



The University of Vermont

**John J. Collins**

*Senior Associate General Counsel*

RECEIVED

OCT 27 2016

EPA ORC *WS*  
Office of Regional Hearing Clerk

October 26, 2016

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency,  
Post Office Square, Suite 100  
Mail Code ORA I 8-1  
Boston, MA 02109-3912

Michael Wagner, Enforcement Counsel Office of  
Environmental Stewardship  
U.S. Environmental Protection Agency, Region I 5 Post  
Office Square, Suite 100  
Mail Code OES04-3 Boston, MA  
02109-3912

Re: In the Matter of: University Of Vermont State and Agricultural College  
EPA Docket No. RCRA-01-2016-0077

Dear Ms. Santiago and Attorney Wagner:

I enclose for filing the University of Vermont's Answer to the above referenced complaint. I also enclose a certificate of Service.

As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, the University requests a hearing on each Count of and material fact alleged in this Complaint, and as to the appropriateness of the proposed penalty and Compliance Order in light of the facts.

Attorney Wagner and I are in active discussions regarding settlement of this matter and we are hopeful that the matter can be settled without the need for hearing but we reserve the right to a hearing should the matter not settle.

{V0019555.1}  
OFFICE OF LEGAL AFFAIRS & GENERAL COUNSEL  
Waterman 357 Bldg.  
Burlington, VT 05405  
(802) 656-8585 john.j.collins@uvm.edu



The University of Vermont

**John J. Collins**

*Senior Associate General Counsel*

Please contact me with any questions or comments. Thank you for your assistance.

Sincerely,

John J. Collins  
Senior Associate General Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

RECEIVED

OCT 27 2016

EPA ORC WS  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )  
)  
University of Vermont and State )  
Agricultural College, )  
85 South Prospect Street )  
344-353 Waterman Bldg. )  
Burlington, VT 05405, )  
)  
Respondent. )  
)  
Proceeding under Section 3008(a) of )  
the Resource Conservation Recovery )  
Act, 142 U.S.C. § 6928(a) )  
\_\_\_\_\_

EPA Docket No. RCRA-01-2016-0077

**ADMINISTRATIVE COMPLAINT,  
COMPLIANCE ORDER, AND  
NOTICE OF OPPORTUNITY FOR  
HEARING**

**ANSWER TO COMPLAINT**

Now Comes the University of Vermont and State Agricultural College (the "University"), through its Office of the General Counsel, and answers the Complaint as set forth below. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, the University requests a hearing on each Count of and material fact alleged in this Complaint, and as to the appropriateness of the proposed penalty and Compliance Order in light of the facts. For convenience, the allegations are provided with the answer set forth thereafter.

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing

("Complaint") is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, "RCRA"), 42 U.S.C. § 6928(a), and 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, 40

C.F.R. Part 22 ("Consolidated Rules of Practice"). The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region I ("EPA").

**ANSWER: Admitted.**

2. The Respondent, University of Vermont and State Agricultural College ("Respondent"), is hereby notified of EPA's determination that it has violated Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924 and 6925; set forth at 40 C.F.R. Parts 262, 265 and 268; IO Vermont Statutes Annotated chapter 159; and the Vermont Hazardous Waste Management Regulations ("VHWMR") 7- 101 *et seq.* EPA also provides notice of Respondent's opportunity to request a hearing.

**ANSWER: Admit as to notification. Deny as to allegations as more specifically set forth below. The University Requests a hearing if this matter cannot be settled.**

## **I. NATURE OF ACTION**

3. This Complaint seeks to obtain civil penalties and compliance with RCRA and is issued pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. Specifically, Complainant seeks civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for Respondent's violations of the federal and state hazardous waste regulations promulgated pursuant to RCRA, and 10 Vermont Statutes Annotated chapter 159.

**ANSWER: Non- Traversable.**

4. Notice of commencement of this action has been given to the State of Vermont ("Vermont") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

**ANSWER: Without sufficient information to admit or deny.**

## **II. STATUTORY AND REGULATORY FRAMEWORK**

5. Congress enacted RCRA in 1976, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. Subtitle C of RCRA, 42 U.S.C. § 6921–6939e, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

**ANSWER: Non- Traversable.**

6. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are regulated as "hazardous wastes." These regulations are set forth at 40 C.F.R. Part 261.

**ANSWER: Non- Traversable.**

7. Section 3002 of RCRA, 42 U.S.C. § 6922, required EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and relate to such matters as determining whether a waste is hazardous, container management, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.

**ANSWER: Non- Traversable.**

8. Section 3004 of RCRA, 42 U.S.C. § 6924, and the regulations promulgated thereunder at 40 C.F.R. Part 264, establish standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.

**ANSWER: Non- Traversable.**

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the owner or operator of a treatment, storage or disposal facility to obtain an operating permit.

**ANSWER: Non- Traversable.**

10. In 1984, Congress substantially amended RCRA with the Hazardous and Solid Waste Amendments to, among other things: (a) restrict the disposal of hazardous wastes on the land or in landfills; and (b) change the method for determining whether wastes are toxic (and therefore hazardous). 42 U.S.C. § 6924(c)-(p).

**ANSWER: Non- Traversable.**

11. Sections 3004(d) (o) of RCRA, 42 U.S.C. § 6924, and the regulations promulgated thereunder at 40 C.F.R. Part 268, establish pre-disposal treatment requirements for land disposal of certain hazardous wastes.

**ANSWER: Non- Traversable.**

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize

a state to administer a hazardous waste program *in lieu* of the federal program when the Administrator deems the state program to be equivalent to the federal program.

