UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN - 6 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven M. Safyer, MD
President and CEO
Montefiore Medical Center
111 E. 210th St.
Bronx, NY 10467

Re: EPA Enforcement Actions under the Resource Conservation and Recovery Act, the Clean Water Act and the Toxic Substances Control Act

Dear Dr. Safyer:

The United States Environmental Protection Agency, Region 2 ("EPA") is initiating three enforcement actions related to violations of federal environmental laws at the Montefiore Medical Center's Moses Division and Medical Park Division facilities, located in Bronx, New York ("the facilities"). They are the following:

(1) A Complaint, Compliance Order and Notice of Opportunity for Hearing, issued 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"). This action alleges violations of requirements applicable to the management of hazardous wastes at the two facilities.

(2) A Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing, issued pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. Section 1321(b)(6). This action alleges violations of requirements applicable to the management of oil stored at the Moses Division of the Montefiore Medical Center.

(3) A Complaint and Notice of Opportunity for Hearing, issued pursuant to Section 16(a), 15 U.S.C. Section 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq. This action alleges violations of requirements applicable to the management of polychlorinated biphenyls (PCBs) stored at the Moses Division of the Montefiore Medical Center.

It is our expectation that by pursuing these enforcement actions concurrently, attention will be focused not only on ensuring compliance with the particular provisions cited, but also on areas of possible improvement in your organization's environmental management and control systems. You may wish to consider any opportunities you may have to carry out pollution prevention and/or recycling projects at the facilities. EPA also encourages the use of Supplemental Environmental Projects, where appropriate, as part of settlement. EPA's Supplemental Environmental Projects (SEP) Policy can be found on the EPA website at http://www.epa.gov/compliance/civil/seps/index.html.

Enclosed is a copy of the Consolidated Rules of Practice (40 C.F.R. Part 22), which can also be found at http://www.epa.gov/oalj/rules/crop.pdf. The appropriate EPA penalty policies can be found on the EPA website at http://www.epa.gov/compliance/resources/policies/civil/index.html.

Although these enforcement actions are being commenced concurrently, the legal authorities under which they are brought vary to some extent, and, consequently, the procedures to be followed in each case may vary as well. To minimize any possible confusion, the documents relating to each enforcement action are being mailed to you in separate envelopes, and each package includes specific information on your rights and obligations, as well as instructions on how to proceed. Jeannie Yu is the Assistant Regional Counsel who will be handling the RCRA action, Timothy Murphy is the Assistant Regional Counsel who will be handling the Clean Water Act action, and Vickie Pane is the Compliance Officer who will be handing the TSCA action. Following receipt of these actions, if you have any questions, you may wish to contact Ms. Yu at (212) 637-3205, Mr. Murphy at (212) 637-3236 and Ms. Pane at (732) 321-6798.

Sincerely yours,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Edward F. Pfleging, P.E.
Vice President, Facilities
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of: **MONTEFIORE MEDICAL CENTER,** Respondent Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2012-7108

COMPLAINT

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 ("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 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the Montefiore Medical Center (hereinafter "Respondent" or "MMC") has violated requirements of the authorized New York State hazardous waste program.

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). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other 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). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized State program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute this action, hereby alleges upon information and belief:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.

Respondent's Background

3. Respondent is a medical hospital/institution engaged in the business of researching, diagnosing and treating medical illnesses and diseases.

4. Respondent has various locations in the New York area including the following:

   a. the main hospital which includes the buildings located next to each other at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467 ("Montefiore Moses Division" or "MosesD"), and

   b. the buildings located at 1695 Eastchester Road, Bronx, NY 10461 ("Montefiore Medical Park" or "MedicalP").

5. Respondent is a not-for-profit corporation organized in 1884 pursuant to the laws of the State of New York.

6. Respondent is a person as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) § 370.2(b).[1]

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[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.

7. MosesD and MedicalP each constitute a "Facility" within the meaning of 6 NYCRR § 370.2(b).

8. Respondent has been and remains the owner of the MosesD Facility.

9. Respondent has been and remains the operator of each Facility.

Respondent's Generation of Waste

10. Upon information and belief, Respondent, in carrying out its medical activities, including the research, diagnosis and treatment of illnesses and diseases, 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 Facilities.

11. Upon information and belief, in carrying out its medical activities, including the research, diagnosis and treatment of illnesses and diseases, and in the course of normal building maintenance, Respondent has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at its Facilities.

12. Upon information and belief, in carrying out its medical activities, including the research, diagnosis and treatment of illnesses and diseases, Respondent has been generating, and continues to generate, acute hazardous waste, as defined in 6 NYCRR § 370.2, at one or more of its Facilities.

13. As of October 2010 and prior and subsequent thereto, Respondent has been a generator of hazardous waste and "acute hazardous waste" within the meaning of 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii) at its Facilities.

14. During the period from October 2007 through October 2010, Respondent generated at the MosesD Facility at least 1000 kilograms ("kg") of hazardous waste in each calendar month.

15. Subsections 6 NYCRR § 373-1.1(d) and 6 NYCRR § 372.2(a)(8)(ii) provide, in part, that a generator may accumulate hazardous waste on-site for a period of ninety (90) days or less without being subject to the permitting requirements [*i.e.* without having obtained a permit or without having interim status], provided such generator complies with the requirements of, *inter alia*, 6 NYCRR § 373-1.1(d)(1)(iii), (iv), (xix), and (xx).

16. At the time of the Inspection and at times both prior thereto and subsequent thereto, Respondent was and is a large quantity generator at the MosesD Facility.

17. As of January 2011, and at times both prior thereto and subsequent thereto, Respondent, at the MedicalP Facility, has generated, and continues to generate, (at least) 100 kg of hazardous waste in a calendar month.

18. Respondent at the MedicalP Facility is considered a small quantity generator as that phrase is defined in 6 NYCRR § 370.2(b).

19. 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).

20. Respondent's Facilities are "existing hazardous waste management facilities" (or "existing facilities") within the meaning of 6 NYCRR § 370.2(b).

Regulatory Filings

21. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA that it generated hazardous waste through a notification (EPA form 8700-12) for the following Facilities:

    a. Notification dated September 18, 1985 for MosesD, and

    b. Notification dated April 30, 2010 for MedicalP.

22. In response to the Notifications, EPA provided Respondent's Facilities with the following EPA Identification Numbers:

    a. NYD041581026 for MosesD, and

    b. NYR000174573 for MedicalP.

