

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

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In The Matter of:  
  
**Memorial Sloan Kettering Cancer  
Center,**  
  
Respondent.  
  
Proceeding under Section 3008 of the Solid  
Waste Disposal Act, as amended.

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket Number: RCRA-02-2017-7101

**PRELIMINARY STATEMENT**

This is a civil administrative proceeding 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 U.S.C. §§ 6901, *et seq.* (referred to collectively as "RCRA" or the "Act").

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this CA/FO is an appropriate means of resolving the RCRA claims specified herein against Memorial Sloan Kettering Cancer Center ("Respondent" or "MSK"), without litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum.

## EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is MSK.
2. MSK is a not-for-profit corporation organized pursuant to the laws of New York State.
3. MSK has been and is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 6 New York Code Rules and Regulations ("NYCRR") § 370.2(b).
4. MSK has been and is an educational institution and hospital engaged in the diagnosing of and treatment of illnesses and diseases as well as the conducting of medical research in various laboratories located in both the Zuckerman Building situated at 417 East 68<sup>th</sup> Street, New York, New York 10065 and the Rockefeller Building situated at 1275 York Avenue, New York, New York 10065.
5. Both the Zuckerman Building and the Rockefeller Building constitute a "facility" within the meaning of 6 NYCRR § 370.2(b).
6. MSK is both the "owner" and "operator" of the Zuckerman Building and the Rockefeller Building as those terms are defined in 6 NYCRR § 370.2(b).
7. At all times relevant hereto, Respondent has generated and is generating "hazardous waste" and "acute hazardous waste" in laboratories located in the Zuckerman Building and the Rockefeller Building as those phrases are defined in 6 NYCRR §§ 371.1(d) and 371.4.
8. MSK has been and is a "large quantity generator" of "acute hazardous waste" and "hazardous waste" as those phrases are defined in 6 NYCRR § 370.2(b).
9. On or about July 1-2, and 7-8, 2015, a duly designated representative of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted a Compliance Evaluation Inspection ("July Inspections") of MSK.
10. On or about October 23, 2015, EPA issued to Respondent a combined Notice of Violation ("NOV") and Request for Information ("IRL").
11. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that EPA had identified a number of potential RCRA violations and requested Respondent to provide a description and documentation of the actions Respondent had taken to correct the violations identified by EPA in that NOV. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to Respondent's generation and handling of hazardous waste and acute hazardous waste at its facility.

12. On or about December 23, 2015, Respondent submitted its response to the combined NOV and IRL.
13. As a result of the July 2015 Inspections and MSK's responses to the October 2015 IRL, EPA representatives determined that Respondent failed to: (1) make hazardous wastes determinations for the waste-streams found in five laboratories in the Zuckerman Building and four trays of old chemicals situated in the chemical storage area on the thirteenth floor of the Rockefeller Building in violation of 6 NYCRR § 372.2(a)(2), and (2) maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air which could threaten human health or the environment in fifteen laboratories in the Zuckerman Building and in connection with the handling of the above referenced four trays of old chemicals in the chemical storage area in the Rockefeller Building in violation of 6 NYCRR § 373-3.3(b).
14. EPA and MSK met to discuss EPA determinations described in Paragraph 13 and agreed to settle this matter by entering into this Consent Agreement.

### CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies EPA's Findings of Fact and/or Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) agrees to perform and implement the Supplemental Environmental Project in accordance with the terms and conditions set forth herein; (e) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter, at its facility, maintain compliance with all applicable statutory requirements of RCRA, 42 U.S.C. § 6901 *et seq.*, and its implementing regulations relating to its generation, management and disposal of hazardous waste
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions of RCRA and the implementing regulations cited in Paragraph 13 in the above Findings of Fact and Conclusions of Law.
3. Respondent shall pay a civil penalty to EPA in the total amount of **FIFTEEN THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS (\$15,622)**. Such payment

shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check 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 shall be identified with a notation thereon listing the following: ***IN THE MATTER OF MEMORIAL SLOAN KETTERING CANCER CENTER***, and shall bear thereon the **Docket No. RCRA-02-2017-7101**. If Respondent chooses to make the payment by EFT, then Respondent 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 **D 68010727**  
Environmental Protection Agency.
  - 6) Name of Respondent: **Memorial Sloan Kettering Cancer Center**
  - 7) Case Number: **RCRA 02-2017-7101.**
4. Payment shall be received (if made by check) or effected (if implemented by EFT) on or before forty-five (45) calendar days from the Effective Date of this CA/FO.
- a. Failure to pay the requisite civil penalty amount in full according to the above provisions or to pay any stipulated penalty due and owing pursuant to Paragraph 30, below, may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
  - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
  - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