**ANSWER: Non- Traversable.**

13. The State of Vermont received final authorization on January 7, 1985, with an effective date of January 21, 1985 (50 FR 775), to implement the RCRA hazardous waste management program. The Region published an immediate final rule for certain revisions to Vermont's program on May 3, 1993 (58 FR 26,242). This authorization became effective August 6, 1993 (58 FR 31,911). The Region granted authorization for further revisions to Vermont's program on September 24, 1999 (64 FR 51,702), effective November 23, 1999. The Region granted authorization for further revisions to Vermont's program on October 26, 2000, effective December 26, 2000 (65 FR 64,164). On June 23, 2005 (70 FR 36,350) the Region published an immediate final rule for additional revisions to Vermont's program. This authorization became effective on August 22, 2005. The Region granted authorization for further revisions to Vermont's program on March 16, 2007 (72 FR 12,568), which became effective on May 15, 2007. The Region granted authorization for further revisions to Vermont's program on December 31, 2013 (78 FR 79,615), which became effective on March 3, 2014.

**ANSWER: Non- Traversable.**

14. Vermont's federally authorized hazardous waste management regulations are codified at VHWMR, Subchapters 1-9, § 7-101 through § 7-916.

**ANSWER: Non- Traversable.**

15. As amended, Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA (Sections 3001 – 3023), 42 U.S.C. §§ 6921-6939e. Therefore, a violation of any requirement under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

**ANSWER: Non- Traversable.**

16. Pursuant to Sections 3006(g), 3008(a), and 3008(g) of RCRA, 42 U.S.C. §§ 6926(g), 6928(a), and 6928(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including the federally approved Vermont hazardous waste management regulations as well as the federal regulations promulgated pursuant to the Hazardous and Solid Waste Amendments, by issuing orders requiring compliance immediately or within a specified time.

**ANSWER: Non- Traversable.**

17. Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), provide that any person who violates any order or requirement of Subtitle C of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subtitle C of RCRA is up to \$37,500 per day per violation for violations that occurred on or after January 13, 2009, through November 2, 2015.



**ANSWER: Non- Traversable. The University denies allegations with specificity below.**

### **III. GENERAL AND FACTUAL ALLEGATIONS**

18. Respondent, a state university, is a body corporate and instrumentality of the State of Vermont for providing public higher education. Respondent is a "person" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(15), and VHWMR § 7-103.

**ANSWER: Admitted.**

19. Among the facilities at Respondent's campus is the Environmental Research Safety Facility

Bio-Research Complex located at 607 Speer Street in Burlington, Vermont ("Facility").

**ANSWER: Admitted, except corrected as to address which is 667 Spear Street.**

20. Respondent uses the Facility to provide hazardous waste management services to its various administrative, academic and research departments. Respondent treats and stores hazardous waste at the Facility.

**ANSWER: Admitted.**

21. At all times relevant to the allegations set forth in this Complaint, Respondent was and currently is the "owner" and "operator" as defined in 40 C.F.R. § 260.10 of the Facility.

**ANSWER: Admitted.**

22. The Facility was first issued a hazardous waste facility permit for treatment and storage by the Vermont Department of Environmental Conservation on June 12, 1991. The Facility's permit was re-issued on July 14, 2006, and then again on November 20, 2012 ("Permit"). The Facility's EPA ID number is VTD000636563.

**ANSWER: Admitted.**

23. As the owner and operator of a facility that treats and stores hazardous waste, Respondent is subject to the requirements of its permit and the hazardous waste treatment, storage, and disposal requirements set forth at VHWMR § 7-50 *et seq.*

**ANSWER: Admitted.**

24. At all times relevant to the allegations set forth in this Complaint, Respondent was and is a "transporter," as that term is defined in 40 C.F.R. § 260.10 and VHWMR § 7-103.

**ANSWER: Admitted.**

25. As a transporter of hazardous waste, Respondent is subject to the requirement of transporters of hazardous waste set forth at VHWMR § 7-401 *et seq.*

**ANSWER: Admitted.**

26. On August 19, 2015, duly authorized representatives from EPA conducted an inspection at the Facility ("Inspection") to determine Respondent's compliance with RCRA, the Permit, and federal and state hazardous waste regulations. During the Inspection, EPA observed conditions at the Facility and reviewed documents provided by Respondent, including (but not necessarily limited to) hazardous waste manifests, land disposal restriction notifications, training records, the current hazardous waste contingency plan, and available waste profiles.

**ANSWER: Admitted.**

27. At all times relevant to this Complaint, the Facility consisted of the site contained within a 6-foot chain link fence that includes a 9,000-square-foot main building; and a 59-square-foot, prefabricated steel, reactivities storage building. Both buildings and all areas within the fence-line are considered the Facility and are managed in accordance with the Permit.

**ANSWER: Admitted.**

28. The main building is constructed of non-combustible concrete block with a concrete floor slab on grade. It has 9,000 square feet of floor area on two levels. The building includes offices, a quality assurance/quality control laboratory, loading dock, truck bay, work area, chemical storage rooms, a chemical distribution and exchange room, restroom, locker room and shower, storage, mechanical spaces, and corridors.

**ANSWER: Admitted.**

29. A reactivities storage building is located approximately 40 feet from the main building. The back of the reactivities storage building is approximately five feet from the six-foot-high chain-link, perimeter fence, which borders on 200 feet of unused marsh area owned by Respondent. It is used to store water-reactive, air-reactive, poly-nitrated compounds, and other reactive materials.

**ANSWER: Admitted.**

30. After the Inspection, Respondent transmitted additional information to EPA. Based on the Inspection and EPA's review of subsequently-provided information, EPA identified the following violations of RCRA, the Permit, 10 Vermont Annotated Statutes chapter 159, and the VHWMR.

**ANSWER: Admitted that the University transmitted additional materials to EPA.**

**Denied as to violations as more specifically set forth below.**

#### **IV. VIOLATIONS**

##### COUNT 1 - STORAGE OF INCOMPATIBLE HAZARDOUS WASTES IN CONTAINERS.

31. Complainant incorporates by reference the allegations in paragraphs 1 to 30.

**ANSWER: Non Traversable.**

32. Pursuant to Permit Conditions 1.7, 1.13, and 5.9, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7), which references VHWMR 7-311, incompatible wastes and materials must not be placed in the same container.

