



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 05 2011

REPLY TO THE ATTENTION OF:  
LR-8J

**CERTIFIED MAIL 7009 1680 0000 7667 0746**  
**RETURN RECEIPT REQUESTED**

Mr. Thomas Ginter  
Director, Technology Services  
BayCare Aurora, LLC  
2845 Greenbrier Road  
Post Office Box 8900  
Green Bay, Wisconsin 54308-8900

Re: Consent Agreement and Final Order  
BayCare Aurora, LLC  
EPA ID No.: WIR000123042  
Docket No.: RCRA-05-2011-0010

Dear Mr. Ginter:

Enclosed, please find an original signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on JUL 05 2011, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$66,500 in the manner prescribed on page numbers 10 and 11 (paragraphs 67-71) of the CAFO, and reference all checks with the number BD 2751142R011 and docket number RCRA-05-2011-0010. Your payment is due thirty (30) days from your receipt of an executed copy of the CAFO.

Enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Mary S. Setnicar  
Acting Chief, RCRA Branch  
Land and Chemicals Division

Enclosures

cc: Patricia Chabot – WDNR, Madison Central Office (w/ CAFO)  
Steven Sisbach – WDNR, Madison Central Office (w/CAFO)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. RCRA-05-2011-0010</b>
	)	
<b>BayCare Aurora, LLC</b>	)	<b>Proceeding to Commence and Conclude</b>
<b>Green Bay, Wisconsin</b>	)	<b>An Action to Assess a Civil Penalty</b>
	)	<b>Under Section 3008(a) of the Resource</b>
<b>EPA ID: WIR000123042</b>	)	<b>Conservation and Recovery Act,</b>
	)	<b>42 U.S.C. § 6928(a)</b>
<b>Respondent.</b>	)	
_____	)	

**RECEIVED**  
JUL 05 2011

**Consent Agreement and Final Order**  
**Preliminary Statement**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

1. This administrative action is commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is BayCare Aurora, LLC (herein referred to as "BCA"), a limited liability company doing business in the State of Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA; 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k and the regulations at 40 C.F.R. Parts 260 – 279 at its healthcare facility located at 2845 Greenbrier Road in Green Bay, Wisconsin.

### **Statutory and Regulatory Background**

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste pursuant to Sections 3001-3007, *inter alia*, of RCRA, 42 U.S.C. §§ 6921-6927.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004 through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA occurring after January 12, 2009.

### **Factual Allegations and Alleged Violations**

17. Respondent was and is a “person” as defined by Wisconsin Administrative Code (WAC) § NR 660.10(90), 40 C.F.R. § 260.10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is the owner and operator, as these terms are defined under WAC § NR 660.10(88) and (87) [40 C.F.R. § 260.10], of a healthcare facility located at 2845 Greenbrier Road in Green Bay, Wisconsin (Facility).

19. On April 15, 2009, U.S. EPA conducted an inspection (“Inspection”) of BCA to evaluate Respondent’s compliance with the applicable requirements of RCRA.

20. At all times relevant to this CAFO, Respondent generated wastes at the Facility, which were “solid wastes,” as defined in WAC §§ NR 660.10(108); 661.02 [40 C.F.R. § 261.2].

21. At all times relevant to this CAFO, Respondent generated “hazardous waste,” as that term is defined in WAC §§ NR 660.10(52); 661.03 [40 C.F.R. § 261.3].

22. At all times relevant to this CAFO, Respondent was an “individual generation site,” as that term is defined in WAC § NR 660.10(59) [40 C.F.R. § 260.10].

23. At all times relevant to this CAFO, Respondent was a “generator,” as that term is defined in WAC § NR 660.10(50) [40 C.F.R. § 260.10].

24. At all times relevant to this CAFO, Respondent accumulated hazardous waste in containers, as that term is defined in WAC § NR 660.10(14) [40 C.F.R. § 260.10].

25. Respondent generated and managed hazardous waste at the Facility after November 19, 1980.

26. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, or the analogous Wisconsin regulations as part of the applicable state hazardous waste management program for the state of Wisconsin, or both.