- d. The civil penalty and any stipulated penalties provided for herein constitute "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.
5. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Gary H. Nurkin, Assistant Regional Counsel  
Office of Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1621  
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1631  
New York, New York 10007-1866

6. Complainant shall mail to Respondent (to the representative designated in Paragraph 7, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
7. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Leonard Voo, Chief  
RCRA Compliance Branch  
US Environmental Protection Agency 2  
290 Broadway  
New York, New York 10007

and

Gary H. Nurkin, Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway, Room 1621  
New York, New York 10007

EPA shall address any written communications to Respondent at the following address:

Erik Talley, Vice President, Environmental Health & Safety Department  
Memorial Sloan Kettering Cancer Center  
1275 York Avenue, SR-G25, 440  
New York, New York 10065

and

Elizabeth D'Elia  
Associate General Counsel  
Box 208, Memorial Sloan Kettering Cancer Center  
633 Third Avenue  
New York, New York 10017

Each party may upon written notice to the other party change the name and address of its contacts.

8. Respondent agrees to and shall, in accordance with the terms and conditions of this Consent Agreement, perform the Supplemental Environmental Project ("SEP") described herein. The SEP shall consist of the following:

MSK has agreed to purchase, install and thereafter utilize for at least three years (3) years, a web-based hazardous material computerized inventory system to facilitate the management of hazardous materials by streamlining and standardizing the tracking of inventory across the MSK facility and serving as a repository of important hazardous information that can be easily (and quickly) accessed by MSK's Environmental Health and Safety Department. The use of this electronic system ("Chem Tracker" data base system) will help MSK to better manage the use and disposal of chemicals that are purchased for use in MSK's laboratories.

The total expenditure for the SEP shall be not less than **ONE HUNDRED EIGHTEEN THOUSAND DOLLARS (\$118,000) (this amount shall be increased by the amount of any cost savings enjoyed by MSK as a result of the SEP).**

9. Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

Schedule and Reports

10. MSK will implement the SEP in accordance with the milestones set forth in Attachment A.
11. Respondent agrees that failure to carry out the SEP as described in Paragraph 8 above (except as provided for in Paragraphs 17 and 22 below) shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 30 below.
12. The SEP will be considered completed upon EPA's acceptance of the SEP Completion Report as described in Paragraphs 14 and 18, below.
13. Respondent shall submit four interim SEP reports certified by an appropriate corporate official as follows:

- a. a SEP Installation Report documenting the Installation of the system shall be submitted within sixty (60 days) of the completion of the Installation;
  - b. an Operational Roll Out Report documenting the Operational Roll Out of the system shall be submitted within sixty (60 days) of the completion of the Operational Roll Out;
  - c. an Annual Interim Operation Report documenting the operation of the system shall be submitted for each of the first two years within thirty (30) days of the yearly anniversary of the Operational Roll Out;
  - d. the SEP Installation Report, Operational Roll Out Report and Annual Interim Operation Report shall include the information identified in Paragraphs 14(b) – (h), below for the relevant time period covered by the report.
14. Respondent shall submit a SEP Completion Report certified by an appropriate corporate official within thirty-nine (39) months of the Operational Roll Out. Unless otherwise agreed, Respondent shall provide the following information in the SEP Completion Report:
- a. evidence of SEP completion, which may include but is not limited to, photos of the equipment, vendor invoices or receipts, and correspondence from the vendor;
  - b. a detailed description of the SEP as implemented;
  - c. all itemized expenditures made in connection with the SEP;
  - d. itemized total costs incurred (e.g. cost of packaging and transport, and/or other costs) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made;
  - e. any savings accrued by the Respondent as a result of its implementation of the SEP;
  - f. identification of any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discussion of how any such issues or problems were addressed, and the solutions thereto;
  - g. quantification to the extent possible of the benefits associated with the project and a statement setting forth how the benefits were measured or estimated; and
  - h. the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.