**Answer: See answer to 33-35 below.**

33. At the time of the Inspection, the following containers stored at the Facility contained incompatible wastes: container 150616A (located in Room 109), container 150211D (located in Room 110), container 150331A (located in Room 110), container 150424A (located in Room 113), container 150505B (located in Room 113), container 141021F (located in Room 118), container 150211C (located in Room 118), container 150429B (located in Room 118), container 150624A (located in Room 118), and container 150408A (located in Room 119). Each contained pairs of wastes that according to the National Oceanic and Atmospheric Administration's CAMEO Chemicals Program, were incompatible.

**Answer: Denied. To make this determination, it appears EPA utilized the National Oceanic and Atmospheric Administrations' CAMEO (Computer-Aided Management of Emergency Operations) software.**

**The CAMEO system is an effective tool for developing emergency response plans to chemical emergencies and for predicting how chemicals react in certain situations. Using this tool to determine compatibility within a waste drum does not directly correlate because the chemicals identified under each unique tag number are the starting materials that undergo intentional chemistries. At the University these reactions happen in laboratory environments according to specific protocols and safeguards managed by the laboratory supervisor and staff. Intentional chemistry is addressed under the *Reactivity Prediction* section on CAMEO's website where it states, "For intentional chemistry, most reactions are driven forward by**

heat, pressure, catalysis, etc. and do not follow the coding we are applying here.”

Additionally, CAMEO does not account for mixtures or percentage of chemicals that are diluted. The wastes that EPA identifies as incompatible are lower concentrations than the chemicals represented in CAMEO. Below are a few examples illustrating the same:

1. In container 150211D EPA identified hydrazine hydrate as an incompatibility. Hydrazine hydrate listed in CAMEO is an aqueous solution “with more than 37% Hydrazine.” The 2 liter solution in the drum was actually 5% hydrazine in water. In a laboratory environment hydrazine was added to water as part of the laboratory’s intentional chemical process. What ESF personnel managed as a hazardous waste was the spent solution, which had the starting components of 5% hydrazine and 95% water.
2. In container 150408A EPA identifies hydrochloric acid and as an incompatible. The most concentrated hydrochloric acid solution in that drum consisted of a 400 milliliter container of 45% water, 30% sodium hydroxide, 10% hydrochloric acid, 10% iron, and 5% sulfuric acid. These materials were combined in a laboratory environment as part of their intentional chemical process. What ESF personnel managed as a hazardous waste was the spent solution, which had these starting components. In this example, the resultant solution was alkaline indicating the sodium hydroxide prevailed through the reaction. In CAMEO there is only one choice for hydrochloric acid, which represents full concentration reagent grade, and in this case, it was neutralized during the laboratory procedure.
3. In container 150616A EPA identified sulfuric acid as an incompatibility. The most concentrated sulfuric acid solution in that drum consisted of a 1 liter container of 39% sulfuric acid, 1% acetone, 1% 2-butanol, and 59% water. These materials were combined in a laboratory environment as part of their intentional chemical process. What ESF personnel managed as a hazardous waste was the spent solution, which had these starting components. In CAMEO there is only one choice for sulfuric acid, which represents full concentration reagent grade.

None of the containers listed in paragraph 33 had any adverse chemical reactions. Additionally, an employee with 22 years of experience at the ESF does not recall an instance where there was an incident involving a chemical reaction or explosive release. The University will provide additional details as to other containers.

34. The mixtures of the incompatible wastes stored in the containers identified in Paragraph 33 can, in summary, lead to intense, violent, and explosive reactions that can cause pressurization (and potential failure) of containers due to the generation of gases; release of heat due to chemical exothermic reactions (even under such ambient temperature conditions normally found within the Facility); and can result in the production of reaction products that are themselves toxic, flammable ignitable, corrosive, and friction/shock sensitive.

**Answer: Denied that that would or could have occurred in this instance. See answer to 33 above.**

35. By storing incompatible hazardous wastes in the hazardous waste containers identified in Paragraph 33, above, Respondent violated Permit Conditions 1.7, 1.13, and 5.9, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7), which references VHWMR7-311.

**Answer: Denied. See answer to 33 above.**

COUNT 2 - FAILURE TO COMPLETE LAND DISPOSAL RESTRICTION  
("LDR") NOTIFICATIONS

36. Complainant incorporates by reference the allegations in paragraphs 1 to 35.

**Answer: Non Traversable.**

37. Pursuant to Permit Conditions 1.7, 1.13, and 5.9, and VHWMR § 7-504(e)(4), which references VHWMR § 7-308 and VHWMR § 7-106, Respondent must operate and maintain the Facility in accordance with all applicable requirements of the land disposal restrictions set forth at 40 CFR Part 268 except for 40 CFR §§ 268.5, 268.6, and 268.42(b).

**Answer: Admitted that the University must comply with its Permit Conditions and the applicable C.F.R. regulations.**

38. Pursuant to 40 C.F.R. § 268.7(a)(2), if a "waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file" or "the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination."

**ANSWER: Non Traversable.**

39. The "Tags in Barrels Report" (packing sheets) submitted to EPA in response to EPA 's May 18, 2016 request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, demonstrates that Respondent failed to include all of the EPA waste codes on LDR notifications accompanying shipments of:

- a. container 150616A, located in Room 109, shipped on December 17, 2015;
- b. container 150211D, located in Room 110, shipped on November 16, 2015;
- c. container 150331 A, located in Room 110, shipped on September 24, 2015;
- d. container 150424A, located in Room 113, shipped on November 16, 2015;
- e. container 150424B, located in Room 110, shipped on September 24, 2015;
- f. container 150512A, located in Room 110, shipped on November 16, 2015;
- g. container 150814A, located in Room 111, shipped on September 24, 2015;

- h. container 150414B, located in Room 116, shipped on September 24, 2015, and
1. container 140624A located in Room shipped on September 24, 2015.