Audit Agreement History

23. On November 28, 2003, EPA and the Respondent entered into a Facility Audit Agreement pursuant to which Respondent conducted an audit of its compliance with federal environmental requirements including RCRA. The agreement provided that MMC would disclose and correct identified violations at its Facilities for which, in exchange, EPA agreed to not seek gravity based penalties. The agreement also provided that MMC would take the steps necessary to prevent the recurrence of violations.

24. In February and March 2004, in accordance with the Audit Agreement, MMC submitted a Disclosure Report for MosesD in which it reported numerous regulatory deficiencies including the following:

    a. Failure to make hazardous waste determinations on chemotherapy waste, expired

pharmaceuticals, contaminated rags, consumer electronics hazardous waste, and waste batteries;

b. Failure to properly dispose of lead foil backings;

c. Failure to have knowledge of how hazardous waste amalgam was being disposed of;

d. Failure to label containers in satellite accumulation areas;

e. Failure to label and date hazardous wastes in storage rooms;

f. Failure to label containers/boxes of waste fluorescent bulbs as universal waste;

g. Failure to manage spent batteries as universal waste;

h. Failure to properly dispose of consumer electronics;

i. Failure to train personnel to make hazardous waste determinations;

j. Failure to train personnel involved in hazardous waste management;

k. Failure to prepare a written emergency preparedness and response plan;

l. Failure to sign and keep track of manifests of hazardous wastes; and

m. Failure as a generator to sign manifests for hazardous waste shipped off site for disposal.

25. In addition to disclosure of its regulatory violations, MMC outlined future steps to prevent recurrence of each of the violations identified in its Audit Agreement Disclosure Report.

26. On December 17, 2004, EPA issued MMC a "Notice of Determination" in which it waived a potential civil penalty of $397,400 which it had calculated using the RCRA Civil Penalty and other EPA Penalty Policies for the numerous RCRA and other regulatory violations identified during the audit including the ones mentioned in paragraph 24 above.

City of New York Fire Department Inspections

27. During each of the 2008, 2009 and 2010 calendar years, the Fire Department of New York ("FDNY") conducted several inspections of the MosesD Facility.

28. Based on the inspections described in the prior paragraph, FDNY issued various violation orders to MMC for each year that MMC was inspected.

29. Following the 2008 Inspections, FDNY ordered Respondent to correct the following violations, as well as others, in various locations throughout Montefiore Hospital:

    a. "Arrange that all flammable liquids which are stored below ambient temperatures be stored only in flammable storage refrigerators" (5/19/08, 6/2/08 and 6/30/08);

    b. "Provide that all storage of acids shall be on the acid resistant trays to prevent any direct contact with metal" (5/19/08); and

    c. "Arrange all ispropanol containers that have been open for over year to be properly and legally disposed" (5/19/08 and 6/2/08).

30. Following the 2009 Inspections, FDNY ordered Respondent to correct the following violations, as well as others, in various locations throughout Montefiore Hospital:

    a. "Reduce the quantity of flammable liquids used and stored within the laboratory unit to meet the MAX limits of 25 gal for this type of 2 lab unit (note at the time of inspection it was 35 gal of flammable liquid waste and flammable liquids in use and storage)" (5/28/09); and

    b. "Arrange that all glass bottles of flammable liquids and/or chemicals be stored only in a cabinet or on the shelves, instead of on the floor" (11/30/09).

31. Following the 2010 Inspections, FDNY ordered Respondent to correct the following violations, as well as others, in various locations throughout Montefiore Hospital:

    a. "Arrange that all glass bottles of flammable liquids and/or chemicals be stored only in a cabinet or on the shelves, instead of on the floor" (6/14/10);

    b. "Provide that all old and expired chemicals are properly removed and disposed with city, state and/or federal regulations" (9/27/10); and

    c. "Provide that all flammable liquids be properly stored within designated areas" (9/27/10).

EPA Inspection

32. On or about October 12, 13, 18, 19, & 21, 2010, and January 3, 2011, duly designated representatives of EPA conducted a Compliance Evaluation Inspection ("Inspection") of Respondent's Facilities pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.

a. The MosesD Facility was inspected on or about October 12, 13, 18, 19 and 21, 2010; and

b. The MedicalP Facility was inspected on or about January 3, 2011.

MosesD Facility

33. In the course of its operations, both prior to and as of the dates of the Inspection, MMC had generated chemical wastes that were waste due to their being stored in corroded, leaking, and/or contaminated containers, and/or which were unlabeled, and/or were unidentified, off-specification, and/or which had been stored for an extensive period of time without the prospect of being used, and/or which were being stored in lieu of disposal at its Facilities.

34. Upon information and belief, in the course of its operations, both prior to and as of the dates of the Inspection, MMC generated chemical wastes that were waste and that were disposed/discarded into the sink at its MosesD Facility.

35. Upon information and belief, in the course of its operations, both prior to and as of the dates of the Inspection, MMC had generated various wastes exhibiting the characteristics of "ignitability"(within the meaning of 6 NYCRR § 371.3(b)), "corrosivity" (within the meaning of 6 NYCRR § 371.3(c)), "reactivity" (within the meaning of 6 NYCRR § 371.3(d)) and/or "toxicity" (within the meaning of 6 NYCRR § 371.3(e)).

36. Approximately 857 kilograms (kg) of hazardous waste was shipped from the MosesD Facility after EPA's Inspection.

37. In a letter dated November 22, 2010, Respondent admitted that "there was a huge increase in waste removal volume following the October EPA inspection. We removed all the old, expired and unnecessary chemicals that were found during the inspection as well as our own walkthroughs."

MedicalP Facility

38. From January 1, 2007 through February 2010, the following chemotherapy chemicals were used at the MedicalP Facility:

a. Arsenic Trioxide;

b. Mitomycin;

c. Daunorubicin; and

d. Cyclophosophamide.

39. Unused mitomycin, daunorubicin, and cyclophosophamide which can no longer be used, has no purpose, and/or is discarded are hazardous wastes.

40. Unused arsenic trioxide which can no longer be used, has no purpose, and/or is discarded is an acute hazardous waste which is referred to as a P listed hazardous waste.

