

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of:

Omnicare, Inc.; Omnicare of NY LLC;
CARE4 LP; and CHP Acquisition Corp.

Respondents.

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended

CONSENT AGREEMENT
AND FINAL ORDER

Docket No.: **RCRA-02-2014-7105**

REGIONAL HEARING
CLERK

2015 APR -2 AM 7: 09

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondents are Omnicare, Inc. and three New Jersey based subsidiaries of Omnicare, Inc. These subsidiaries are CARE4, LP doing business as ("dba") as Omnicare of Edison; CHP Acquisition Corp. dba Omnicare of Southern New Jersey; and Omnicare of NY LLC dba as Omnicare of Whippany.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State

Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondents on or about September 25, 2014. The Complaint alleged that Respondents failed to comply with certain federally authorized New Jersey hazardous waste regulations at the three New Jersey facilities. Complainant and Respondents conducted settlement negotiations which led to this agreement.

Complainant and each Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondents and Their Regulatory Status

1. Respondents are Omnicare, Inc.; CARE4, LP doing business as (dba) as Omnicare of Edison; CHP Acquisition Corp. dba Omnicare of Southern New Jersey; and Omnicare of NY LLC dba as Omnicare of Whippany. The latter three corporations are subsidiaries of Omnicare, Inc. Hereafter, each subsidiary of Omnicare, Inc. ("Omnicare") will be referred to by its Omnicare dba name.
2. Each Respondent provides a broad array of pharmacy related services to long term care facilities and other customers in the health care environment.
3. Each Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
4. Omnicare of Whippany conducts pharmaceutical operations at 21 Algonquin Parkway in Whippany, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
5. Omnicare of Whippany is the "owner" and/or "operator" of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

6. In or about February 2011, Omnicare of Whippany notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Whippany EPA Identification Number NJR000077032.
7. Omnicare of Whippany is a “generator” of “hazardous waste” at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
8. Omnicare of Southern New Jersey conducts pharmaceutical operations at 40 Twosome Drive, Moorestown, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
9. Omnicare of Southern New Jersey is the "owner" and/or “operator” of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
10. In or about July 2013, Omnicare of Southern New Jersey notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Southern New Jersey EPA Identification Number NJR986637445.
11. Omnicare of Southern New Jersey is a “generator” of “hazardous waste” at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
12. Omnicare of Edison conducts pharmaceutical operations at 120 Fieldcrest Avenue in Edison, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
13. Omnicare of Edison is the "owner" and/or “operator” of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
14. In or about March 2013, Omnicare of Edison notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Edison EPA Identification Number NJR986636272.
15. Omnicare of Edison is a “generator” of “hazardous waste” at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
16. Omnicare, Inc. is an "owner" and/or “operator” of the Omnicare of Edison, Whippany and Southern New Jersey facilities referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a) and is therefore liable for any violations of RCRA requirements at these facilities.
17. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

Omnicare of Southern New Jersey's Failure to Have an EPA Identification Number

18. Pursuant to 40 CFR § 262.12(a), as incorporated by reference by NJAC 7:26G-6.1(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.
19. Omnicare of Southern New Jersey generates and has been generating hazardous waste at its facility since at least April 2011.
20. EPA did not issue Omnicare of Southern New Jersey an EPA Identification Number until July 26, 2013.
21. During various periods of time between at least April 2011 and July 26, 2013, Omnicare of Southern New Jersey stored hazardous waste at its facility for temporary periods of time at the end of which hazardous waste was treated, stored or disposed of elsewhere.
22. On at least one occasion during the period of time between at least April 2011 and July 26, 2013 Omnicare of Southern New Jersey offered hazardous waste for transport from its facility.
23. Omnicare of Southern New Jersey's failure to obtain an EPA Identification Number prior to storing at, and/or offering hazardous waste for transport from, its facility is a violation of 40 C.F.R. 262.12(a) as incorporated by reference by NJAC 7:26G-6.1(a).

Omnicare of Edison's Failure to Have an EPA Identification Number

24. Pursuant to 40 CFR § 262.12(a), as incorporated by reference by NJAC 7:26G-6.1(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.
25. Omnicare of Edison has been generating hazardous waste at its facility since at least January 2012.
26. EPA did not issue Omnicare of Edison an EPA Identification Number until March 12, 2013.
27. During various periods of time between at least January 2012 and March 12, 2013, Omnicare stored hazardous waste at its Edison facility for temporary periods of time at the end of which hazardous waste was treated, stored or disposed of elsewhere.
28. On at least one occasion during the period of time between at least January 2012 and March 12, 2013 Omnicare of Edison offered hazardous waste for transport from its facility.

29. Omnicare of Edison's failure to obtain an EPA Identification Number prior to storing at, and/or offering hazardous waste for transport from, its facility is a violation of 40 C.F.R. 262.12(a) as incorporated by reference by NJAC 7:26G-6.1(a).

**Omnicare of Edison's, Omnicare of Southern New Jersey's and Omnicare of Whippany's
Failure to Make Hazardous Waste Determinations**

30. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a), a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

31. Pursuant to 40 C.F.R. § 261.2, as incorporated by reference by NJAC 7:26G-5.1(a), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined.

32. Pursuant to 40 C.F.R. § 261.2(b), as incorporated by reference by NJAC 7:26G-5.1(a), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

33. Prior to February 2013, Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany each disposed used fluorescent light bulbs in the municipal trash at their respective facilities.