**ANSWER: Denied.** EPA asserts in this allegation that a specified list of drums stored at the Environmental Safety Facility (“ESF”) had waste code information missing from the container labels and Land Disposal Restriction (LDR) notifications. To make this determination, EPA utilized the University’s “Tags in Barrel Report.”

The University’s ESF personnel manage waste generated in laboratories in compliance with the University’s facility permit. Details of waste identification and the RCRA determination process can be found in Appendix I of the University’s permit. The hazardous waste determination is based on generator knowledge and waste verification, which occurs at the time of waste pick up. An explanation for why EPA waste codes were not included on the drums identified by EPA can be grouped into two categories:

1. The description of waste in the “Tags in Barrel” report is completed by laboratory staff in compliance with the Academic Waste Rule (subpart K). What the laboratory staff enter as the “waste” sometimes does not match the traditional RCRA description. ESF personnel use this information as one piece in the overall waste determination process. See Appendix I for a complete description of the waste determination and verification process.
  - a. **Example 1:** EPA indicates drum 150424B should receive the EPA waste code of U007 for unused acrylamide. The determination was made because a laboratory staff person listed waste as 100% acrylamide. What ESF personnel picked up from the laboratory was spent acrylamide gels used for separating proteins and sometimes DNA. In this case, the laboratory wanted to convey the most hazardous constituents in the waste (acrylamide), when in actuality it was spent gels. ESF personnel made the RCRA waste determination based on verification at the time of pickup and managed it accordingly.
  - b. **Example 2:** In Drum 150331A one waste solution has sodium borohydride listed on the “Tags in Barrel” report. With this entry, the laboratory person misentered the percentages as sodium borohydride 97%, glutaraldehyde 1%, and formaldehyde 2%. In reality the waste was sodium borohydride 2%, glutaraldehyde 1%, and formaldehyde 97%. The mistake by the laboratory was discovered at the time of the waste pickup. ESF personnel made the RCRA waste determination based on verification at the time of pickup and managed it accordingly.
  - c. Other drums that have similar user entry ambiguities include: 150211D (cyclophosphamide), 150424A (silane), 150512A (isopropanol cartons), and 150414B (hexanes paper towels/debris).
2. The EPA is applying contaminant specific waste codes to drums where the concentration of a chemical in the drum is below the maximum concentration for the



toxicity characteristic; thus, the chemical does not require the contaminant specific code.

- a. **Example 1:** EPA indicates drum 150616A should receive EPA waste code D027 for dichlorobenzene. In this case, dichlorobenzene is 1% of 1 liter (0.01 liters) in a 55 gallon (208 liter) drum. Similarly, EPA identifies that silver nitrate should merit waste code D011 for silver. In this example, silver nitrate (AgNO<sub>3</sub>) is roughly 1.5% of a 4 liter solution in a 208 liter drum.
- b. Other wastes that have similar de minimis amounts are included in drum 150331A for isopropanol and diaminobenzidine.

At the time of the EPA inspection, there was approximately 2,240 individual waste tags in the University's electronic system.

40. Respondent's failure to include all waste codes on land disposal notifications violated Condition 7.1 of the Permit, VHWMR § 7-504(e)(3), and 40 C.F.R Part 268.7(a)(2).

**ANSWER: Denied. See answer to 39 above.**

COUNT 3: FAILURE TO PROVIDE ADEQUATE PERSONNEL TRAINING.

41. Complainant incorporates by reference the allegations in paragraphs 1 to 40.

**ANSWER: Non Traversable.**

42. Condition 5.1 of the Permit requires that Facility personnel receive adequate training.

Condition 8.3 of the Permit provides that all Facility personnel involved in the handling of hazardous waste shall take part in a training program each calendar year which includes a review of the introductory training program and Department of Transportation training.

**ANSWER: Denied;**

**Department of Transportation (DOT) Training:**

**Condition 8.3 in the University's Permit states, "All facility personnel involved in the handling of hazardous waste shall take part in a training program each calendar year which includes a review of the introductory training program." The list of topics included in the "introductory training program" in Appendix H of UVM's Permit does not include DOT training. The University complied with the applicable requirements as to DOT training.**

43. Pursuant to VHWMR § 7-504(e)(1), every hazardous waste treatment, storage, or disposal

facility issued a certification under the provisions of this subchapter shall, at a minimum, be designed, constructed, operated, and maintained in accordance with all applicable requirements of, among other things, 40 C.F.R. Part 264. Forty C.F.R. § 264.16(a) provides, in part, that RCRA treatment, storage and disposal facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Part 264. Under 40 C.F.R. § 264.16(c), Facility personnel must take part in an annual review of the initial training required in 40 C.F.R. § 264.16(a).

**ANSWER: Denied that the University personnel did not receive the required training. See answers to 42 and 44.**

44. All eight employees who work at the Facility did not receive RCRA training in 2012.

**ANSWER: Denied.**

**Annual Resource Conservation and Recovery Act (RCRA) training:**

**This allegation indicates that indicated University facility personnel, "did not receive RCRA training," for years 2012. "RCRA training" is not specifically defined in 40 CFR 264.16 which provides for training for personnel operating a regulated hazardous waste treatment, storage, and disposal facility. UVM's facility permit and training plan (Appendix H) is in compliance with the requirements set in 264.16. UVM provides training to its facility staff according to its permit. Topics such as container management, waste packing, and waste stream verification are covered, as needed, during a weekly Monday morning staff meeting. Recent topics included proper identification and segregation of batteries (Li, NiCd, alkaline, etc.) and proper waste management for new chemically "green" gel stains such as SYBR Safe.**

This meeting is held at the ESF.

Additionally, all facility personnel at the ESF receive annual emergency response training per 29 CFR 1910.120(p)(8) and 1910.120(q). In CFR 264.16(4), facility employees that receive training pursuant to these regulations are “not required to provide separate emergency response training pursuant to this section.”

