

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:	)	Docket No. RCRA-10-2022-0264
	)	
Fairbanks Memorial Hospital	)	
	)	
Respondent	)	EXPEDITED SETTLEMENT
	)	AGREEMENT AND
Fairbanks Memorial Hospital	)	FINAL ORDER
1650 Cowles Street	)	
Fairbanks, Alaska	)	
	)	
EPA ID Number: AKR000003178	)	
	)	
Facility	)	
_____	)	

**EXPEDITED SETTLEMENT AGREEMENT**

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928, and 40 C.F.R. § 22.13(b).
2. Fairbanks Memorial Hospital (“Respondent”) is the owner or operator of the facility at 1650 Cowles Street, Fairbanks, Alaska 99701 (“Facility”). The EPA inspected the Facility on May 11-12, 2022. Respondent is a Small Quantity Generator of Hazardous Waste and a Small Quantity Handler of Universal Waste.
3. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926 to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, the EPA may enforce the federal hazardous waste program in the State of Alaska. The EPA alleges that Respondent violated the following requirements of the RCRA.

**a: Storage of Hazardous Waste without a Permit or Interim Status**

Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c), provide that any person who treats, stores or disposes of hazardous waste must have a permit or interim status. However, the regulation at 40 C.F.R. § 262.16, allows a small quantity generator (SQG) to accumulate hazardous waste on-site without a permit or interim status provided it meets all of the applicable exemption conditions therein. The regulation at 40 C.F.R. § 262.15 allows a generator to accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation without a permit or interim status, provided that it meets all of the applicable exemption conditions therein. Violations 1-5 detail instances where certain exemption conditions were not met at the time of the May 11<sup>th</sup>-12<sup>th</sup>, 2022 inspection.

### **1. Failure to accumulate hazardous waste on site for less than 270 days.**

The regulation at 40 C.F.R. § 262.16(c) provides that an SQG who must transport its waste or offer its waste for transportation, over a distance of 200 miles or more, for off-site treatment, storage or disposal, may accumulate hazardous waste on site for 270 days or less without a permit or interim status, provided the generator complies with the conditions of 40 C.F.R. § 262.16(b).

During the May 11-12, 2022 inspection in the WP102 Compactor Room, one 5-gallon lab pack container of hazardous waste, was observed dated with an accumulation start date of July 13, 2020; therefore, Fairbanks Memorial Hospital had accumulated the container for greater than the allowed 270 days, which constituted a violation of 40 C.F.R. § 262.16(c).

### **2. Failure to mark or label containers of hazardous waste with a hazard indicator.**

40 C.F.R. § 262.16(b)(6)(i)(B) provides that a SQG must mark or label its containers with the following: An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 C.F.R. part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 C.F.R. 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

During the May 11-12, 2022, inspection, the following 14 containers accumulating hazardous waste were observed lacking hazard indicators:

Five containers in the WP102 Compactor Room.

Nine containers in the WP101 Central Accumulation Area (CAA).

Accumulating hazardous waste without a hazardous indicator in these containers constituted a violation of 40 C.F.R. § 262.16(b)(6)(i)(B).

### **3. Failure to keep containers of hazardous waste in a satellite accumulation area closed.**

40 C.F.R. § 262.15(a)(4) provides that, for a SQG, a container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste or when temporary venting of a container is necessary.

During the May 11-12, 2022, inspection, the following four rooms each had a satellite accumulation area container marked as hazardous waste that was not closed, constituting a violation of 40 C.F.R. § 262.15(a)(4):

Room 2531 Soiled Utility, Room 263CT, Room 364CT, and Room 465CT.

### **4. Failure to mark or label containers of hazardous waste in a satellite accumulation as hazardous waste.**

40 C.F.R. § 262.15(a)(5)(i) provides that a SQG must mark or label its satellite container with the words “Hazardous Waste.”

During the May 11-12, 2022 inspection, a satellite accumulation area container in each of the following five rooms was not marked or labeled with the words “Hazardous Waste” constituting a violation of 40 C.F.R. § 262.15(a)(5)(i):

Room 218NT, Room 263CT, Room 364CT, Room 465CT, and Medication Room 238ST.

**5. Failure to mark or label containers of hazardous waste in a satellite accumulation area with a hazard indicator.**

40 C.F.R. § 262.15(a)(5)(ii) provides that a SQG must mark or label its container with the following: An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 C.F.R. part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 C.F.R. 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

During the May 11-12, 2022 inspection, the following six rooms each had a satellite accumulation area container of hazardous waste lacking the required hazard indication, constituting a violation of 40 C.F.R § 262.15(a)(5)(ii):

Room 218NT, Room 2531 Soiled Utility, Room 263CT, Room 364CT, Room 465CT, and Medication Room 238ST.

**b: Failure to meet the standards for containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.**

The regulations at 40 C.F.R. § 266.502 outline the standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals. 40 C.F.R § 266.502(d)(3) states: A healthcare facility must keep containers of non-creditable hazardous waste pharmaceuticals closed and secured in a manner that prevents unauthorized access to its contents.