41. Upon information and belief, the hazardous waste Respondent generated at the MedicalP Facility consisted of, at least in part, the following:

a. Arsenic trioxide and arsenic trioxide-contaminated hazardous waste;

b. Mitomycin and mitoycin-contaminated hazardous waste;

c. Daunorubicin and daunorubicin-contaminated hazardous waste; and

d. Cyclophosophamide and cyclophosphamide-contaminated hazardous waste.

EPA Notice of Violations and Request for Information

42. On or about April 1, 2011 EPA issued to Respondent a combined Notice of Violation ("NOV") and Information Request Letter ("IRL") regarding its Facilities.

43. 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 at its Facilities and required Respondent to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.

44. 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 Facilities and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facilities.

45. In its response to the IRL MMC admitted that during and after the EPA Inspection, working in close collaboration with Triumvirate Environmental, Inc., MMC made hazardous waste determinations on and removed the following identified wastes from the Hazardous Waste Container Storage Area at the MosesD Facility:

a. Phosgene in toluene (500 ml) manifested off-site as D001, D003 and P095 after the Inspection; diethylether (500 grams); nitromethane (1.5 liters ("L"))

manifested off-site as D001 after the Inspection; and dioxane (1 L) manifested off-site as D001 and U108 after the Inspection.

b. Four cases of Collodion, each 36 x 60 ml tubes, consisting of 22-26% alcohol, expired in March 2008, manifested off-site as D001 after the Inspection.

c. Five bottles of alcohols: a 500-ml bottle of isoamyl alcohol, dated January 8, 1993, and bottles of ethyl, butyl and isopentyl alcohols (chemicals with these designations were manifested off-site as D001) and mercaptoethanol.

d. Five 500-ml bottles of hydrochloric acid. Over 36 liters of hydrochloric acid were manifested off-site as D002 after the Inspection.

46. On or about May 6, 2011, a duly authorized representative of the Respondent submitted the Respondent's certified Response to the combined NOV and IRL attesting that the information provided in the Response was true and accurate.

COUNT 1 - Failure to Make Hazardous Waste Determinations

47. Complainant repeats and realleges each allegation contained in paragraphs 1 through 46, inclusive, with the same force and effect as if fully set forth below.

48. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste using the procedures specified in that provision.

49. Pursuant to 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a "solid waste is any "discarded material" that includes "abandoned, "recycled or "inherently waste-like materials as those terms are further defined therein.

50. Pursuant to 6 NYCRR § 371.1(c)(3), materials are solid wastes if they are abandoned by being:

a. disposed of;

b. burned or incinerated; or

c. accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated.

51. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, the following chemicals had been abandoned:

MosesD Facility

Hazardous Waste Container Storage Area

a. Phosgene in toluene (500 mL) (D001, D003 and P095);

b. Nitromethane (3-500 mL bottles) (D001);

c. Ether (4 L) (D001 and U117);

d. Ethanol (D001 and U154);

e. Dioxane (1 L) (D001 and U108);

f. Collodion, expired in March 2008 (4 cases of 36 x 60 mL tubes) (D001);

g. One 500 mL bottle each of ethyl alcohol, isobutanol, isoamyl alcohol, dated January 8, 1993, and isopentyl alcohol (D001);

h. Five bottles of hydrochloric acid (500 mL) (D002); and

i. An abandoned box containing approximately two dozen small bottles of incompletely characterized wastes: nine bottles only had radioactive labels; one bottle only had an acetylcholine label; and one bottle only had a label with the date of 1981.

Laboratories

j. A container of a mixture of xylenes, dated 1986 (D001, U239) (Hofheimer Room 512);

k. Sodium perchlorate, dated 1987 (D001) (Moses Research Tower, Room 301);

l. Crystallized hydrochloric acid, (one gallon) (D002) (Moses Research Tower, Room 701); and

m. Six boxes of Tetenal photo bath solution (each approximately 1 gallon) containing sodium hydroxide (D002) (Central Building Laboratories, Room 431).

52. Each of the chemicals identified in the preceding paragraph was a hazardous waste.

53. After EPA's Inspection of the MosesD Facility, MMC shipped the wastes, described in paragraphs 51 & 52, offsite and identified them on manifests as hazardous wastes.

54. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior to, MMC disposed/discharged the following chemical containing wastes into sink(s):

a. Tissue processing and staining wastes (Foreman 4-079);

b. Staining wastes, Roche Modular and Abbott Architect wastes (Foreman Core Lab);

c. Staining wastes (including crystal violet) containing 95% ethanol (Foreman Room North 8-005);

d. Staining wastes and 0.01% solution of thimerosal which produces approximately 2 liters of waste every 3-4 months; (Foreman Room 8-011 which includes mycobacteriology (TB)); and

e. Approximately one gallon of tissues fixatives and stains, acetone, ethanol, and/or bleach a week (Moses Research Tower, Room 910).

55. Some of the wastes described in paragraph 54 were hazardous wastes.

56. After the Inspection, MMC made hazardous waste determinations for the fluids disposed into the sink as described in paragraphs 54 & 55.

57. After the Inspection, stain waste collected from the following locations was being handled as hazardous waste:

a. the tissues fixatives and stains, acetone, ethanol, and/or bleach from Moses Research Tower Room 910; and

b. thimersol wastes from anaerobic parasitology/bacteriology (Room 8-011).

58. Upon information and belief, at the time of the Inspection and at times prior to, the MosesD Facility stored the following inherited, old, outdated, unused and/or abandoned/orphaned chemicals:

a. Sodium azide (P105) (Moses Research Tower Room 701);

b. Magnesium turnings (D001) (Moses Research Tower Room 701);

c. A 500 mL (crystals on the side of cap and down side of neck of the bottle) and a 2.5 L (crystals on cap and on upper part of bottle) bottles of hydrochloric acid (Room 701, Moses Research Tower);

d. A greater than 20 year old 2.5 liter bottle of hydrochloric acid (D002) which had a layer of crystals floating on top of liquid in the bottle and was dated 10/1/8? (the year was illegible on the label) (Central Room C322);

e. Isoamyl, dated January 8, 1993 (Hazardous Waste Storage Area, Moses building); and

f. Sodium perchlorate, dated 1987 (D001) (Moses Research Tower Room 301).

59. Upon information and belief, both prior to and at the time of the Inspection of the MosesD Facility, Respondent was storing the following leaking/rusting chemicals in the following locations:

a. A 500 mL leaking bottle of perchloric acid was stored with product chemicals in Hofheimer Room 319; and

b. A severely rusted metal can containing formic acid stored with product chemicals in Moses Research Tower Room 701.