**Count 1**

**Failure to complete hazardous waste determinations**

27. Complainant incorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

28. Pursuant to WAC § NR 662.011 [40 CFR § 262.11], a person who generates a solid waste must determine if the waste is a hazardous waste.

29. Pursuant to WAC § NR 662.040(3) [40 CFR § 262.40(c)], a “generator” must maintain records of any test results, waste analyses, or other determinations for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal.

30. During the Inspection, the inspectors identified the following materials as being solid wastes that are potentially hazardous when discarded:

- a. containers of used laboratory reagents that had been used in the analysis of human samples and were managed as infectious waste;
- b. chemotherapy chemicals and materials contaminated with those chemicals;
- c. bottles of hand sanitizer;
- d. silver-containing bandages and ointments;
- e. barium contrasts used in imaging; and
- f. pharmaceuticals (including the containers for potential p-listed pharmaceuticals that had not been triple-rinsed) that are not eligible for credit in a reverse distribution arrangement.

31. At all times relevant to this CAFO, Respondent was a generator of all of the solid wastes identified in paragraph 30.

32. Respondent failed to conduct hazardous waste determinations for the solid wastes identified in paragraph 30.

33. Respondent's failure to conduct hazardous waste determinations violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at WAC § NR 662.011 [40 C.F.R. § 262.11], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

## Count 2

### Storage of Hazardous Waste without a Permit

34. Complainant reincorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

35. Except as otherwise provided, a large quantity generator may, for ninety days or less, accumulate hazardous waste that is generated on-site without a Wisconsin hazardous waste license, provided that the conditions of WAC § NR 662.034 [40 C.F.R. § 262.34] are met.

36. If the conditions of WAC § NR 662.034 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating license under WAC §§ NR 670.001(3); 670.010(1) [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

37. In order to avoid the need for an operating license, owners and operators must label satellite containers of hazardous waste with the words "Hazardous Waste" or with other words that describe the waste. See, WAC § NR 662.034(3)(a)2. [40 C.F.R. § 262.34(c)(1)(ii)].

38. At the time of the Inspection, Respondent stored spent mixed stains in two 5-gallon carboys in the Histology Laboratory at BCA.

39. At the time of the Inspection, Respondent had failed to label the two containers of discarded mixed stains identified in paragraph 39 with the words “Hazardous Waste” or with words identifying the waste.

40. BCA determined, prior to the Inspection, that discarded mixed stains are ignitable hazardous waste.

41. Waste was neither being added nor removed from the 5-gallon carboys at the time of the Inspection.

42. As set forth above, Respondent did not meet the conditions of WAC § NR 662.034 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at WAC §§ NR 670.001(3), 670.010(1) and (4), and 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

### **Count 3**

#### **Failure to Conduct RCRA Training**

43. Complainant reincorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

44. Facilities that fail to meet the conditions for a generator permit exemption for waste storage under WAC NR 662.34 [40 C.F.R. § 262.34] must meet the standards for treatment, storage, and disposal facilities in WAC § NR 664.0016 [40 CFR § 264.16], which require that an owner or operator must provide to the facility personnel instruction that covers hazardous waste management procedures, including contingency plan implementation, relevant to the employees’ positions.



45. At the time of the Inspection, Respondent had not offered training specific to the risks and hazards posed by hazardous wastes generated and managed at BCA.

46. Respondent's failure to provide hazardous waste training at BCA violated the regulations at WAC § 664.0016 [40 CFR § 264.16], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

#### **Count 4**

##### **Failure to Complete a Contingency Plan**

47. Complainant incorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

48. Pursuant to WAC § NR 664.0051(1) [40 CFR § 264.51(a)] Respondent must have a contingency plan for BCA.

49. The contingency plan for the facility must include, *inter alia*, a list of names, phone numbers, and addresses of employees qualified to act as emergency coordinators; and the plan must include a list of all emergency and decontamination equipment at the facility complete with locations, physical descriptions of each item, and capabilities. See, WAC § NR 664.0052(4) and (5) [40 CFR § 264.52(d) and (e)].

50. At the time of the Inspection, BCA had a contingency plan, known at the facility as an emergency action plan, in place.