15. Respondent agrees that submission of a false and/or inaccurate report shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 30 below.
16. Respondent agrees that failure to submit a report required by this Consent Agreement in a timely manner (except as provided for in Paragraphs 17 and 22 below) shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 30 below.
17. EPA may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to the SEP if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.
18. Following its receipt of the SEP Completion Report, EPA will notify Respondent in writing that it:
  - a. accepts the SEP Completion Report; or
  - b. rejects the SEP Completion Report, with identification of any questions it has and/or deficiencies in the report, including, but not limited to, a determination by EPA that certain expenditures are not creditable. EPA will grant MSK an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to answer EPA's inquiries and/or, to correct any deficiencies in the SEP Completion Report, and to resubmit an amended report if required. Such submission, provided it is timely, shall not be subject to stipulated penalties; or
  - c. rejects the SEP Completion Report because EPA concludes that:
    - (1) the Respondent has not made a good faith effort to complete the SEP or (2) the implementation of the SEP is flawed and cannot be remedied at this late stage.



19. If EPA notifies Respondent of its rejection of the SEP Completion Report pursuant to Paragraph 18(c) above, EPA shall permit Respondent the opportunity to object in writing to the rejection notification within fourteen (14) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.
20. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CA/FO, and whether costs are creditable to the SEP shall be in the sole discretion of EPA.
21. Respondent agrees that submission of an untimely or unacceptable SEP Completion Report shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 30 below.
22. Delays:
  - a. If any unforeseen event occurs which causes or may cause delays in the implementation of the SEP or the submission of a report as required herein, Respondent shall notify EPA in writing within (14) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the implementation of the SEP or the submission of a required report caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.
  - b. If the parties agree that the delay or anticipated delay in the implementation of the SEP or the submission of a report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances.
  - c. In the event that EPA does not agree that a delay in implementing the SEP or submitting the report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
23. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of its SEP and documentation supporting information in any report submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within fourteen (14) days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. Respondent shall also allow EPA to conduct, during normal business hours, an inspection of the facility to verify the implementation of the SEP. The provisions of this paragraph shall remain in effect for six (6) years from the Effective Date of this Consent Agreement.
  24. All documents submitted to EPA shall be in a form mutually agreeable to both parties (e.g. by electronic mail in Microsoft Word or Portable Document Format [.pdf] format).

#### Certifications

25. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, that:
  - a. all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and Respondent in good faith estimates that the cost to implement the SEP is \$118,000;
  - b. Respondent is not required to perform or develop the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement;
  - c. Respondent is not required to perform or develop the SEP as set forth herein by any agreement, grant, or as injunctive relief awarded in any forum;
  - d. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved herein;
  - e. Respondent has not received and will not receive credit in any other enforcement action for the actions that constitute the SEP; and
  - f. Respondent will not receive reimbursement for any portion of the SEP from any person or entity.
26. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding the same activity as the SEP described herein.

Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that could fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

27. Respondent further certifies that it has not and agrees that it will not capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP for federal income tax purposes.
28. If at any time, EPA believes that any of the information certified to herein is inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA within twenty (20) days of EPA's notification. After review of any comments submitted, EPA shall provide a written statement of its initial decision to Respondent. This initial decision shall be final and binding upon Respondent unless Respondent requests, within 20 days of its receipt of the initial decision, review of the decision by a more senior EPA Regional official (at the Branch Chief level or higher) After such review, EPA will issue a final decision, which decision shall be final and binding upon Respondent. Respondent agrees that a substantially or materially inaccurate certification shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 30 below. Such payment(s) shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.
29. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

#### Stipulated Penalties

30. Respondent agrees to pay stipulated penalties for the failure to comply with the terms of Paragraphs 8 - 14 of this Consent Agreement, in the same manner as specified in Paragraph 3 and subject to the same provisions specified in Paragraphs 4 and 5, above, in the following amounts:
  - a. If EPA determines that the Respondent has halted or abandoned work on the SEP and Respondent has not purchased, installed and operated for at least two years following the Operational Roll Out, a web-based hazardous material computerized inventory system, the Respondent shall pay a stipulated penalty of One Hundred Twenty-Five Thousand (\$125,000) Dollars.