60. Each of the chemicals identified in paragraphs 58 & 59, above, was a hazardous waste.

61. The chemicals described in paragraphs 58 & 59, above, were sent off site from the MosesD Facility after the Inspection and described as hazardous waste in the manifest accompanying the offsite shipments.

MedicalP Facility

62. Upon information and belief, prior to February 2010, MMC disposed of chemotherapy hazardous waste, including greater than trace amounts of chemotherapy drugs left over after administration as well as personal protective equipment, empty tubing, IV bags, vials and syringes, as regulated medical waste.

63. Upon information and belief, and as alleged in paragraphs 38-41, above, in the course of its operations prior to February 2010, the MedicalP Facility generated chemotherapy hazardous waste and sent it to a medical waste incinerator as regulated medical waste.

64. As a result of the aforementioned activities, MMC has generated hazardous waste and acute hazardous wastes that were "discarded material" and a "solid waste" as defined in 6 NYCRR § 371.1(c).

65. Upon information and belief, in the course of its operations, prior to February 2010, MMC had not determined if its wastes, including all the wastes described above in Count 1 and those denoted in paragraphs 38-41, above, constituted hazardous waste.

66. Respondent's failure to have made hazardous waste determinations for the aforementioned wastes constitutes a violation of 6 NYCRR § 372.2(a)(2).

COUNT 2 - Storage of Hazardous Waste Without a Permit

67. Complainant repeats and realleges each allegation contained in paragraphs 1 through 46, inclusive, with the same force and effect as if fully set forth below set forth herein.

Legal Requirements for Permit and Exemptions

68. Respondent stores hazardous waste at its Facilities for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurs in various Facility locations including in the hazardous waste container storage area and in numerous satellite accumulation areas located at MMC's Facilities.

69. Respondent's MosesD Facility is a "storage" facility as that term is defined in 6 NYCRR § 370.2(b).

70. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:

    a. Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of existing facilities for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and

    b. 6 NYCRR § 373-1.2(a), provides that no person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.

71. 6 NYCRR § 372.2(a)(8)(i)(a) provides, that a generator of hazardous waste can be exempt from the permit requirements and still accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, and provided further that the generator complies with the use and management standards set forth in 6 NYCRR § 373-3.9(b)-(d), and marks the containers with the words Hazardous Waste and with other words that identify the contents of the containers.

72. Except as otherwise provided for large quantity generators (LQG), 6 NYCRR § 372.2(a)(8)(ii) provides, in part, that a generator may accumulate hazardous waste on-site of generation for a period of ninety (90) days or less under the provisions therein specified and found in subparagraphs 373-1.1(d)(1)(iii). The provisions (all in 6 NYCRR), *inter alia*, are:

a. § 373-1.1(d)(1)(iii)(a) sets requirements for liquid hazardous waste in containers under 8,800 gallons,

b. § 373-1.1(d)(1)(iii)(c)(1) requires that the waste be placed in containers and the generator complies with the requirements of 373-3.9 which sets the requirements for Use and Management of Containers.

c. § 373-1.1(d)(1)(iii)(c)(2) requires that the date on which each period of accumulation of hazardous waste begins is clearly marked and visible for inspection on each container.

d. § 373-1.1(d)(1)(iii)(c)(3) requires that a label or sign stating Hazardous Waste must identify all areas, tanks, and containers used to accumulate hazardous waste. In addition, tanks and containers must be marked with other words to identify their contents.

e. § 373-1.1(d)(1)(iii)(c)(4) requires that each container is properly labeled and marked according to sections 372.2(a)(5) and 372.2(a)(6) of this Title (these two sections concern labeling and marking requirements prior to the transport of hazardous waste).

f. § 373-1.1(d)(1)(iii)(c)(5) requires that the generator complies with the requirements for personnel training in section 373-3.2 of this Part, preparedness and prevention in section 373-3.3 and contingency plans and emergency procedures in section 373-3.4, and with subparagraph 376.1(g)(1)(iv).

73. Pursuant to 6 NYCRR § 373-3-2(g)(1) facility personnel must successfully complete a program of classroom instruction or on-the-job training. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

74. Pursuant to 6 NYCRR § 373-3-2(g)(5) training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

75. Pursuant to 6 NYCRR § 372.2(a)(8)(iii)('d'), a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any calendar month may accumulate non-acute hazardous waste on-site for 180 days or less without being subject to the permitting requirements of 6 NYCRR Part 373 [*i.e.* without having obtained a permit or without having interim status], provided such generator complies with the requirements of, *inter alia*:

a. Six NYCRR § 373-3.9 (except for 6 NYCRR § 373-3.9(f));

b. Six NYCRR § 373-1.1(d)(1)(iii)('c')('2') - ('3');

c. Six NYCRR § 373-3.3; and

d. Six NYCRR § 376.1(g)(1)(iv).

MosesD Facility's Storage of Hazardous Waste and Failures to Qualify for Exemption from Permit

76. At the times of the Inspection, and upon information and belief for some time prior thereto, Respondent stored containers at its MosesD Facility.

77. Upon information and belief, certain of the aforementioned containers held hazardous waste.

78. The MosesD Facility does not have interim status or a permit authorizing the storage of hazardous waste at its facility.

Failure to label with accumulation start date

79. Upon information and belief, on one of the dates of the Inspection of the MosesD Facility and for some time prior to, the following containers in the Hazardous Waste Container Storage Area were not marked with an accumulation start dates:

a A container marked 'xylene and alcohol waste"; and

b An approximately 1 liter container of isopropanol and acetone mixture.

Failure to label with words "Hazardous Waste":

80. Upon information and belief, on at least one of the days of the Inspection of the satellite accumulation areas at the MosesD Facility and for some time prior to, Respondent was storing the following containers of hazardous waste without marking them with the words Hazardous Waste:

a. A bottle containing N, N, N', N'-Tetramethylethylenediamine (D001) had a crystal formation around the cap and the top and sides of the bottle, and had emitted crystals on to nearby containers (Hofheimer Rooms 508/509).

b. Three approximately 1-gallon containers collecting waste ethanol (Hofheimer Room 409);

c. An approximately 1 gallon container of ethanol waste (Hofheimer Room 318); and

d. A 55-gallon drum of crushed bulbs, labeled as universal waste (Bulb Crushing Room).