34. The discarded fluorescent light bulbs identified in Paragraph 33 at each of the referenced facilities were "abandoned" as that term is defined in 40 C.F.R. § 261.2, as incorporated by NJAC 7:26G-5.1(a).

35. The discarded fluorescent light bulbs identified in Paragraph 33 constitute "discarded material" and "solid waste" as those terms are in 40 C.F.R. § 261.2, as incorporated by NJAC 7:26G-5.1(a).

36. Prior to February 2013, Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany each failed to determine if the fluorescent light bulbs identified in Paragraph 33 at their respective facilities constituted a hazardous waste.

37. The failure to determine whether each waste generated at the Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany facilities constituted a hazardous waste is a violation of 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G- 6.1(a).

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Commencing upon the effective date of this Consent Agreement and Final Order and continuing thereafter, each Respondent shall:
 - make hazardous waste determinations for each solid waste generated at its respective facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a).
2. Within twenty (20) days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing its present compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Ms. Meghan La Reau
Senior Enforcement Team
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

3. For the purpose of this proceeding, each Respondent admits the jurisdictional allegations of the Complaint applicable to it and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.
4. Respondent(s) shall pay a civil penalty to EPA in the total amount fifty-eight thousand and five hundred dollars (\$58,500). Such payment shall be paid in full within sixty (60) days of the effective date of this CA/FO. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payment is made by check(s), then the check(s) shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check(s) shall be identified with a notation thereon: **In the Matter of Omnicare, Inc.; Omnicare of NY LLC; CARE4 LP; and CHP Acquisition Corp.** and shall bear thereon the Docket Number: **RCRA-02-2014-7105**. If Respondents choose to make the payment by EFT, then Respondents shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondents: **Omnicare, Inc.; Omnicare of NY LLC; CARE4 LP; and CHP Acquisition Corp.**
- 7) Case Number: **RCRA-02-2014-7105**.

Whether the payments are made by checks or by EFT, the Respondents shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

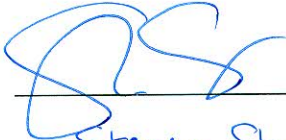
5. Payment must be received pursuant to the provisions above.
 - a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the deadline described in Paragraph 4 above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the deadline through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the

deadline in which a balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the deadlines in Paragraph 4. The Respondents shall be jointly and severally liable for the interest handling charge and penalty, if these accrue.


- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondents have read the Consent Agreement, understand its terms, find it to be reasonable and consent to its terms. Each Respondent consents to the issuance of the accompanying Final Order. Each Respondent further agrees that all the terms of the settlement are set forth herein.
6. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
8. Each Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.
9. This CA/FO does not waive, extinguish, or otherwise affect each Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
10. Each party shall bear its own costs and fees in this matter.
11. The representative of each Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon each Respondent and its officials including authorized representatives and successors or assigns.
12. Each Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
13. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENTS:


Omnicare, Inc.

BY: 
NAME: Steven Skwara
TITLE: Chief Compliance Officer
DATE: 3/24/15

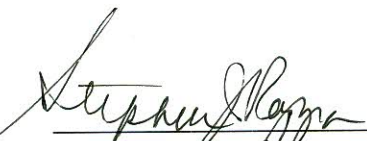
Omnicare of NY LLC

BY: 
NAME: Stephen J. Rappa
TITLE: Vice President Operations
DATE: 3-20-2015

CARE4 LP

BY: 
NAME: Stephen J. Rappa
TITLE: Vice President Operations
DATE: 3-20-2015

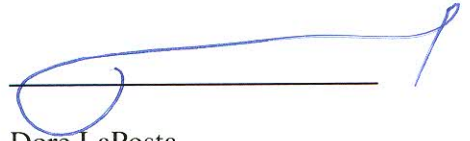
CHP Acquisition Corp.

BY: 
NAME: Stephen J. Rappa
TITLE: Vice President Operations
DATE: 3-20-2015

COMPLAINANT:

United States Environmental Protection
Agency – Region 2

BY:



NAME:

Dore LaPosta

TITLE:

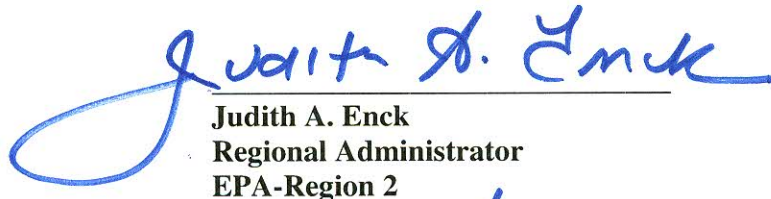
Director, Division of
Enforcement & Compliance
Assistance

DATE:

MARCH 27, 2015

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



Judith A. Enck
Regional Administrator
EPA-Region 2

DATE: 3/27/15

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April I caused a copy of the Consent Agreement and Final Order entered in In the Matter of Omnicare, Inc.; Omnicare of NY LLC; CARE4 LP; and CHP Acquisition Corp., Docket No.: **RCRA-02-2014-7105** to be sent to the following persons in the manner indicated:

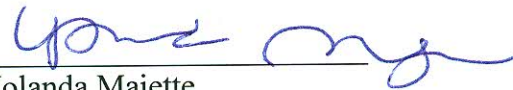
By United States First Class Mail:

William Irvin, R. Ph.
Regional Compliance Officer
Omnicare, Inc.
13 Commerce Avenue
Londonderry, New Hampshire 03053

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007

Date: 4/1/15


Yolanda Majette