The University has provided EPA with the training certificates for all eight personnel, from 2012 to 2014, at the ESF. Class syllabuses from each year and topics that overlap with the facility training plan (Appendix H) have also been provided to the EPA.

Finally, in response to the August 19, 2015 inspection and to ensure any ambiguity in training was covered, all staff completed a traditional “RCRA training” on Sept 16, 2015. This training will now become an annual requirement with the next class scheduled for November 7, 2016. Training certificates from 2015 have been provided to EPA as well.

45. All eight employees who work at the Facility did not receive RCRA training and did not receive Department of Transportation training in 2013.

**Answer: Denied that all eight employees did not receive RCRA training in 2013. See Answer to 44 above. Admitted that all eight employees did not receive Department of Transportation training in 2013, but denied that such training was required under applicable CFR regulations or the University’s permit (see answer to 42 above). The employees who were required to receive Department of Transportation training in 2013, did in fact receive such training.**

46. All eight employees who work at the Facility did not receive Department of Transportation

training in 2014 and six of the eight employees did not receive RCRA training in 2014.

**ANSWER: Denied that six of the eight employees did not receive RCRA training in 2014. See Answer to 44 above. Admitted that all eight employees did not receive Department of Transportation training in 2014, but denied that such training was required under applicable CFR regulations or the University’s permit (see answer to 42 above). The employees who were required to receive Department of Transportation training in 2014, did in fact receive such training.**

47. Respondent's failure to provide training to employees with hazardous waste

management responsibilities constitutes violations of conditions 5.1 and 8.3 of the

Permit and VHWMR § 7-504(e)(1).

**ANSWER: Denied. See answers to 43-46 above.**

COUNT 4 - FAILURE TO PROPERLY LABEL CONTAINERS

48. Complainant incorporates by reference the allegations in paragraphs 1 to 47.

**ANSWER: Non Traversable.**

49. Pursuant to Permit Conditions 1.7, 1.13, and 5.9, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7) which references VHWMR 7-311, with exceptions not material here, containers and packages used for the storage of hazardous wastes shall be clearly marked from the time they are first used to accumulate waste. Such marking shall include: (A) The generator's name, address, and EPA identification number; and (B) the name and hazardous waste identification code(s) of the hazardous waste stored therein.

**Answer: Deny that the University failed to comply with its Permit Conditions or applicable regulations related to labelling; see answer to 39 above.**

50. Information submitted to EPA in response to EPA's May 18, 2016 request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, demonstrates that Respondent failed to include the name and hazardous waste identification code(s) on all hazardous waste labels.

**Answer: Deny that the University failed to comply with Permit Conditions related to labelling, and specifically deny that the University failed to include the name and hazardous waste identification code(s) on all hazardous waste labels. See answer to 39 above.**

51. At the time of the Inspection, container 150616A, located in Room 109, container 150211D, located in Room 110, container 150331A, located in Room 110, container 150424A, located in Room 113, container 150424B, located in Room 110, container 150512A, located in Room 110, and container 150814A, located in Room 111, each had labels that did not include the names and hazardous waste codes for all of the hazardous wastes stored therein.

**ANSWER: Deny that the University failed to comply with Permit Conditions related to labelling, and specifically deny that the University failed to include the name and hazardous waste identification code(s) on all hazardous waste labels. See answer to 39 above.**

52. Respondent's storage of hazardous waste with incomplete labels occurred in violation of Condition 5.1 of the Permit, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7), which references VHWMR 7-311.

**ANSWER : Denied, see answer to 39 above.**

## **V. COMPLIANCE ORDER**

53. Based on the foregoing findings, Respondent is hereby ordered to achieve and maintain compliance with all applicable requirements of RCRA, the Permit, the requirements for generators of hazardous wastes set forth at VHWMR § 7-301 *et seq.*, the requirements for transporters of hazardous waste set forth at VHWMR § 7-401 *et seq.*, and the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities set forth at VHWMR § 7-501 *et seq.* Specifically, Respondent shall do the following:

54. Immediately, upon receipt of this Complaint, pursuant to Permit Conditions 1.7, 1.13, and 5.9, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7), which references VHWMR 7-311, Respondent must cease placing incompatible wastes and materials in the same container.

**ANSWER: See answers to Count I above.**

55. Immediately, upon receipt of this Complaint, pursuant to of Condition 7.1 of the Permit and VHWMR § 7-504(e)(3), Respondent must include all applicable waste codes on land disposal restriction notifications, in accordance with the 40 C.F.R. § 268(a)(2).

**ANSWER: See answers to Count II above.**

56. Within sixty (60) days of receipt of this Complaint, and annually thereafter, Respondent shall provide the necessary hazardous waste training, and Department of Transportation training, to employees with hazardous waste management responsibilities, in accordance with Permit Conditions 5.1 and 8.3 and VHWMR § 7-504(e)(1).

**ANSWER: See answers to Count III above.**

57. Immediately, upon receipt of this Complaint, pursuant to Permit Conditions 1.7, 1.13, and 5.9, and VHWMR 7-504(e)(4), which references VHWMR 7-308(b)(7), which references VHWMR 7-311, Respondent must label containers of hazardous waste with all applicable waste codes.

**ANSWER: See answers to Count IV above.**

58. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraphs 54 through 57 above. Any notice of noncompliance required under this

paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will not excuse the noncompliance. This statement shall specify all actions taken by Respondent to comply with 54 through 57 above of this Compliance Order. Respondent shall submit the above-required information and notices to:

Linda Brolin  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region  
15 Post Office Square, Suite 100  
Mail Code OES05-4  
Boston, MA 02109-  
3912

and

Michael Wagner, Enforcement  
Counsel Office of Environmental  
Stewardship  
U.S. Environmental Protection Agency, Region  
15 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, MA 02109-3912

**ANSWER: See answers to Count I through Count IV above, inclusive; the University believes it was compliant.**

59. The information requested in this Compliance Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 *et seq.*

**Answer: Non- Traversable.**

60. If Respondent fails to comply with the requirements of this Compliance Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.