81. Upon information and belief, on at least one of the days of the Inspection of the MosesD Facility and for some time prior to, the following containers of hazardous waste in the Hazardous Waste Container Storage Area were not marked with the words "Hazardous Waste":

a. One 5-gallon plastic container of xylene and alcohol waste;

b. An approximately 100 mL container of 2 methylbutane and isopentane; and

c. One 2-liter glass bottle of waste isopropanol and acetone.

Failure to identify waste with words to identify its contents

82. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior to, Respondent was storing a bottle of hazardous waste without marking it with words identifying its contents as "xylene" (Storage Building Room 128).

Storing Hazardous Waste for more than ninety (90) days

83. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior to, Respondent was storing the following containers with old and obsolete chemicals that were hazardous wastes for more than ninety (90) days in the hazardous waste storage area (Moses Building):

a. A 100 mL bottle of 2 methylbutane and isopentane dated 4/26/10;

b. A bottle labeled 2-methylbutane isopentane and dated 4/26/10; and

c. A 500 mL bottle of isoamyl alcohol dated 1/8/93.

84. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, Respondent was storing a greater than 20 year old 2.5 liter bottle of hydrochloric acid (D002) which had a layer of crystals floating on top of liquid in the bottle and was dated 10/1/8? (exact year was illegible on the label) (Central Room C322).

Failure to close containers

85. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, certain of the following containers were not fully closed, and waste was neither being added to nor removed from the containers:

    a. Two open containers in a bin labeled hazardous waste in the chemo pharmacy satellite accumulation area (Room 245); and

    b. An open container of hazardous crushed waste bulbs in the Bulb Crushing Room.

Failure to satisfy contingency plan and training requirements

86. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, the following records and training documents for employees who handle hazardous waste were not maintained at the facility:

    a. Employee names;

    b. Written job title and description for each employee; and

    c. Written Records of completion of training for each employee.

87. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, Respondent's Contingency Plan did not include the following:

    a. Location, physical description and capability of each piece of emergency equipment; and

    b. Name of the current emergency coordinator.

88. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, Respondent did not maintain hazardous waste training records on former employees for at least three years from the date the employee last worked at the facility.

89. At the time of the Inspection, Respondent did not have hazardous waste training records on a former employee, the director of plant operations, who left such job in 2010.

90. At the time of the Inspection, Respondent did not have hazardous waste training records for employees who worked with hazardous waste (e.g. the emergency coordinator and employees transporting hazardous waste or working with the bulb crusher).

Respondent's Violations of Hazardous Waste Permitting Rules at the MosesD Facility

91. As a result of Respondent's failures and the facts alleged in the paragraphs above, Respondent was not eligible for a permit exemption otherwise available to large quantity generators and Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2(a) for MosesD.

92. The aforementioned (paragraphs 79-85, above) instances of storage at the MosesD Facility constitute "storage" within the meaning of:

    a. Section 1004(33) of RCRA, 42 U.S.C. § 6903(33); and

    b. Six NYCRR § 370.2(b).

93. Respondent never obtained a RCRA hazardous waste permit or qualified for interim status at the MosesD Facility.

94. Up through the completion of the MosesD Inspection (although not necessarily limited to that time period), Respondent was required to obtain a permit for the storage of hazardous waste at the MosesD Facility.

95. Respondent's aforementioned operations of hazardous waste management facility without having obtained a permit or qualifying for interim status constitutes a violation of each of the following:

    a. Section 3005 of the Act, 42 U.S.C. § 6925; and

    b. Six NYCRR § 373-1.2(a).

COUNT 3 – Failure to Minimize Risks of Fire, Explosion and Releases, and Failure to Keep Containers in Good Condition at the MosesD Facility

96. Complainant repeats and realleges each allegation contained in paragraphs 1 through 46 and 68, inclusive, with the same force and effect as if fully set forth herein.

97. Pursuant to 6 NYCRR § 373-3.3(b), a facility must be maintained and operated 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, soil or surface water which could threaten human health or the environment.

98. 6 NYCRR § 373-3.9(b) requires facilities to keep containers in good condition and to transfer hazardous waste from a leaking container to a container that is in good condition.

99. Upon information and belief, both prior to and at the time of the Inspection of MosesD, Respondent was storing the following hazardous waste chemicals in an unsafe manner in the Hofheimer Rooms 508/509/510 hazardous waste satellite accumulation area:

    a. Chloroform (D002) was stored in four corroding metal containers, with chemical material leaking from at least one of the containers;

    b. A bottle containing N, N, N', N'-Tetramethylethylenediamine (D001) had a crystal formation around the cap and the top and sides of the bottle, and had emitted crystals on to nearby containers;

    c. A bottle containing Dimethyldichlorosilane (D001, D002 and D003) had chemical material spilled down the neck, sides of and under the bottle; and

100. Upon information and belief, both prior to and at the time of the Inspection of the MosesD Facility, Respondent was storing in a unsafe manner, a leaking 500 mL bottle of perchloric acid with product chemicals in Hofheimer Room 319 (it should be stored in an acid cabinet).

101. Each of the chemicals described in the preceding paragraphs 99 and 100 was a hazardous waste.

102. After the Inspection, the hazardous chemicals described in paragraphs 99 and 100 were shipped offsite and identified on the manifests as hazardous wastes.

103. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, approximately two dozen small bottles of incompletely characterized wastes were abandoned in the Hazardous Waste Container Storage Area. These bottles included the following:

a. nine bottles contained a label which indicated that they were radioactive;

b. one bottle contained a label indicating that it contained acetylcholine; and

c. one bottle had a label with a date of 1981 (it had been stored more than ninety (90) days).

