

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In The Matter of:

The City University of New York

Including Brooklyn College

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery Act
as amended.
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**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2017-7102

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). Since 1986, New York State has been authorized for many hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 75 Fed. Reg. 45489 (August 3, 2010).

On July 15, 2016, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the "Region"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent City University of New York ("CUNY") including Brooklyn College (hereinafter "BCollege") (collectively known as the "Respondent"). The Complaint alleged that Respondent violated requirements of the authorized New York hazardous waste program.

The Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). The parties have met and held settlement discussions.

The recitation below of findings of fact and conclusions of law is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. CUNY is the public university system of the City of New York consisting of three types of institutions providing higher education, senior colleges (four year colleges), community colleges and graduate or professional schools.
2. BCollege is a senior college and a branch of the CUNY university system.
3. Respondent is CUNY which includes BCollege.
4. The BCollege campus is located at 2900 Bedford Avenue in the Midwood section of Brooklyn, New York.
5. BCollege has occupied the above location since 1910.
6. BCollege has approximately 120 teaching and research laboratories primarily housed in the Ingersoll and old Ingersoll Buildings.
7. The location discussed in paragraph 4 & 6, above constitutes Respondent's "Facility" as that term is defined at Title 6 of the New York Codes, Rules and Regulations ("6 NYCRR") § 370.2(b).
8. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 6 NYCRR § 370.2(b).¹
9. Respondent has been and remains the "owner" and "operator" of the Facility within the meaning of 6 NYCRR § 370.2(b).
10. BCollege, in carrying out its teaching and research activities, and in the course of conducting normal building maintenance operations, has been generating, and continues to generate, "solid waste" (within the meaning of 6 NYCRR § 371.1(c)) at its Facility.
11. In carrying out its teaching and research activities, and in the course of conducting normal building maintenance operations, BCollege has been generating, and continues to generate, "hazardous waste," as defined in 6 NYCRR § 371.1(d), at its Facility.
12. The requirements for generators are set forth in 6 NYCRR §372.2. A small quantity generator may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 6 NYCRR §372.2(a)(8) including but not limited to 6 NYCRR §372.2(a)(8)(iii) - (v).

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

13. As of February 2016, and prior and subsequent thereto, BCollege has been a small quantity “generator” of hazardous waste at the Facility.
14. BCollege stores hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
15. Hazardous waste is and has been stored in the Facility’s hazardous waste container storage area and in numerous accumulation areas located throughout the campus, including Ingersoll Hall and Ingersoll Hall Extension buildings.
16. Pursuant to 6 NYCRR § 373-3.1(a)(2), facilities in existence on or before November 19, 1980 are subject to the regulatory standards set forth in 6 NYCRR Subpart 373-3.
17. Respondent’s Facility is an “existing hazardous waste management facility” (or “existing facility”) within the meaning of 6 NYCRR § 370.2(b).
18. On or about February 10, 11, 17, and 18, 2016, a duly designated representative of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine BCollege’s compliance with Subtitle C of RCRA and New York’s authorized hazardous waste regulations.
19. On or about March 15, 2016, a duly authorized representative of BCollege submitted manifests and documentation to EPA.
20. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about June 28, 2016, EPA issued BCollege a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”).
21. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed BCollege that EPA had identified a number of potential RCRA violations at its Facility and asked BCollege to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
22. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and required that BCollege submit specific types of documentation relating to hazardous waste activities at its Facility.
23. On or about November 22, 2016, a duly authorized representative of BCollege submitted its certified Response to the combined NOV and IRL and attested that the information provided in the Response was true and accurate.
24. On July 10, 2017, EPA issued a Complaint to the Respondent alleging the following violations of Subtitle C of RCRA and its implementing regulations:
 - a. Failure to make hazardous waste determinations for multiple waste streams in violation of 6 NYCRR § 372.2(a)(2); and
 - b. Failure to maintain or operate its Facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous

waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 6 NYCRR 373-3.3(b).

25. Respondent has obtained an extension of time in which to file its Answer to the Complaint as approved by the Regional Judicial Officer and has not yet answered the Complaint.

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 Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 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 Conclusions of Law set forth in this Consent Agreement; (c) consents to the assessment of the civil penalty and other terms of settlement set forth below; and (d) waives its right to contest or appeal the Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, that its Facility is in compliance with applicable RCRA regulations found at Subtitle C of RCRA and its implementing regulations, including New York's authorized hazardous waste regulations.
2. Respondent shall hereafter comply at its Facility with the hazardous waste rules cited in EPA's Complaint to the extent applicable to Respondent, including but not limited to the following:
 - a. making hazardous waste determinations for each solid waste previously generated at its facility (to the extent Respondent has not done so) and for each solid waste newly generated at its facility pursuant to 6 NYCRR § 372.2(a)(2); and
 - b. maintaining or operating its Facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment pursuant to 6 NYCRR § 373-3.3(b).
3. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

Mr. Derval Thomas
Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

and

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, Room 1635
New York, New York 10007

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

Jane M. Sovern, Esq.
Deputy General Counsel
Office of the General Counsel
The City University of New York
205 East 42nd Street, 11th Floor
New York, New York 10017

4. Respondent shall pay a civil penalty to EPA in the total amount of **FORTY-FOUR THOUSAND DOLLARS** (\$44,000). Such payment shall be made by 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 THE CITY UNIVERSITY OF NEW YORK INCLUDING BROOKLYN COLLEGE***, and shall bear thereon the **Docket Number RCRA-02-2017-7102**.

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: **IN THE MATTER OF THE CITY UNIVERSITY OF NEW YORK INCLUDING BROOKLYN COLLEGE**.
7. Case Number: **RCRA-02-2017-7102**.

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before thirty (30) calendar days of the Effective Date of this CA/FO.

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions 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.
5. Complainant shall mail to Respondent 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.
 6. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
 7. 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 federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
 8. 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 has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
 9. Full payment of the penalty described in paragraph 4 shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
 10. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
 11. 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.
 12. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
 13. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.

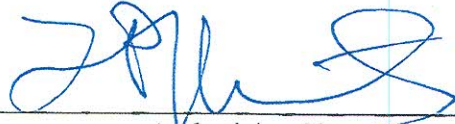
14. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
15. Each party hereto shall bear its own costs and fees in this matter.
16. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In The Matter of The City University Of New York Including Brooklyn College,
Docket Number RCRA-02-2017-7102

RESPONDENT:

THE CITY UNIVERSITY OF NEW YORK
INCLUDING BROOKLYN COLLEGE

BY:



Authorizing Signature

NAME:

Loretta P. Martinez

(PLEASE PRINT)

TITLE:

General Counsel and VC.

DATE:


3/8/18

for Legal
Affairs

In The Matter of The City University Of New York Including Brooklyn College,
Docket Number RCRA-02-2017-7102

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**



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

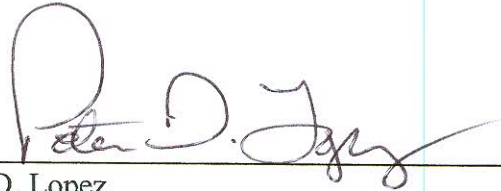
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DATE: _____

In The Matter of The City University Of New York Including Brooklyn College,
Docket Number RCRA-02-2017-7102

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 40 C.F.R. § 22.31(b).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: 3/28/18

In The Matter of The City University Of New York Including Brooklyn College,
Docket Number RCRA-02-2017-7102

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Jane M. Sovern, Esq.
Deputy General Counsel
Office of the General Counsel
The City University of New York
205 East 42nd Street, 11th Floor
New York, New York 10017

APR 03 2018

Dated: _____