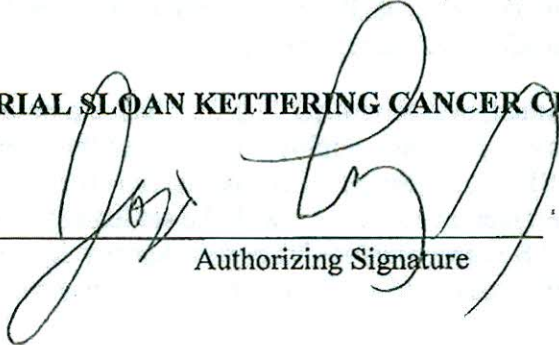
- b. If EPA believes that Respondent has made a good faith effort to complete the SEP but that it has not incurred creditable expenditures of at least 90% of the required expenditure amount of \$118,000 (\$106,000) on the SEP, then EPA shall promptly advise Respondent of its belief and the basis for its belief and shall afford Respondent an opportunity to respond to EPA within twenty (20) days of EPA's notification. If, after considering Respondent's Reply, EPA determines that an amount less than \$106,000 was spent by Respondent, then within thirty (30) days of receipt of EPA's determination, Respondent shall pay a penalty in an amount that is twice the figure that is calculated using the following formula: (Required expenditure amount pursuant to Paragraph 8) minus (the amount of expenditures made as of the time of the first submission of the SEP Completion report that EPA determines to be creditable as SEP expenditures). The penalty due under this subparagraph "b" shall, however, in no event be more than Sixty Thousand (\$60,000) Dollars.
  - c. In the event that Respondent fails to timely submit a required report (except as provided for in Paragraphs 17 and 22) or submits an unacceptable SEP Completion Report, stipulated penalties shall accrue on a per day basis. For any such violation Respondent shall pay a stipulated penalty in the amount of \$100 per day for the first ten days, \$250 per day for days 11-30, and \$500 per day after day 30. If a report is submitted late or not at all, then such penalties shall begin to accrue on the day after the report is due and shall continue to accrue until a report is submitted.
  - d. If EPA, acting in accordance with Paragraphs 18(c) and 19, above, rejects the SEP Completion Report, then Respondent shall pay a stipulated penalty of Twenty Thousand (\$20,000) Dollars within thirty (30) days of receipt of EPA's final written determination, in addition to any other stipulated penalties due under this paragraph.
  - e. If at any time, EPA believes that the information in Paragraphs 2, and 25 - 27, above, was inaccurately certified or if after reviewing a submitted report EPA believes that any information therein was inaccurately certified, the parties will follow the procedures set out in paragraph 28. If EPA makes a final determination that a certification was substantially or materially inaccurate, then within thirty (30) days of receipt of EPA's determination, Respondent shall pay a penalty as set forth below: (1) Sixty Thousand (\$60,000) Dollars if the certification at issue was made pursuant to any sub-paragraph from "25.b." to "25.f" or involved Respondent's certification in Paragraph 26 that it is(was) not a party to an open federal financial assistance transaction that is (was) funding the same activity as the SEP. (2) Twenty thousand (\$20,000) dollars for other certifications made pursuant to requirements of this Consent Agreement.
31. The Complainant, may, in her sole discretion, reduce or waive any stipulated penalty otherwise due under this Consent Agreement.
32. Unless otherwise specified in this Consent Agreement, payment of stipulated penalties shall be made within thirty (30) days of Respondent's receipt of a notice from EPA that payment is due, and failure of Respondent to pay any stipulated penalty due and owing

pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.

33. Respondent agrees that following notice to Respondent's contact person (specified in Paragraph 7 above) EPA may contact its vendor at any time, after the SEP has been alleged to have been completed in order to confirm details about the SEP or its costs. The provisions of this paragraph shall remain in effect from the Effective Date of this CA/FO until one (1) year after EPA acceptance of the SEP Completion Report.
34. Any public statement, oral or written, in print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the U.S Environmental Protection Agency against the Memorial Sloan Kettering Cancer Center, under the Resource Conservation and Recovery Act."
35. This Consent Agreement 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 described above in Paragraph 13 of EPA's Finding of Facts and Conclusions of Law. 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.
36. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
37. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
38. This Consent Agreement 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 Consent Agreement or any of its terms and conditions.
39. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any findings of fact or conclusions of law or other provisions contained within these documents.
40. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement.