104. Subsequent to the Inspection, the radioactive waste was removed.

105. Upon information and belief, for sometime prior to the MosesD Inspection and at the time thereof (but not necessarily limited to such times), in various rooms at the Facility, Respondent stored hazardous chemicals in an incompatible manner (*i.e.* in a manner incompatible with the physical and chemical properties of such waste, such as in a manner that increased the potential for explosions and fire) in various locations near or next to satellite accumulation areas throughout the MosesD Facility including the following:

a. Bottles of acetic acid, ammonium hydroxide and hydrochloric acid (which should be stored separately) were stored together in a cabinet, in the same plastic secondary containment container (Hofheimer Room 507);

b. Chemicals were arranged alphabetically (for example sodium azide, which is explosive, poisonous, and extremely reactive, was stored with other sodium compounds instead of being stored separately) (Hofheimer Room 512);

c. One approximately 500 mL bottle of acetic acid was stored without secondary containment on a window sill (it could have been easily knocked over) and an approximately 2.5 liter container of hydrochloric acid and 1 liter container of sodium hydroxide (both incompatible corrosive chemicals that should not be stored next to each other) were stored without secondary containment, on a lab bench, surrounded by electrical equipment (Hofheimer Room 409);

d. Hydrochloric and acetic acids (organic acids should not be stored next to other acids) were stored together without secondary containment (Hofheimer Room 315;

e. Potassium dichromate was stored near combustible materials of paper and folders (labels warn not to store it near combustible materials); and mercaptoethanol (a flammable) was stored in a refrigerator containing a sign with the warning "STORE NO FLAMMABLES"(Central Building Room C207); and

f. Hydrogen peroxide, a corrosive oxidizer, was not stored with other compatible chemicals (Storage Building Room 128).

106. MMC employs fluorescent light bulbs for lighting purposes in its operations.

107. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, Respondent used a bulb crusher to crush spent fluorescent light bulbs at its MosesD Facility.

108. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, MMC gave little or no training on the use of the bulb crusher to the bulb crushing operators/employees.

109. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, the bulb crushing operators-employees were provided a face mask for safety when operating/opening/handling the bulb crusher

110. All fluorescent light bulbs contain mercury, a hazardous constituent.

111. Fluorescent light bulbs may be hazardous waste because they contain certain levels of mercury.

112. Respondent's crushing of fluorescent light bulbs released mercury into the bulb crusher.

113. At the time of the Inspection, broken glass from the crushing/removal of fluorescent bulbs was present on top of the bulb crusher unit and on the floor.

114. At the time of the Inspection, phosphor dust was present on the outside of the drums.

115. Bulb crushing is meant to be a self contained operation in which all phosphor dust, broken glass and/or mercury should be contained within the unit.

116. The presence of phosphor dust and broken glass outside of the bulb crusher indicated that Respondent did not properly operate/open/handle the crusher.

117. The presence of phosphor dust and broken glass outside of the bulb crusher indicated that mercury vapors may have been released into the air outside of the bulb crusher.

118. A face mask does not provide adequate respiratory protection from mercury.

119. Upon information and belief, at the time of the Inspection of the MosesD Facility and at times prior thereto, MMC operated the bulb crusher in a room with little to no ventilation.

120. The bulb crusher's manufacturer's instructions recommended operation of such machinery in a ventilated room.

121. Improper operation/opening/removal of crushed bulbs from the bulb crushing unit may have released a hazardous waste constituent (i.e., mercury) to the air.

122. Improper operation/opening/handling of the bulb crushing unit may have released volatile mercury into the air which could have threatened human health or the environment.

123. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, improper operation/opening/handling of the bulb crushing unit may have exposed the bulb crusher operator to the releases of mercury.

124. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, no precautions/procedures were taken to minimize emissions during drum or filter change-outs.

125. Upon information and belief, at the time of the Inspection of the MosesD Facility and for some time prior thereto, no precautions/procedures were taken to protect its operator-employees or people walking by the room from emissions from the bulb crusher.

126. Following the Inspection, MMC discontinued use of the bulb crusher at the MosesD Facility.

127. Respondent's aforementioned failure to maintain and operate its MosesD Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air, soil or surface water which could threaten human health or the environment, constitutes a violation of 6 NYCRR § 373-3.3(b).

Count 4 – Respondent's Failures to Ship Hazardous Waste from the MedicalP Facility to an Authorized Facility

128. Complainant re-alleges each allegation contained in paragraphs 1 through 46, inclusive, as if fully set forth herein.

129. Pursuant to 6 NYCRR § 372.2(b)(5)(iii), a generator must offer for shipment or ship hazardous waste to an authorized facility.

130. Upon information and belief, at the time of the Inspection and prior to February 2010, Respondent had generated and offered for shipment and shipped, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste described in paragraphs 38-41 to a regulated medical waste facility.

131. Upon information and belief, at the time of the Inspection and prior to February 2010, Respondent did not offer for shipment or ship, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste described in paragraphs 38-41 to an authorized hazardous waste facility

132. Respondent's failures to offer for shipment or ship its hazardous waste to an authorized facility are violations of 6 NYCRR § 372.2(b)(5)(iii).

Count 5 – Respondent's Failures to Use Manifests for the Transportation of Hazardous Wastes From the MedicalP Facility

133. Complainant re-alleges each allegation contained in paragraphs 1 through 46, inclusive, as if fully set forth herein.

134. Pursuant to 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i), a generator who transports, or offers for transportation, hazardous waste must prepare a manifest according to the manifest instructions provided in Appendix 30 of Title 6 NYCRR Part 372. No generator may offer a shipment of hazardous waste for transport off-site without an accompanying manifest.

135. Upon information and belief, at the time of the Inspection of the MedicalP Facility and prior to February 2010, Respondent had generated and offered for transportation, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste identified in paragraphs 38–41 above without preparing a hazardous waste manifest.

136. Respondent's failures to prepare a hazardous waste manifest when offering the hazardous wastes identified in Paragraphs 38-41 above for transportation are violations of 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i).

Count 6 – Respondent's Failure to send a Land Ban Notification to TSD for Shipment From the MedicalP Facility's

137. Complainant realleges each allegation contained in paragraphs 1 through 46, inclusive, with the same force and effect as if fully set forth herein.

138. Pursuant to 6 NYCRR § 376.1(g)(1)(i), a generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This includes determining if the hazardous waste meets the treatment standards in Subdivision 376.4(a) or Subdivision 376.4(g).

139. Pursuant to 6 NYCRR § 376.1(g)(1)(ii), if the waste does not meet the treatment standard(s), the generator must send a one-time written notification to the treatment or storage facility setting forth information specified in the generator paperwork requirements table in subparagraph 376.1(g)(1)(iv), including a statement that the waste is subject to land disposal restrictions. A new notice is required for each waste or facility change.

140. At times prior to the Inspection, Respondent sent chemotherapy hazardous waste to its treatment or storage facility without sending a notification whether the waste was subject to land disposal restrictions.

141. At times prior to the Inspection, Respondent failed to send an original notification stating that the waste exceeded the treatment standard(s).

