(e)6.(ii) [40 C.F.R. § 262.34(d)(2)] which incorporates TR 0400-12-01-.05(9)(e) [40 C.F.R. § 265.174], a condition of the Small Quantity Generator Permit Exemption requires a facility to inspect areas where containers of hazardous waste are stored to look for leaking or deteriorating containers.
35. Pursuant to TR 0400-12-01-.07(1)(b)2. [40 C.F.R. § 270.1(c)], a permit is required for the treatment, storage, and disposal of any "hazardous waste" as identified or listed in TR 0400-12-01-.02 [40 C.F.R. Part 261].
36. Pursuant to TR 0400-12-01-.03(5)(b) , a generator must submit an Annual Report to the TDEC by March 1 for the preceding calendar year.

IV. EPA ALLEGATIONS AND DETERMINATIONS

37. Respondent is a "person" as defined in TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
38. Respondent is the "owner" and "operator" of a "facility" located at 1701 Century Center Cove, Memphis, Tennessee, as those terms are defined in TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
39. On July 16, 2013, inspectors from the EPA and the TDEC Division of Solid and Hazardous Waste Management conducted a Compliance Evaluation Inspection (CEI) at the facility.

40. During the CEI, EPA observed that the facility was generating waste chemicals from laboratory processes including waste isopropyl and methyl alcohols (D001 hazardous wastes) and waste xylene (F003).
41. During the CEI, Respondent was generating waste xylene in its Cytology Department and was managing this waste as a D001 and as an F003 hazardous waste. Respondent had previously been manifesting this waste for off-site disposal at a RCRA-permitted treatment, storage, and disposal facility.
42. During the CEI, EPA observed: (i) that the operation of tissue processing machines in Respondent's Cytology Laboratory involved the use of varying concentrations of isopropyl alcohol; (ii) a one gallon container of methyl alcohol intended for reuse was located beneath the sink in the Histology Laboratory; and (iii) chemicals used to perform tissue tests, called gram stains, were located in the Microbiology Department. EPA's inspector was informed by facility personnel that these and other chemical wastes generated by laboratory processes, except for waste xylene, had typically been disposed of down the sink drain.
43. During the CEI, Respondent informed EPA's inspector that wastes generated by Respondent's laboratory processes did not undergo a hazardous waste determination prior to being disposed of down the sink drain.
44. EPA therefore alleges that Respondent violated TR 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11] by failing to make hazardous waste determinations on solid waste generated at the facility.
45. Respondent typically conducted waste determinations on several waste streams generated at the facility, including: five isopropyl alcohol waste streams from the Cytology Department; one methyl alcohol waste stream from the Microbiology Department; and one additional waste stream from the Chemistry Department. Respondent determined that each of the six identified waste streams exhibited the characteristic of ignitability, and therefore constituted D001 hazardous wastes.
46. During the CEI, Respondent informed EPA's inspector that the facility's practice was to dilute the isopropyl alcohol wastes and methyl alcohol wastes in the sink with tap water whereupon the diluted hazardous wastes were then disposed of via the sink's drain.
47. Wastes entering the sink drains at the facility are transported by gravity or pumped to, and treated by, the City of Memphis's POTW.
48. EPA therefore alleges that Respondents violated T.C.A. 68-212-108 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] by treating hazardous waste without a permit or having interim status in violation of TR 0400-12-01-.03(1)(c)(1) [40 C.F.R. § 262.12] or qualifying for an exemption to the permit requirement under TR 0400-12-01-.07(1)(b)2. [40 C.F.R.

§ 270.1(c)], by diluting hazardous waste prior to its transportation via the facility's sewer system to the POTW.

49. During the CEI, Respondent informed EPA's inspector that the facility generated approximately forty gallons (approximately 264 pounds) of waste xylene each month. Subsequently, Respondent informed EPA's inspector that the facility generates approximately 20 pounds of waste ethyl alcohol and 171 pounds of waste isopropyl alcohol per month. Accordingly, Respondent was generating an aggregate amount of approximately 455 pounds (approximately 207 kilograms) of hazardous waste per month at the facility.
50. During the CEI, although Respondent had not yet requested or received an Installation Identification Number from the Commissioner, the facility was a small quantity generator of hazardous waste.
51. EPA therefore alleges that Respondent violated T.C.A. 68-212-106 [Section 3010 of RCRA, 42 U.S.C. § 6929] by treating, storing, disposing or offering for transportation, hazardous waste as a small quantity generator without having received an installation identification number from the Commissioner as required under TR 1200-01-11-.03(1)(c) [40 C.F.R. § 262.12].
52. During the CEI, Respondent was unable to provide weekly inspection documentation, evidence of a designated emergency coordinator, a modified contingency plan, and records of hazardous waste employee training for the past three years.
53. EPA therefore alleges that Respondent violated T.C.A. 68-212-108 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or having interim status because Respondent failed to meet a requirement of the Small Quantity Generator Permit Exemption given in TR 0400-12-01-.03(4)(e)6.(ii) [40 C.F.R. § 262.34(d)(2)] by not complying with TR 0400-12-01-.05(9)(e) [40 C.F.R. § 265.174] which requires a generator to inspect areas where containers of hazardous waste are stored to look for leaking or deteriorating containers.
54. EPA therefore alleges that Respondent violated T.C.A. 68-212-108 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or having interim status because Respondent failed to meet a requirement of the Small Quantity Generator Permit Exemption given in TR 0400-12-01-.03(4)(e)6.(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)], which requires a generator to have an emergency coordinator who is responsible for coordinating all emergency response measures specified in subitem (IV) of TR 0400-12-01-.03(4)(e)6.(vii) [paragraph (d)(5)(iv) of 40 C.F.R. § 262.34].
55. EPA therefore alleges that Respondent violated T.C.A. 68-212-108 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or having interim status because Respondent failed to meet a requirement of the Small Quantity Generator