**Answer: Non- Traversable; the University believes it was and is compliant.**

61. This Compliance Order shall become effective immediately upon receipt by Respondent.

**Answer: Non- Traversable; the University believes it was and is compliant..**

62. In accordance with 40 C.F.R. § 22.37(b), this Compliance Order shall automatically become a final order unless, no later than thirty (30) days after the Compliance Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

**Answer: The University requests such a hearing.**

63. Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. Respondent may seek judicial review of the Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

**Answer: The University seeks administrative review in accordance with 40 C.F.R. Part 22.**



**V. PROPOSED PENALTY**

64. The civil penalty proposed below has been determined in accordance with Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

**Answer: Non- traversable. Deny that any fine is appropriate under the circumstances.**

65. Based on the nature, circumstances, extent, and gravity of the above-cited violations, a civil penalty in the amount of \$93,797 is hereby proposed to be assessed against Respondent (see Attachment A to this Complaint explaining the reasoning for this penalty). By this Complaint, Complainant seeks to assess Respondent the following civil penalties:

| <u>COUNT</u>                            | <u>PENALTY</u> |
|---|----------------|
| 1. Incompatible Waste in same container | \$25,998       |
| 2. LDR Notification violations          | \$5,946        |
| 3. Inadequate Training                  | \$55,907       |
| 4. Inadequate labels                    | \$5,946        |

**TOTAL PROPOSED  
PENALTY**

**\$93,797**

**Answer: Non- traversable. Deny that any fine is appropriate under the  
circumstances.**

66. Payment of the penalty may be made by a cashier's or certified check, or by wire transfer, and shall include the case name (*"In Re University of Vermont and State Agricultural College."*) and docket number ("RCRA-01 -2016-0077") on the face of the check or wire transfer confirmation. A check should be payable to the Treasurer, United States of America. Each payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial

carrier: U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-  
C2GL St. Louis, Missouri  
63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite  
100 Mail Code ORA 18-1  
Boston, MA 02109-3912

and

Michael Wagner, Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite  
100 Mail Code OES04-3  
Boston, MA 02109-3912

**ANSWER: Non-traversable. Deny that any fine is appropriate under the circumstances.**

### **VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

67. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40

C.F.R. §22.14 of the Consolidated Rules of Practice, Respondent has the right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty or Compliance Order. Any such hearing would be conducted in accordance

with 40 C.F.R. Part 22, a copy of which is provided with this Complaint. **A request for a hearing must be incorporated into a written Answer filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.**

**ANSWER: Under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, the University requests a hearing on each Count of and material fact alleged in this Complaint, and as to the appropriateness of the proposed penalty and Compliance Order in light of the facts.**

68. In its Answer, Respondent may contest any material fact contained in the Complaint.

The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: ( 1 ) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. If Respondent denies any material fact or

raises any affirmative defense, Respondent will be considered to have requested a hearing. *See* 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

**Answer: Non- Traversable.**

69. The original and one copy of any motions or other pleadings filed or made before an Answer to the Complaint is filed, the Answer to the Complaint, and any Consent Agreement and Final Order to settle the case filed in this action must be sent to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 15  
Post Office Square, Suite 100  
Mail Code ORA I 8-1  
Boston, MA 02109-3912

**Answer: Non- Traversable.**

70. After an Answer has been filed, except for a Consent Agreement and Final Order settling the case, a copy of all other documents that Respondent files in this action must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings -

Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

For UPS, FedEx, DHL, or other courier, or personal delivery -

Headquarters Hearing Clerk  
U.S. Environmental Protection  
Agency Office of Administrative  
Law Judges Ronald Reagan  
Building, Rm. M1200 1300  
Pennsylvania Ave., NW Washington,  
DC 20460

**Answer: Non- Traversable.**

71. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to Michael Wagner, the attorney assigned to represent EPA and designated, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant in this matter at:

Michael Wagner, Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency,  
Region 1 5 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, MA 02109-3912

**Answer: Non- Traversable.**

72. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer, "a copy of which has been provided with the Complaint.

**Answer: Non- Traversable.**

## **IX. DEFAULT ORDER**

73. If **Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default** pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

**Answer: Non- Traversable; Respondent has answered within the applicable time period.**


## **X. SETTLEMENT CONFERENCE**

74. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. In addition, where circumstances so warrant, a recommendation that any or all of the charges be dropped may be made to the Regional Judicial Officer. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

**Answer: Non- Traversable; settlement discussions are on going.**

75. A request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Michael Wagner, Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above, at (617) 918-1735, or at [wagner.michael@epa.gov](mailto:wagner.michael@epa.gov).



  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1

9/30/16  
\_\_\_\_\_  
Date

**Answer: Non- Traversable.**

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint and Notice of Opportunity for Administrative Hearing was sent to the following persons, in the manner specified, on the date below:

Two copies, hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region  
15 Post Office Square, Suite 100  
Mail Code: ORA18-1

A true and correct copy, by certified mail, return receipt requested and a copy of the Part 22 Rules:

Thomas Sullivan, President  
University of Vermont  
85 South Prospect Street  
344-353 Waterman Building  
Burlington, VT 05405

Date: 03/30/18  
1

  
Senior Enforcement Counsel

for

**Answer: Non- Traversable.**

**Attachment 1**  
**Explanation of Penalty Calculation**  
**In the Matter of University of Vermont and State Agricultural**  
**College**

**Administrative Complaint**  
**EPA Docket No. RCRA-01-2016-0077**

The following discussion provides a justification for the proposed penalty against the University of Vermont and State Agricultural College ("UVM-AG") for violations of certain requirements of the Resource Conservation and Recovery Act ("RCRA"), the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and the State of Vermont Hazardous Waste Management Regulations ("VHWMR"). UVM-AG operates a hazardous waste treatment and storage facility at 667 Spear Street in Burlington, Vermont ("Facility").