142. Respondent's failure to send the one-time land disposal restrictions notification is a violation of 6 NYCRR § 376.1(g)(1).

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: ***http: //www. epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf***. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule (with a further revision not relevant to this action on April 6, 2010).

The maximum civil penalty adjusted for inflation under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is $37,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out below for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

The Complainant herewith proposes the assessment of a civil penalty in the total amount of one hundred thirteen thousand and one hundred and ten dollars ($113,110), as follows:

Count 1:	$32,900
Count 2:	$24,900
Count 3:	$32,900
Count 4, 5 & 6	$22,410
TOTAL	**$113,110**

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

1. Within twenty (20) days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent shall at its MosesD Facility:

    a. make hazardous waste determinations for each solid waste generated at its facility pursuant to 6 NYCRR § 372.2(a)(2);

    b. maintain and operate the facility in a manner that minimizes 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);

    c. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators as set forth or referenced in 6 NYCRR § 372.2(a)(8)(ii) and accumulate hazardous waste on site for no longer than ninety (90) days; and

d. as an alternative to compliance with the generator provisions identified in Paragraph 1(c) of this Compliance Order, obtain and comply with a hazardous waste storage permit from the New York State Department of Environmental Conservation. However, Respondent must comply with the appropriate requirements cited in Paragraph 1.c. above until such permit is obtained.

2. Starting no later than twenty (20) days after the effective date of this Compliance Order, Respondent shall at its MedicalP Facility:

   a. ship its chemotherapy hazardous waste to an authorized facility pursuant to 6 NYCRR § 372.2(b)(5)(iii);

   b. prepare a hazardous waste manifest when offering its chemotherapy hazardous wastes for transport off site pursuant to 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i); and

   c. to the extent it has not done so, send a one-time land disposal restrictions notification pursuant to 6 NYCRR § 376.1(g)(1).

This Compliance Order shall take effect with respect to the Respondent within thirty (30) days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Mr. Charles Zafonte
Multimedia Enforcement Coordinator
Division of Enforcement and Compliance Assistance
Compliance and Program Support Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

And

Mr. Abdool Jabar
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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its Facilities. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its Facilities.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to $37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008). Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the EPA or the State of New York.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board (AB; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so [w]ithin thirty (30) days after the initial decision is served. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Note that the forty (45) day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866
212-637-3205

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent

agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:

D LaPosta

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date 12/29/11

To: Steven M. Safyer, M.D.
President-CEO
Montefiore Medical Center
111 East 210th Street
Bronx, New York 10467

cc: Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

CERTIFICATE OF SERVICE

This is to certify that on the day of JAN - 6 2012, I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number RCRA-02-2012-7103, together with Attachments I and II (collectively henceforth referred to as the Complaint), and with a copy of the CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, 40 C.F.R. Part 22, by certified mail, return receipt requested, to Steven M. Safyer, M.D., President-CEO, Montefiore Medical Center located at 111 East 210th Street, Bronx, New York 10467. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: JAN - 6 2012,
New York, New York

Mildred N. Baez

ATTACHMENT 1

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

Respondent: Montefiore Medical Center

Facility Addresses:

-111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467 (Montefiore Moses Division ("MosesD")), and

-1695 Eastchester Road, Bronx, NY 10461 (Montefiore Medical Park ("MedicalP")).

Requirement Violated: Failure to make hazardous waste determinations.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$32,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	$32,900
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted in to the complaint.	$32,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1. Gravity Based Penalty

a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is maximized. This follows because, if the owner/operator is unaware that the facility is generating hazardous waste, there is a much greater likelihood that the owner/operator will not comply with the applicable provisions of the regulatory scheme. In this case, the Potential for Harm was determined to be MAJOR due to: (1) the large number of abandoned and/or old chemicals, of which at least one was an acute p-listed waste (phosgene), stored at the MosesD Facility; (2) the disposal of the chemical staining wastes into the NYC sewer system at the MosesD Facility without proper characterization of the waste; and (3) the disposal of all the chemotherapy and chemotherapy contaminated wastes as medical waste by the MedicalP facility prior to February 2010; and (4) the significant quantities and types of hazardous waste, including acute wastes at the MosesD (approximately 857 kg of hazardous waste was estimated to have been removed later from the MosesD Facility after EPA's Inspection).

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR: Hazardous waste determinations were not conducted on the following: a large number containers containing various types of chemical wastes that were stored at the MosesD Facility; the chemical wastes that were discharged into the NYC sewer system at the MosesD Facility; and all the chemotherapy (one of which was an acute waste) and chemotherapy contaminated wastes at MedicalP facility prior to February 2010. By failing to make a hazardous waste determination, MMC evaded managing chemicals and/or containers as hazardous waste; some of these wastes were discarded or sent to an incorrect disposal facility. The Respondent did not manage these chemicals as regulated wastes, thereby precluding compliance with regulations intended to protect human health and the environment.

The applicable cell ranges from $28,330 to $37,500. The mid-point ($32,900) for the cell was selected, in consideration of the fact that Respondent had characterized some of its MosesD solid wastes and the fact that MedicalP chemotherapy wastes, although not managed as hazardous wastes, were transported to a medical waste incinerator.

2. **Multiple/Multi-day** – Not assessed at this time.

3. **Adjustment Factors**

a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, No adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

c. History of Compliance - Not applicable.

d. Ability to Pay - Not applicable

e. Environmental Project - Not applicable

f. Other Unique Factors – Not applicable

g. Economic Benefit – Preliminarily determined to be less than $5,000.

h. Recalculation of Penalty Based on New Information: - Not applicable.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

Respondent: Montefiore Medical Center

Facility Address:

-111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467 (Montefiore Moses Division ("MosesD"))

Requirements Violated: Operating a Hazardous Waste Storage Facility Without a Permit

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$24,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	$24,900
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$24,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1. **Gravity Based Penalty**

a. Potential for Harm - The potential for harm present in these violations was determined to be MAJOR. Storage of hazardous waste without a permit is a serious violation and has substantial adverse effects on the program. The Respondent effectively did not comply with some storage requirements and with some preparedness and prevention resulting in the following: improper handling and management of hazardous waste at its MosesD Facility, including storing some hazardous waste in unlabeled, open containers, old abandoned/orphaned chemicals), not having complete contingency plans, and failing to have training records of facility personnel.

b Extent of Deviation -The extent of deviation present in this violation was determined to be MODERATE. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with many regulations that must be met by SQGs or LQGs to be exempt from RCRA permitting. However, Respondent had complied with regulations for some hazardous wastes: other containers of hazardous waste at the Facilities were labeled as hazardous waste and were marked with accumulation start dates; some were stored for allowable periods of time, and met the other program requirements.