Permit Exemption given in TR 0400-12-01-.03(4)(e)6.(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)], which requires a generator to have a modified contingency plan posted next to the telephone.

56. EPA therefore alleges that Respondent violated T.C.A. 68-212-108 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or having interim status because Respondent failed to meet a requirement of the Small Quantity Generator Permit Exemption given in TR 0400-12-01-.03(4)(e)6.(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)], which requires a generator to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.
57. As of the date of the CEI, Respondent was a small quantity generator as defined in TR 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], yet had not submitted annual reports to TDEC for the past three consecutive years.
58. EPA therefore alleges that Respondent violated TR 0400-12-01-.03(5)(b) by failing to submit an Annual Report to the TDEC by March 1 for each of the preceding three calendar years.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations, and Determinations, the parties agree to the following:

59. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
60. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
61. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
62. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
63. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
64. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact

or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

65. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
66. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Tennessee hazardous waste program.
67. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations alleged and facts stipulated in this CA/FO.
68. Each party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

69. Respondent consents to the payment of a civil penalty in the amount of *THIRTY ONE THOUSAND FOUR HUNDRED THIRTY-FIVE AND 00/100* DOLLARS (\$31,435.00) payable within thirty (30) calendar days of the effective date of this CA/FO.
70. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearinghouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: *Treasurer, United States of America*, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, (301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

and to:

Nancy McKee
Chief, North Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

71. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not

paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
 - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
72. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

73. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
74. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
75. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

76. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the future handling, storage, treatment, transportation, or disposal of solid

waste or hazardous waste at the facility may present an imminent and substantial endangerment to human health and the environment.

77. 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.
78. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

IX. OTHER APPLICABLE LAWS

79. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

80. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Gregory D. Luetscher
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9677
luetscher.greg@epa.gov

81. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Cheryl Estes
Lewis Thomason
One Commerce Square
29th Floor

40 South Main Street
Memphis, Tennessee 38103
cestes@lewisthomason.com

XI. SEVERABILITY

82. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

83. The effective date of this CA/FO shall be the date on which the fully executed CA/FO is filed with the Regional Hearing Clerk.

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In the matter of American Esoteric Laboratories, Docket No. RCRA-04-2014-4001(b):

AGREED AND CONSENTED TO:

For the Respondent

David L. Smalley
(Signature)

Date: 8/28/2014

Please print or type name and title:

David L. Smalley
President, AEL

For the U.S. Environmental Protection Agency

César Zapata
César Zapata, Chief
RCRA and OPA Enforcement
and Compliance Branch
RCRA Division

Date: 9-4-14

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)	DOCKET NO.: RCRA-04-2014-4001(b)
)	
American Esoteric Laboratories)	
1701 Century Center Cove)	Proceeding Under Section 3008(a) of the
Memphis, Tennessee 38134)	Resource Conservation and Recovery Act
)	42 U.S.C. § 6928(a)
EPA ID No.: TNR 000 036 368)	
)	
<u>Respondent.</u>)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 4 day of Sept., 2014

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of American Esoteric Laboratories, Memphis, Tennessee, **Docket Number: RCRA-04-2012-4001(b)** on the parties listed below in the manner indicated:

Gregory D. Luetscher
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9677

(Via EPA's internal mail)

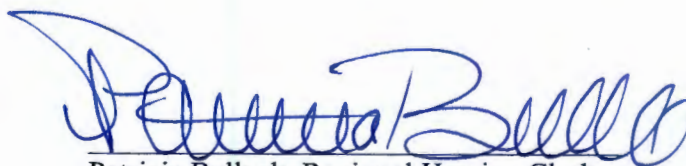
Quantindra Smith
RCRA and OPA Enforcement
and Compliance Branch
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Cheryl Estes
Lewis Thomason
One Commerce Square
29th Floor
40 South Main Street
Memphis, Tennessee 38103

(Via Certified Mail - Return Receipt
Requested)

9-5-14
Date



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511