41. Each party hereto shall bear its own costs and fees in this matter.
42. Pursuant to 40 C.F.R. §22.31(b), the Effective Date of this Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT: **MEMORIAL SLOAN KETTERING CANCER CENTER**

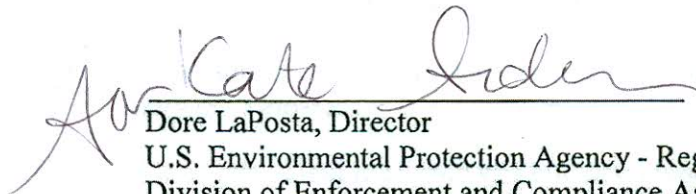
BY:   
Authorizing Signature

NAME: Jorge Lopez Jr  
(PLEASE PRINT)

TITLE: Executive VP + General Counsel

DATE: 12/13/16

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**



Dore LaPosta, Director  
U.S. Environmental Protection Agency - Region 2  
Division of Enforcement and Compliance Assistance  
290 Broadway  
New York, New York 10007

**DEC 20**

DATE: \_\_\_\_\_, 2016

**Supplemental Environmental Project: Chemical Inventory Management System  
 Memorial Sloan Kettering Cancer Care Center  
 1275 York Avenue & 417 E. 68<sup>th</sup> Street, New York, N.Y. 10065**

Milestone	Timing
Start Date	[ ]
SEP Purchase Date	1/1/2017
SEP Installation	6/1/2017
SEP Installation Report identified in Paragraph 13.a	8/1/2017
Super User Training completed	12/1/2017
MSK-Specific System Documentation completed	4/1/2018
MSK Departmental Training Completed	10/1/2018
Operational Roll Out	2/1/2019
Operational Roll Out Report identified in Paragraph 13.b.	4/1/2019
Check electronic inventory against physical inventory and reconcile differences	10/1/2019
Submission of Interim Annual Report identified in Paragraph 13.c.	3/1/2020
Check electronic inventory against physical inventory and reconcile differences	10/1/2020
Submission of Interim Annual Report identified in Paragraph 13c.	3/1/2021
Check electronic inventory against physical inventory and reconcile differences	10/1/2021
SEP Completion Report identified in Paragraph 14	5/1/2022

“SEP Installation” means the completion of Respondent’s procurement process (including security review completion) and installation of the ChemTracker System software.

“Operational Roll Out” means the completion of documentation for system use, departmental training, and inventory cataloguing across the facility and other information collection activities to populate ChemTracker System as necessary for its initial operation.

“Super User Training” means the training of staff members of the MSK Environmental Health and Safety (“EHS”) Department (including the Director of Operations and the Vice President of the EHS Department) with authorized user privileges for the ChemTracker System on the use and maintenance of the system, including adding users, granting access, populating the system, generating reports and updating information.

“MSK-Specific System Documentation” means reference materials for users regarding access and use of the system (e.g. User Guides).

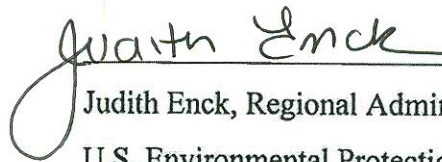
**“MSK Departmental Training” means presentation on the use of the ChemTracker System to members of the MSK community, including accessing information, explanation of the materials and information available through the system, and effective searching and utilization of ChemTracker System.**



In the Matter of Memorial Sloan Kettering Cancer Center, RCRA-02-2017-7101

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008(a) of RCRA and 40 C.F.R. § 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

  
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Judith Enck, Regional Administrator

U.S. Environmental Protection Agency – Region 2

290 Broadway

New York, New York 10007-1866

DATE: 12.20.16

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing docket number RCRA-02-2017-7101, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

William J. O'Brien, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

Dated: 12/22 2016  
New York, NY

  
Yolanda Majette, Branch Secretary