Gravity-based penalties and multiple or multi-day penalties were calculated in accordance with the RCRA Civil Penalty Policy, dated June 23, 2003 ("RCPP"), the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19.

The following RCRA violations were documented during an EPA Compliance Evaluation Inspection ("CEI") conducted at the Facility on August 19, 2015, and information that has been provided to EPA after the inspection:

**A. Summary of Violations**

**I. Storage of Incompatible Hazardous Wastes in Containers**

UVM-AG stored incompatible hazardous wastes in the same containers.

**Penalty Assessment**

**(a) Potential for Harm: MAJOR**

Respondent's storage of incompatible hazardous wastes in the same container posed a substantial potential for harm to human health and the environment from reactions between incompatible wastes. Such reactions can occur if a mechanical or chemical catalyst initiates the reactions. Those reactions could then lead to impacts on nearby or adjacent containers of ignitable wastes or materials resulting in possible releases of hazardous wastes, exposure to hazardous chemicals, property damage, injury or loss of life.

The possible reactions from storing incompatible wastes and materials within the same containers include the creation of heat, gases, and explosions. Pressurization (and potential failure) of containers could occur due to chemical exothermic reactions (even under such ambient temperature conditions normally found within the Facility) and can

**USEPA**  
**Penalty summary -UVM-AG**

result in the production of reaction products that are themselves toxic, flammable/ignitable, corrosive, and friction/shock sensitive.

**(b) Extent of Deviation: Moderate**

There were ten containers in the Facility containing multiple incompatible wastes. This extent of storage of incompatible wastes is a substantial deviation from the hazardous waste storage requirements.

**(c) Penalty Assessment**

1. Respondent's violation of this requirement warrants a classification of Major/Moderate.
2. Gravity-based penalty matrix cell range: \$22,285 – \$29,710
3. Penalty amount chosen: \$25,998 (including inflation adjustment of 4.87%). The mid-point has been determined to be appropriate.

**Total Penalty Amount: \$25,998**

**Answer: Non- Traversable; deny that any fine is appropriate under the circumstances.**

2. Failure to properly complete land disposal restriction ("LDR") notifications.

The records for nine of forty-two containers reviewed showed that UVM-Ag failed to include some EPA waste codes on the LDR notifications for those containers.

**Penalty Assessment**

**(a) Potential for Harm – Moderate**

The failure to send fully-completed LDR notifications to the treatment/disposal facility significantly increases the likelihood that hazardous wastes will not be properly treated prior to ultimate disposal. This increases the potential for releases of hazardous waste to the environment, which could ultimately negatively impact human health.

The LDR notification is an important means of ensuring that the intent of RCRA - to manage hazardous waste from its creation to ultimate disposal – is not undermined. EPA and the public rely on accurate LDR notifications to ensure the

proper treatment and disposal of hazardous wastes. The failure to comply with this requirement undermines the integrity of the hazardous waste program by increasing the risk of improper disposal of hazardous waste.

By not meeting the LDR requirements for all of its hazardous waste, UVM-AG created a significant risk to human health and the environment and significant risk to the hazardous waste program. EPA has determined that the potential for harm is moderate.

## USEPA

### Penalty summary – UVM-AG

#### (b) Extent of Deviation: Minor

As detailed above, the inspection team documented violations of the LDR requirements from some of the waste managed. However, given the total number of hazardous waste containers managed in relation to the number of containers for which LDR notifications were incomplete, UVM's violations amount to a relatively small deviation from the regulatory requirement. Therefore, the extent of deviation is deemed to be minor.

#### (c) Penalty Assessment

Respondent's violation of this requirement warrants a classification of Moderate/Minor

1. Gravity-based penalty matrix cell range \$4,457 – \$7,435
2. Penalty amount chosen: \$5,946 (including inflation adjustment of 4.87%)  
The mid-point has been determined to be appropriate.

**TOTAL PENALTY AMOUNT:\$5,946**

**Answer: Non- Traversable; deny that any fine is appropriate**

**under the circumstances..**

#### 3. Failure to Provide Adequate Personnel Training

Respondent did not provide the RCRA and Department of Transportation ("DOT") training to its employees at the Facility in 2012, 2013, and 2014, as follows: 2012: eight employees did not have RCRA training; 2013: eight employees did not have RCRA and DOT training; 2014: eight employees did not have DOT training and six of eight employees did not have RCRA training

#### **Penalty Assessment**

##### (a) Potential for Harm: Moderate

Respondent's failure to fully train all Facility personnel who handle or manage hazardous waste posed a significant risk of harm to human health and environmental receptors due to possible exposure to hazardous waste. Personnel training is an essential part of proper hazardous waste management. The failure to provide hazardous waste training to employees is a significant violation because only through proper training comes the knowledge of how to manage hazardous waste safely and in accordance

with all state and federal regulations. The regulations themselves encompass the body of knowledge upon which a training program should be based, since they describe all the requirements and standards that must be carried out by generators, transporters, and permitted facilities.

Improper handling of hazardous waste increases the likelihood of releases and needless worker exposure to hazardous waste.

## USEPA

### Penalty summary -UVM-AG

#### (b) Extent of Deviation: Moderate

Comprehensive training is paramount to ensuring that hazardous wastes are properly managed. At the time of the Inspection, UVM-AG had trained some, but not all, of its hazardous waste employees on the requirements of RCRA hazardous waste management, and had lapsed DOT training. This violation significantly deviates from the regulatory training requirements.

#### (c) Penalty Assessment

Respondent's violations of this requirement warrant a classification of Moderate/Moderate.

