



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

DEC 12 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Benz, CEO
Gateway Regional Medical Center
2100 Madison Avenue
Granite City, IL 62040

Re: Gateway Regional Medical Center, Consent Agreement and Final Order
Docket No. EPCRA-05-2009-0007

Dear Mr. Benz:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on DEC 12 2008.

Please pay the civil penalty in the amount of \$12,900.00 in the manner prescribed in paragraph 54, and reference you check with the billing document number 2750944E006 and the docket number EPCRA-05-2009-0007.

Your payments are due on JAN 12 2009 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Leslie A. Kirby-Miles, Associate Regional Counsel, at (312) 353-9443. Thank you for your assistance in resolving this matter.

Sincerely yours,

Silvia Palom for
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Granite City Hospital Corp. d/b/a)
Gateway Regional Medical Center)
Granite City, Illinois)
)
Respondent.)
_____)

Docket No. EPCRA-05-2009-0007
Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) of the Emergency Planning
and Community Right-to-Know Act of 1986

RECEIVED
DEC 12 2008

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) 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, by lawful delegation, the Chief of the Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Granite City Hospital Corporation d/b/a Gateway Regional Medical Center, a corporation doing business in the State of Illinois.
4. 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).
5. 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.

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

Jurisdiction and Waiver of Right to Hearing

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

8. 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.

Statutory and Regulatory Background

9. Pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, must to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

14. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2100 Madison Avenue, Granite City, Illinois, 62040 (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
19. Human exposure to Fuel oil #2 has potential health affects.
20. Fuel oil #2 is considered as a hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910.
21. Fuel oil #2 (CAS #68476-30-2) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
22. Fuel oil #2 (CAS #68476-30-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
23. During at least one period of time in calendar year 2003, fuel oil #2 was present at the facility in an amount equal to or greater than the minimum threshold level.
24. During at least one period of time in calendar year 2004, fuel oil #2 was present at the facility in an amount equal to or greater than the minimum threshold level.
25. During at least one period of time in calendar year 2005, fuel oil #2 was present at the facility in an amount equal to or greater than the minimum threshold level.
26. During at least one period of time in calendar year 2006, fuel oil #2 was present at the facility in an amount equal to or greater than the minimum threshold level.
27. During at least one period of time in calendar year 2007, fuel oil #2 was present at the facility in an amount equal to or greater than the minimum threshold level.
28. OSHA requires Respondent to prepare, or have available, a MSDS for fuel oil #2.
29. Respondent was required to submit to the SERC, the LEPC, and fire department, a completed emergency and hazardous chemical inventory form including fuel oil #2 on or before March 1, 2004 for calendar year 2003.

30. Respondent was required to submit to the SERC, the LEPC, and fire department, a completed emergency and hazardous chemical inventory form including fuel oil #2 on or before March 1, 2005 for calendar year 2004.

31. Respondent was required to submit to the SERC, the LEPC, and fire department, a completed emergency and hazardous chemical inventory form including fuel oil #2 on or before March 1, 2006 for calendar year 2005.

32. Respondent was required to submit to the SERC, the LEPC, and fire department, a completed emergency and hazardous chemical inventory form including fuel oil #2 on or before March 1, 2007 for calendar year 2006.

33. Respondent was required to submit to the SERC, the LEPC, and fire department, a completed emergency and hazardous chemical inventory form including fuel oil #2 on or before March 1, 2008 for calendar year 2007.

34. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

35. At all times relevant to this CAFO, the Madison County LEPC was the LEPC for Madison County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

36. At all times relevant to this CAFO, the Granite City Fire Department was the fire department with jurisdiction over the facility.

37. Respondent submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on August 4, 2008, for calendar year 2003.

38. Respondent's failure to submit to the SERC, the LEPC, and the Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil

#2 by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

39. Respondent submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on August 4, 2008, for calendar year 2004.

40. Respondent's failure to submit to the SERC, LEPC, and the Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. Respondent submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on August 4, 2008, for calendar year 2005.

42. Respondent's failure to submit to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 by March 1, 2006, for calendar year 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

43. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on July 23, 2007, for calendar year 2006.

44. Respondent submitted to the LEPC and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on September 24, 2007, for calendar year 2006.

45. Respondent's failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

46. Respondent's failure to submit to the LEPC a completed emergency and hazardous chemical inventory form including fuel oil #2 by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

47. Respondent's failure to submit to the Granite City Fire Department a completed emergency and hazardous chemical inventory form including fuel oil #2 by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

48. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on March 30, 2008, for calendar year 2007.

49. Respondent submitted to the LEPC and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 on August 4, 2008, for calendar year 2007.