During the May 11-12, 2002 inspection, the following eight rooms each had a container of non-creditable hazardous waste pharmaceuticals that was not closed and secured in a manner that prevents unauthorized access to its contents, constituting a violation of 40 C.F.R § 266.502(d)(3):

Room 218NT, Room 2531 Soiled Utility, Room 263CT, Room 364CT, Room 465CT, Medication Room 238ST, Room OR6, and Room OR7.

**c: Failure to label or clearly mark containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.**

The regulations at 40 C.F.R. § 266.502 outline the standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals. 40 C.F.R. § 266.502(e) states: A healthcare

facility must label or clearly mark each container of non-creditable hazardous waste pharmaceuticals with the phrase "Hazardous Waste Pharmaceuticals."

During the May 11-12, 2022, inspection, the following room had a container of non-creditable hazardous waste pharmaceuticals that was not labeled or clearly marked with the phrase "Hazardous Waste Pharmaceuticals," constituting a violation of 40 C.F.R. § 266.502(e):

WP02 Compactor Room.

**d: Failure to accumulate universal waste for no longer than one year.**

The regulation at 40 C.F.R. § 273.15(a) provides that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated.

During the inspection on May 11-12, 2022, the following three containers of universal waste were observed to have been accumulated for a period of greater than one year from the time the universal waste was generated:

In the basement of the Main Building, Room 008ST, a container of four-foot waste universal waste lamps was observed labeled with a universal waste label and dated June 13, 2016, showing the container had been in accumulation for greater than one year.

In the basement of the Main Building, Room 008ST, a container of four-foot waste lamps had no universal waste labeling and no date at the time of inspection. Following the inspection, the facility representative sent an email, dated May 13, 2022, with a photo showing that the container had been labeled with a universal waste label. At the time of the inspection, paper taped to the container was covering the universal waste label which had an accumulation start date of March 5, 2018. The universal waste lamps had therefore been in accumulation for greater than one year.

In the WP101 CAA, a container of universal waste lithium batteries was observed with an accumulation start date of April 23, 2020. Based on date on the container, the universal waste batteries had been in accumulation for greater than one year.

The accumulation of universal waste in these containers for longer than one year from the date the universal waste was generated constituted a violation of 40 C.F.R. § 273.15(a).

**e: Failure to make a hazardous waste determination.**

The regulation at 40 C.F.R. § 262.11 provides that a person who generates a solid waste, as defined in 40 C.F.R. 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. 40 C.F.R. § 262.11(a) provides that the hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change.



During the inspection on May 11-12, in the WP102 Central Accumulation Area, one container of Nalco 2840 solid waste was observed, for which the facility representative stated no determination had been made. The facility representative said it was received the previous month, from Planned Operations.

The failure to determine if this solid waste was a hazardous waste constituted a violation of 40 C.F.R. § 262.11(a).

4. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$11,250. The attached Penalty Calculation Worksheet is incorporated by reference.
5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b); and (7) consents to electronic service of the filed ESA.
6. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$11,250 for the RCRA violations identified in this Agreement. Payments under this Agreement may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Respondent must note on the check the title and docket number of this action.

7. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
R10\_RHC@epa.gov

Matthew Quarterman  
U.S. Environmental Protection Agency  
Region 10  
Quarterman.Matthew@epa.gov

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and Final Order and to execute and legally bind Respondent to it.
9. EPA reserves all of its rights to take enforcement action for any other past, present, or future

violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.

10. Each party shall bear its own costs and fees, if any.
11. This Agreement and Final Order shall constitute full settlement of the civil claims alleged herein.
12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.
13. This Agreement is binding on the parties signing below and, in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order with the Regional Hearing Clerk for the EPA, Region 10.

IT IS SO AGREED,

**RESPONDENT:**

Name (print): CLINT BROOKS

Title (print): CHIEF OF CUSTOMER SERVICES

Signature: 

Date: 10/24/22

**EPA REGION 10:**

\_\_\_\_\_  
Edward J. Kowalski, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 10

Date: \_\_\_\_\_

**FINAL ORDER**

I hereby ratify the Expedited Settlement Agreement and incorporate it by reference. This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall be effective immediately upon filing with the Regional Hearing Clerk for the EPA, Region 10. Such filing will conclude this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED,

\_\_\_\_\_  
Richard Mednick, Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 10

Date: \_\_\_\_\_

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Fairbanks Memorial Hospital, Docket No.: RCRA-10-2022-0264, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Matthew Quarterman  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 155, M/S 20-C04  
Seattle, WA 98101  
Quarterman.Matthew@epa.gov

Clint Brooks  
Chief of Shared Services  
Fairbanks Memorial Hospital  
1650 Cowles Street  
Fairbanks, Alaska 99701  
clint.brooks@foundationhealth.org

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Regional Hearing Clerk  
EPA Region 10