51. The contingency plan identified in paragraph 50 did not include a list of emergency coordinators for the Facility or a list of emergency equipment.

52. Respondent's failure to complete a contingency plan violated the regulations at WAC § NR 664.0052(4) and (5) [40 CFR § 264.52(d) and (e)], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

### **Count 5**

#### **Failure to Conduct Weekly Inspections – Loading Dock Area**

53. Complainant incorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

54. Pursuant to WAC § NR 664.0174 [40 C.F.R. § 264.174], an owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored.

55. At all times relevant to this CAFO, Respondent stored containers of hazardous waste at BCA.

56. At the time of the Inspection, Respondent had accumulated four 30-gallon containers of materials identified by BCA as hazardous waste in their hazardous waste accumulation area near the shipping dock ("HWAA-Dock").

57. The four 30-gallon containers identified in paragraph 56 above were labeled as containing "Methanol/Acetic Acid", "Alcohol," "Xylene," and "Formaldehyde," respectively.

58. Respondent had not performed inspections at the HWAA-Dock.

59. Respondent's failure to conduct weekly container inspections violated the regulations at WAC § NR 664.0174 [40 C.F.R. § 264.174], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

### **Count 6**

#### **Failure to Conduct Weekly Inspections – Laboratory**

60. Complainant incorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

61. Pursuant to WAC § NR 664.0174 [40 C.F.R. § 264.174], an owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored.

62. At all times relevant to this CAFO, Respondent stored containers of hazardous waste at BCA.

63. At the time of the Inspection, Respondent had accumulated four 30-gallon containers of materials identified by BCA as hazardous waste generated in their Histology Laboratory in their hazardous waste accumulation area near the Analytical Laboratory (“HWAA-Lab”).

64. The four 30-gallon containers identified in paragraph 63 above were labeled as containing “Methanol/Acetic Acid”, “Alcohol,” “Xylene,” and “Formaldehyde,” respectively.

65. Respondent had not performed inspections at the HWAA-Lab.

66. Respondent’s failure to conduct weekly container inspections violated the regulations at WAC § NR 664.0174 [40 C.F.R. § 264.174], thereby subjecting Respondent to civil penalties under Section 3008 of RCRA, 42 U.S.C § 6928.

#### **Civil Penalty**

67. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$66,500. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Complainant also considered U.S. EPA’s RCRA Civil Penalty Policy, dated June 23, 2003.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$66,500 civil penalty for the RCRA violations by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message is  
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the case title, the docket number of this CAFO, and the billing document number.

69. This civil penalty is not deductible for federal tax purposes.

70. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action

71. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

**General Provisions**

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

73. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

74. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

75. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

76. The terms of this CAFO bind Respondent, its successors, and assigns.


77. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

78. Each party agrees to bear its own costs and attorney's fees in this action.

79. This CAFO constitutes the entire agreement between the parties.

**BayCare Aurora, LLC, Respondent**

6-6-11  
Date

Name   
Title Sr. V.P. Finance  
Name and Title of Officer Authorized to Sign for Respondent  
BayCare Aurora, LLC

U.S. ENVIRONMENTAL PROTECTION AGENCY

JUN 1 2011

OFFICE OF REGIONAL COUNSEL

**United States Environmental Protection Agency, Complainant**

6/29/11  
Date


Michael D. Harris <sup>for M.G.</sup>  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:  
BayCare Aurora, LLC  
Docket No. RCRA-05-2011-0010**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-30-11  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**RECEIVED**  
JUL 05 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

IN THE MATTER OF:  
BayCare Aurora, LLC      **RCRA-05-2011-0010**  
Green Bay, Wisconsin

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.


I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Certified Mail #

Mr. Thomas Ginter  
Director, Technology Services  
BayCare Aurora, LLC  
2845 Greenbrier Road  
Post Office Box 8900  
Green Bay, WI 54308--8900

**RECEIVED**  
JUL 05 2011  
**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Dated: 7/05/ 2011  
Margaret Gray

  
\_\_\_\_\_  
Administrative Program Assistant  
RCRA Branch  
United States Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590  
(312) 353-5882