1. Gravity-based Matrix Cell Range: \$7,090 - \$11,330
2. Penalty Amount Chosen: \$9,216. The mid-point has been determined to be appropriate.
3. Multiple/Multi-day Assessment: Multiple penalties are being sought for the failure to train the individuals identified above. In accordance with the 2003 RCRA Civil Penalty Policy, the Region has chosen to apply the multi-day penalty matrix for each violation after the first, rather than assessing a full gravity-based penalty for these violations because UVM-AG violated the same regulatory training requirement for eight employees for at least three years - 2012, 2013 and 2014, and the violations are similar in nature.
4. Multi-Day Cell Range: for 2012 and 2013: \$360 - \$2,339. For 2014: \$378 - \$2,339 (includes 4.87% inflation)
5. Penalty Amount' Chosen: \$1,295 (midpoint) x 7 (for 2012) = \$9,065; \$1,295 x 8 (for 2013) = \$10,360. Penalty amount chosen for 2014: \$1,359 (midpoint; includes 4.87% inflation). 8 x \$1,359 (midpoint; includes 4.87% inflation) = \$10,872
6. Multiple Penalty Amount: \$9,065 + \$10,360 + \$10,872 = \$30,297
7. Adjustment for Economic Benefit: \$16,394 An upward adjustment has been deemed appropriate because UVM-Ag avoided training costs for 2012, 2013 and 2014.

**Total Penalty Amount: \$55,907**

**Answer: Non- Traversable; deny that any fine is appropriate under**

**the circumstances.**



4. **Failure to properly mark containers, with the name and hazardous waste identification code(s) of the hazardous waste stored therein, used for the storage of hazardous waste from the time they are first used to accumulate or store waste, as required by VHWMR § 7-311(t)(1)(B).**

## **USEPA**

Penalty summary UVM-AG

The records for seven of forty-two containers reviewed showed that UVM-Ag had failed to include the name and hazardous waste identification code(s) on the hazardous waste label. The following containers of hazardous waste did not include all of the names and the EPA hazardous waste code(s).

### **Penalty Assessment**

#### **(a) Potential for Harm -**

##### **Moderate Environmental Harm**

A generator of hazardous waste must properly mark containers, with the name and hazardous waste identification code(s) of all the hazardous waste stored therein to ensure the hazardous waste is properly managed. The failure to do poses a significant potential for harm to the environment because it increases the risk of mismanagement of the waste.

##### **Regulatory Harm**

This violation created significant regulatory harm because UVM-Ag was not properly marking containers with the name and hazardous waste identification code(s) of all the hazardous waste stored therein to ensure the hazardous waste is properly managed safely and in accordance with all state and federal regulations. The lack of proper labels makes it more difficult for regulators and emergency responders to know which wastes are being stored and the risks posed by those wastes.

#### **(b) Extent of Deviation – Minor**

Because the quantity of hazardous waste containers that were not marked with all the hazardous waste identification code(s) observed was a small fraction of the total number of containers in storage at UVM-Ag, the violation represents a minor deviation from the regulatory requirement.

#### **(c) Penalty**

Respondent's violation of this requirement warrants a classification of

Moderate Minor. 1. Gravity-based matrix cell range: \$4,457- \$7,435

2. Penalty Amount Chosen: \$5,946 (including inflation adjustment of 4.87%)  
The mid-point has been determined to be appropriate.

**Total Penalty Amount: \$5,946**

**Answer: Non- Traversable; deny that any fine is appropriate under**

**the circumstances.**

**USEPA**  
Penalty summary – UVM-AG

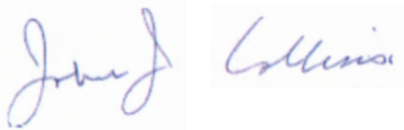
**PENALTY SUMMARY**

|    |                                      |         |
|----|--------------------------------------|---------|
| I. | Incompatible Waste in same container | \$25,99 |
| 2. | Incomplete LDR Notifications         | \$5,946 |
| 3. | Inadequate Training                  | \$55,90 |
| 4. | Inadequate Labeling                  | \$5.946 |

**TOTAL PROPOSED PENALTY \$93,797**

**Answer: Non- Traversable;  
deny that any fine is appropriate  
under the circumstances.**

**Dated at Burlington, Vermont this 26<sup>th</sup> day of  
October, 2016**



**John J. Collins  
Senior Associate Counsel  
UVM General Counsel  
Waterman 357  
Burlington, VT 05405-0160  
802-656-8530  
[john.j.collins@uvm.edu](mailto:john.j.collins@uvm.edu)**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of: )  
University of Vermont and )  
State Agricultural College )  
85 South Prospect Street ) EPA Docket No. RCRA-01-2016-0077  
344-353 Waterman Building )  
Burlington, Vermont 05405 )  
)  
Respondent )  
Proceeding under Section 3008(a) of the )  
Resource Conservation Recovery Act, )  
142 U.S.C. 6928(a) )

**CERTIFICATE OF SERVICE**

I certify that the foregoing Answer to Complaint was sent to the following persons, in the manner specified, on the date below:

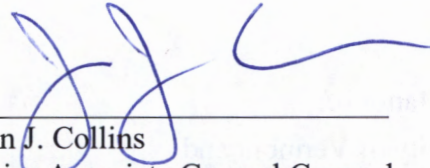
An original and one true and correct copy by overnight mail:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency,  
Post Office Square, Suite 100  
Mail Code ORA I 8-1  
Boston, MA 02109-3912

A true and correct copy by overnight mail:

Michael Wagner, Enforcement Counsel Office of  
Environmental Stewardship  
U.S. Environmental Protection Agency, Region I 5 Post  
Office Square, Suite 100  
Mail Code OES04-3 Boston, MA  
02109-3912

Dated at Burlington, Vermont this 26<sup>th</sup> day of October, 2016.



---

John J. Collins  
Senior Associate General Counsel  
Office of the General Counsel  
**UNIVERSITY OF VERMONT**  
Waterman 357  
Burlington, VT 05405-0160

Direct Phone: 802-656-8530