final CAFO (signed)
in my hands 8/30/07

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF: United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service 10383 North Ambassador Drive Kansas City, Missouri 64153 EPA ID No. MOD985796762 Respondent. Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g).	CONSENT AGREEMENT AND FINAL ORDER Docket No. RCRA-07-2006-0276

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 29, 2006, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service ("Respondent"). Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), Title 42 United States Code (U.S.C.), Section 6901 et seq., the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Parts 262 and 265, as well as the substantially equivalent Missouri state regulations found at Title 10, Code of State Regulations ("C.S.R."), Chapter 25 ("10 C.S.R. 25").

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

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II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.

4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.

5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.

6. Respondent and EPA each agree to bear their own costs and attorneys' fees.

7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of $60,000 as set forth in paragraph 12 of the Final Order.

8. As a demonstration of Respondent's cooperation and good faith, Respondent agrees to produce a presentation designed to promote laboratory compliance with the RCRA requirements for Small Quantity Generators (i.e., those who generate 100-1000 kilograms per month). Respondent will provide EPA with a copy of the written presentation materials. In addition, within one year, Respondent agrees to provide this presentation on-site at each of the Grain Inspection, Packers and Stockyards Administration field offices located in League City, Texas; New Orleans, Louisiana; Portland, Oregon; and Toledo, Ohio. Respondent will also offer to provide this presentation at the 2008 USDA Health and Safety Conference, conducted by the Marketing and Regulatory Programs, as well as at the 2008 American Association of Grain Inspection and Weighing Agencies (AAGIWA) meeting. Respondent also will provide copies of the presentation to the USDA agencies who attend the Health and Safety Conference and to all member organizations of the AAGIWA.

9. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

10. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in paragraph 16 of the Final Order provides Respondent with written notice, in accordance with paragraph 26 of the Final Order, that all requirements hereunder have been satisfied.

11. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

12. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of $60,000.

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

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

The Respondent shall reference the Docket Number, RCRA-07-2006-0276, on the check. Copies of the check shall also be mailed to:

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

and to:

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

Respondent's civil penalty payment also may be made by transferring the amount via the Intra-Governmental Payment and Collection System (IPAC) to the following account:

ALC (Agency Location Code) 68010727
Duns Number 029128894

Payment made by IPAC shall reference the above case caption and docket number, along with a point of contact for Respondent. The point of contact for EPA for payment by IPAC is Craig Steffen at (513) 487-2091.

At the same time that payment by IPAC is made, written notification confirming any funds transfer by IPAC shall be mailed to:

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

and to:

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

14. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

15. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Submittals

16. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Consent Agreement and Final Order to:

Larry S. Mullins
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

17. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order to:

Ronald C. Bicsak
Technical Services Division
U.S. Department of Agriculture,
Grain Inspection, Packers and Stockyards Administration
10383 N. Ambassador Drive
Kansas City, Missouri 64153-1394

and to:

Gary Fremerman, Esq.
Office of General Counsel
U.S. Department of Agriculture
Room 3351 South Building
1400 Independence Avenue, SW
Washington, DC 20250.

C. Parties Bound

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

D. Reservation of Rights

19. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's September 29, 2006, Complaint, Docket No. RCRA-07-2006-0276. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

20. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed thirty-two thousand five hundred dollars ($32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

21. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

22. Except as expressly provided herein, including the provisions of Section C of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

23. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

24. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

25. Nothing in this Consent Agreement and Final Order shall be construed to require Respondent to obligate funds in any fiscal year in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

26. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Respondent:

By: David R Shipman
for James E. Link, Administrator
Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture

8/24/07
Date

For the Complainant:
The United States Environmental Protection Agency

Leslie Humphrey for
Alex Chen
Assistant Regional Counsel

8.27.07
Date

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

8-27-07
Date

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

Robert Patrick
Regional Judicial Office

August 27, 2007
Date

IN THE MATTER OF U.S. Department of Agriculture, Grain Inspection, Packers & Stockyards Administration, Federal Grain Inspection Service
Docket No. RCRA-07-2006-0276

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

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

Copy by Certified Mail Return Receipt to:

Gary Fremerman
U.S. Department of Agriculture
Office of General Counsel, Room 3531 South Building
1400 Independence Avenue, SW
Washington, DC 20250

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable William B. Moran
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: Aug 28, 2007

Anna Rod for
Kathy Robinson
Hearing Clerk, Region 7