The applicable cell ranges from $21,250 to $28,329. The mid-point for the cell matrix ($24,900) was selected. Although Respondent was in compliance with some requirements, Respondent violated many requirements that had to be complied with to be exempt from permitting at its MosesD Facility.

2. **Multiple/Multi-**day - Not assessed at this time.

3. **Adjustment Factors**

a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection. No adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

c. History of Compliance – Not applicable.

d. Ability to Pay - Not applicable

e. Environmental Project - Not applicable

f. Other Unique Factors - Not applicable

g. Economic Benefit – Not applicable

h. Recalculation of Penalty Based on New Information - Not applicable.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

Respondent: Montefiore Medical Center

Facility Address:

-111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467 (Montefiore Moses Division ("MosesD")), and

Requirement Violated: Failure to Minimize releases

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$32,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select the appropriate multiple day matrix cell.	N/A
3. Multiply line 2 by the number of days of violation minus 1.	N/A
4. Add line 1 and line 3	N/A
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$32,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1. Gravity Based Penalty

a. Potential for Harm - The potential for harm present in this violation was determined to be MAJOR. Respondent allowed chemical wastes at MosesD to be stored in an unsafe manner. Illustrating this was Respondent's storage of such chemicals in rusted corroding containers (chloroform), allowing a chemical to leak and/or disperse crystals to nearby hazardous waste containers (N, N, N', N'-tetramethylethylenediamine and dicholoromethylsilane); storage of old and/or expired abandoned chemicals at the facility (e.g. hydrochloric acid with a thick layer of crystals in the bottle), and storage of an acid without secondary containment. Additionally, MMC exposed employees to phosphor dust, broken glass and/or mercury from fluorescent bulbs due to improper operation of the bulb crusher at the MosesD Facility.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The MosesD Facility was not operated to minimize releases in many different ways into the environment. It allowed chemicals to be released into the environment by storing them in corroded, leaking and/or contaminated containers. Some of the chemicals were off specification and/or stored for a long period of time without the prospect of being used. Additionally, MMC operated/handled the bulb crusher in a manner so that mercury and shards of glass were released into the environment and did not provide bulb crusher employees with adequate protection.

The applicable cell ranges from $28,330 to $37,500. The mid-point ($32,900) for the cell was selected, in consideration of the fact that Respondent stored many chemicals properly.

2. Multiple/Multi-day – Not being Assessed

3 Adjustment Factors

a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

b. Willfulness/Negligence – Not Applicable.

c. History of Compliance - Not applicable

d. Ability to Pay - Not applicable

e. Environmental Project - Not applicable

f. Other Unique Factors - Not applicable

g. Recalculation of Penalty Based on New Information - Not applicable.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 4, 5 & 6)

Respondent: Montefiore Medical Center

Facility Address:

-1695 Eastchester Road, Bronx, NY 10461 (Montefiore Medical Park ("MedicalP")).

Violations: **Count 4 -Failure to Ship Hazardous Waste to an Authorized Facility**
Count 5 -Failure to Use a Manifest for Transportation of Hazardous Wastes
Count 6-Failure to provide a land ban notification to a Treatment or Storage Facility

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	$24,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3.	$24,900
5. Percent decrease for good faith.	$ 2,490
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10.Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$22,410

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet (Counts 4, 5 & 6)

1. Gravity Based Penalty

a. Potential for Harm - The potential for harm was determined to be MAJOR. Respondent did not send certain wastes to the proper facility. The medical waste incinerator was not authorized to accept hazardous wastes and this also had an adverse impact on the RCRA program. The medical waste incinerator did not have the safety features of a hazardous waste incinerator thereby creating additional risk. Respondent systematically failed to prepare manifests for shipments to the receiving facilities potentially resulting in a substantial adverse impact upon the RCRA program. The manifest system is the basis for the cradle-to-grave tracking of hazardous waste which is one of the fundamental tenets underlying the RCRA program. By failing to prepare a manifest for the hazardous chemotherapy wastes shipped to a medical waste incinerator, neither the receiving facility nor the transporter were notified that the chemotherapy wastes they received or transported were a hazardous waste subject to regulatory requirements intended to ensure the protection of human health and the environment. Failure to provide a land ban notification is also a major requirement of the RCRA program and causes harm to the program.

b. Extent of Deviation - The extent of deviation present in these violations was determined to be MODERATE. Although the Respondent mishandled each of the chemotherapy hazardous wastes during the relevant time period, the chemotherapy waste was sent to a medical waste incinerator and Respondent did generate other hazardous wastes that it handled properly. The Facility appears to have handled the chemotherapy waste properly after February 2010.

The applicable cell ranges from $21,250 to $28,329. The mid-point was chosen

2 Multiple/Multi-day- EPA did not impose multi-day penalties for this count due to the small amounts of chemotherapy wastes shipped and the fact that such wastes were incinerated.

3 Adjustment Factors

a. Good Faith – A 10% adjustment downwards was made because the MedicalP Facility properly handled its chemotherapy wastes after February 2010, eight months prior to EPA's Inspection.

b. Willfulness/Negligence N/A

c. History of Compliance N/A

d. Ability to Pay N/A

e. Environmental Project N/A

f. Other Unique Factors N/A

g. Economic Benefit - Preliminarily determined to be less than $ 5,000

ATTACHMENT II-TABLE I
GRAVITY MATRIX

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT		
	MAJOR	MODERATE	MINOR
MAJOR	$37,500 to $28,330	$28,329 to $21,250	$21,249 to $15,580
MODERATE	$15,580 to $11,330	$11,329 to $7,090	$7089 to $4,250
MINOR	$4,250 to $2,130	$2,129 TO $710	$709 TO $150

MULTI-DAY MATRIX

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		Major	**Moderate**	**Minor**
	Major	**$7,090 to $1,420**	**$5,670 to $1,070**	**$4,250 to $780**
	Moderate	**$3,120 to $570**	**$2,230 to $360**	**$1,420 to $220**
	Minor	**$850 to $150**	**$430 to $150**	**$150**