50. Respondent's failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including fuel oil #2 by March 1, 2008, for calendar year 2007 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

51. Respondent's failure to submit to the LEPC a completed emergency and hazardous chemical inventory form including fuel oil #2 by March 1, 2008, for calendar year 2007 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

52. Respondent's failure to submit to the Granite City Fire Department a completed emergency and hazardous chemical inventory form including fuel oil #2 by March 1, 2008, for calendar year 2007 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

53. In consideration of Respondent's cooperation, willingness to quickly resolve this matter, agreement to perform a supplemental environmental project, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$12,900.00.

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,900.00 civil penalty for the EPCRA violations. Respondent must pay the penalty 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
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Gateway Regional Medical Center, the docket number of this CAFO and the billing document number **2750944E006**.

55. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5

77 West Jackson Boulevard
Chicago, IL 60604

Leslie A. Kirby-Miles, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

57. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 70, below, 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.

58. 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 the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

59. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and donating equipment to the Madison County HAZMAT team and the Granite City Fire Department.

60. Within 60 days of the effective date of the CAFO, Respondent must complete the SEP as follows:

- a. purchase a rugged computer and donate the rugged computer to the Madison County HAZMAT Team;
- b. purchase (11) two-way radio communication devices and chargers and donate the radios and chargers to the Madison County HAZMAT Team; and
- c. Purchase Jaws of Life and supporting equipment and donate the Jaws of Life and support equipment to the Granite City Fire Department.

61. Respondent must spend at least \$16,917.00 for the equipment for the Madison County HAZMAT team and \$31,707.00 for the equipment for the Granite City Fire Department.

62. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

63. U.S. EPA may inspect Respondent's facility at any time to monitor compliance with the EPCRA requirements.

64. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any data to U.S. EPA within seven days of U.S. EPA's request for the information.

65. Within 90 days after the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. A letter from the Granite City Fire Department Fire Chief identifying the

equipment received and the date of receipt;

- e. A letter from an authorized official from the Madison County HAZMAT team identifying the equipment received and the date of receipt;
- f. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- g. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

66. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 55, above.

67. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

68. Following receipt of the SEP completion report described in paragraph 65, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 70.

69. If U.S. EPA exercises option b, in paragraph 68 above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30

days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 70, below.

70. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than \$48,624, identified in Paragraph 61 above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and \$48,624.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$9,725.00 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$24,312.00 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 60 for implementing the SEP or fails to comply with the schedule in paragraph 65 for submitting the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

71. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

72. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 54, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

73. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of EPCRA Section 312."

74. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology purchased and donated by Respondent in connection with the SEP under the terms of this CAFO.

75. For Federal Income Tax purposes, Respondent will neither capitalize nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

78. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

79. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws, and regulations.

80. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response

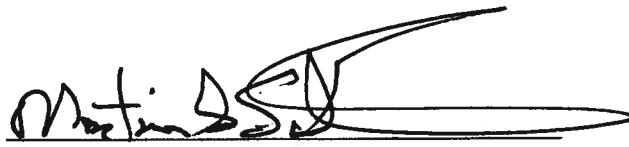
Policy for Section 312 of EPCRA.

81. The terms of this CAFO bind Respondent and its successors, and assigns.
82. Each person signing this CAFO 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.
83. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.
84. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Gateway Regional Medical Center, Granite City, Illinois
Docket No. EPCRA-05-2009-0007

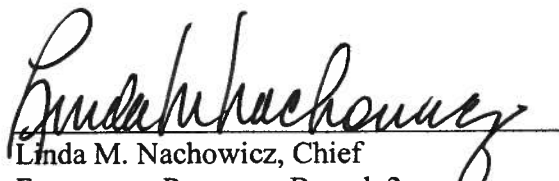
Gateway Regional Medical Center, Respondent

Nov. 20, 2008
Date

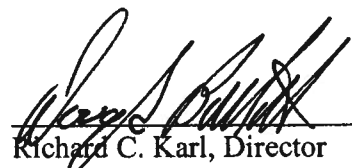

Martin G. Schweinhart, President
Granite City Hospital Corporation d/b/a Gateway
Regional Medical Center

U.S. Environmental Protection Agency, Complainant

12/9/08
Date


Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

12/11/08
Date


for Richard C. Karl, Director
Superfund Division

In the Matter of:
Gateway Regional Medical Center, Granite City, Illinois
Docket No. EPCRA-05-2009-0007

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.

12/11/08
Date

Walter W. Kautel
Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:
Gateway Regional Medical Center, Granite City, Illinois
Docket No. EPCRA-05-2009-0007


Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number EPCRA-05-2009-0007²² to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Gateway Regional Medical Center and their Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mark Benz, CEO
Gateway Regional Medical Center
2100 Madison Avenue
Granite city, IL 62040

David L. Rieser, Attorney
McGuire Woods, LLP
77 West Wacker Drive, Suite 4100
Chicago, IL 60601-1818

on the 12 day of December 2008


James Entzminger
U.S. Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY