



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

U.S. Environmental  
Protection Agency-Reg 2  
2014 OCT -2 AM 10:34  
REGIONAL HEARING  
CLERK

SEP 25 2014

**CERTIFIED MAIL-RETURN RECEIPTS REQUESTED**

Article numbers: 7005 3110 0000 5966 6104  
7005 3110 0000 5966 6111  
7005 3110 0000 5966 6128  
7005 3110 0000 5966 6135

Nitin Sahney, President  
Omnicare, Inc.  
201 E 4th Street  
Suite 1500  
Cincinnati, Ohio 45202-4121

Sean Kane, Manager  
CHP Acquisition Corp. doing business as  
Omnicare of Southern New Jersey  
40 Twosome Drive, Unit 1  
Moorestown, New Jersey 08057

Jeffrey Marcus, Manager  
Omnicare of NY LLC doing business as  
Omnicare of Whippany  
121 Algonquin Parkway  
Whippany, New Jersey 07981

Karen Casey, Manager  
CARE4, LP doing business as Omnicare of  
Edison  
120 Fieldcrest Avenue  
Edison, New Jersey 08837

Re: **In the Matter of the Omnicare, Inc.; Omnicare of NY LLC; CARE4 LP; and CHP  
Acquisition Corp.**  
**Docket Number RCRA-02-2014-7105**

Dear Mr. Sahney, Mr. Marcus, Mr. Kane and Mrs. Casey:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

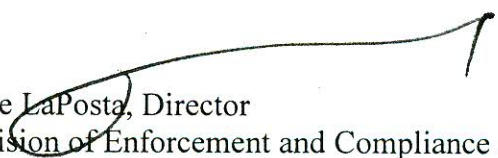
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice" which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.)

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

U.S. Environmental  
Protection Agency-Reg 2  
2014 OCT -2 AM 10:34  
REGIONAL HEARING  
CLERK

In The Matter of:

Omnicare, Inc.; Omnicare of NY LLC;  
CARE4 LP; and CHP Acquisition Corp.

Respondents.

Proceeding Under Section 3008 of the  
Solid Waste Disposal Act, as amended

**COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY  
FOR HEARING**

Docket No.: **RCRA-02-2014-7105**

**I. 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 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA's") preliminary determination that Omnicare Inc. and three subsidiaries of Omnicare, Inc. have violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at the subsidiary facilities. These subsidiaries are CARE4, LP doing business as ("dba") as Omnicare of Edison; CHP Acquisition Corp. dba Omnicare of Southern New Jersey; and Omnicare of NY LLC dba as Omnicare of Whippany.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program ( the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the

regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

### **JURISDICTION**

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

### **NOTICE**

2. EPA has given notice of this action to the State of New Jersey.

### **RESPONDENTS**

3. Respondents are Omnicare, Inc.; CARE4, LP doing business as (dba) as Omnicare of Edison; CHP Acquisition Corp. dba Omnicare of Southern New Jersey; and Omnicare of NY LLC dba as Omnicare of Whippany. Hereafter, each subsidiary of Omnicare, Inc. ("Omnicare") will be referred to by its Omnicare dba name.

4. Each Respondent provides a broad array of pharmacy related services to long term care facilities and other customers in the health care environment.

### **GENERAL ALLEGATIONS**

5. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.* The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270, 273 and 279.

6. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.



7. 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. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty 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.
8. New Jersey's authorized hazardous waste program incorporates by reference, with minor modifications, the federal program set forth in 40 C.F.R. Parts 124, 260-266, 268 and 270. (Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference.)
9. Each Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
10. Omnicare of Whippany conducts pharmaceutical operations at 121 Algonquin Parkway in Whippany, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
11. Omnicare of Whippany is the "owner" and/or "operator" of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
12. In or about February 2011, Omnicare of Whippany notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Whippany EPA Identification Number NJR000077032.
13. Omnicare of Whippany is a "generator" of "hazardous waste" at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
14. Omnicare of Southern New Jersey conducts pharmaceutical operations at 40 Twosome Drive, Moorestown, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
15. Omnicare of Southern New Jersey is the "owner" and/or "operator" of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
16. In or about July 2013, Omnicare of Southern New Jersey notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Southern New Jersey EPA Identification Number NJR986637445.

17. Omnicare of Southern New Jersey is a "generator" of "hazardous waste" at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
18. Omnicare of Edison conducts pharmaceutical operations at 120 Fieldcrest Avenue in Edison, New Jersey. This location constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
19. Omnicare of Edison is the "owner" and/or "operator" of the facility referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
20. In or about March 2013, Omnicare of Edison notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA then issued Omnicare of Edison EPA Identification Number NJR986636272.
21. Omnicare of Edison is a "generator" of "hazardous waste" at its facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
22. Omnicare, Inc. is an "owner" and/or "operator" of the Omnicare of Edison, Whippany and Southern New Jersey facilities referenced above as those terms are defined in 40 C.F.R. §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
23. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

#### **EPA Investigative and Initial Enforcement Activities**

24. On or about July 16, 2013, a duly designated representative of EPA conducted an inspection of the Omnicare of Whippany facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine its compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the Whippany inspection").
25. On or about July 23, 2013, a duly designated representative of EPA conducted an inspection of the Omnicare of Southern New Jersey facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine its compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the Southern New Jersey inspection").
26. On or about August 1, 2013, a duly designated representative of EPA conducted an inspection of the Omnicare of Edison facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine its compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the Edison inspection").



27. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§6927 and 6928, on or about October 31, 2013, EPA issued Omnicare an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its New Jersey facilities. On or about May 19, 2014, EPA issued Omnicare a second IRL pursuant to Section 3007 of the Act, 42 U.S.C. § 6927

28. On or about January 8, 2014, Omnicare and/or each of the three subsidiary Omnicare Respondents submitted a response to EPA's October 2013 IRL/NOV. On or about June 10, 2014, Omnicare and/or each of the Respondents submitted a response to EPA's Second IRL. Each of these submissions was prepared by employees or agents of Omnicare and/or one of the Omnicare subsidiary Respondents in the course of carrying out his/her employment or duties.

## COUNTS

### Count 1

#### Omnicare of Southern New Jersey - Failure to Have an EPA Identification Number

29. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

30. Pursuant to 40 CFR § 262.12(a), as incorporated by reference by NJAC 7:26G-6.1(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

31. Omnicare of Southern New Jersey generates and has been generating hazardous waste at its facility since at least April 2011.

32. EPA issued Omnicare of Southern New Jersey an EPA Identification Number on July 26, 2013.

33. During various periods of time between at least April 2011 and July 26, 2013, Omnicare of Southern New Jersey stored hazardous waste at its facility for temporary periods of time at the end of which hazardous waste was treated, stored or disposed of elsewhere.

34. On at least one occasion during the period of time between at least April 2011 and July 26, 2013 Omnicare of Southern New Jersey offered hazardous waste for transport from its facility.

35. Omnicare of Southern New Jersey's failure to obtain an EPA Identification Number prior to storing at, and/or offering hazardous waste for transport from, its facility is a violation of 40 C.F.R. 262.12(a) as incorporated by reference by NJAC 7:26G-6.1(a).

### Count 2

#### Omnicare of Edison - Failure to Have an EPA Identification Number

36. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
37. Pursuant to 40 CFR § 262.12(a), as incorporated by reference by NJAC 7:26G-6.1(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.
38. Omnicare of Edison has been generating hazardous waste at its facility since at least January 2012.
39. EPA issued Omnicare of Edison an EPA Identification Number on March 12, 2013.
40. During various periods of time between at least January 2012 and March 12, 2013, Omnicare stored hazardous waste at its Edison facility for temporary periods of time at the end of which hazardous waste was treated, stored or disposed of elsewhere.
41. On at least one occasion during the period of time between at least January 2012 and March 12, 2013 Omnicare of Edison offered hazardous waste for transport from its facility.
42. Omnicare of Edison's failure to obtain an EPA Identification Number prior to storing at, and/or offering hazardous waste for transport from, its facility is a violation of 40 C.F.R. 262.12(a) as incorporated by reference by NJAC 7:26G-6.1(a).

### Count 3

#### Failure to Make Hazardous Waste Determinations

43. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
44. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a), a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.
45. Pursuant to 40 C.F.R. § 261.2, as incorporated by reference by NJAC 7:26G-5.1(a), 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.
46. Pursuant to 40 C.F.R. § 261.2(b), as incorporated by reference by NJAC 7:26G-5.1(a), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."



47. Prior to February 2013, Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany each disposed used fluorescent light bulbs in the municipal trash at their respective facilities.

48. The discarded fluorescent light bulbs identified in Paragraph 46 at each of the referenced facilities were “abandoned” as that term is defined in 40 C.F.R. § 261.2, as incorporated by NJAC 7:26G-5.1(a).

49. The discarded fluorescent light bulbs identified in Paragraph 46 constitute “discarded material” and “solid waste” as those terms are in 40 C.F.R. § 261.2, as incorporated by NJAC 7:26G-5.1(a).

50. Prior to February 2013, Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany each failed to determine if the fluorescent light bulbs identified in Paragraph 47 at their respective facilities constituted a hazardous waste.

51. The failure to determine if each waste generated at the Omnicare of Edison, Omnicare of Southern New Jersey and Omnicare of Whippany facilities constituted a hazardous waste is a violation of 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G- 6.1(a).

## II. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondents be assessed the following civil penalty for the violations alleged in this Complaint:

Counts 1 and 2: \$41,800  
(for violations at the Omnicare of Southern New Jersey and Edison facilities)

Count 3: \$31,500  
(for violations at the Omnicare of Southern New Jersey, Edison and Whippany facilities)

Total Proposed Penalty for Counts 1, 2 and 3 is **\$73,300**.

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.

The maximum civil penalty 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. *See* Paragraph 7 *supra*, and 40 C.F.R. Part 19.

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.



### **III. COMPLIANCE ORDER**

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

1. Within twenty (20) days of the effective date of this Compliance Order, to the extent it has not already done so, each Respondent shall make hazardous waste determinations for each solid waste generated at its respective facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a).
2. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Ms. Meghan LaReau  
Senior Enforcement Team  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, NY10007-1866

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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release any Respondent from liability for any violations at its facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding each facility.

### **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 regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent(s) may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent(s) may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

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 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(s) 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(s) 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 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**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent(s) 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)'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(s) has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent(s) 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(s) disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent(s) requests a hearing. 40 C.F.R. § 22.15(b).

Respondent(s)'s failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent(s), 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(s), a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent(s) 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(s) 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(s) 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(s) 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(s) constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent(s)'s right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent(s) 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(s) without further proceedings 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(s), and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent(s) 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. Filing of Documents Filed After the Answer**

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent(s) has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson  
Headquarters Hearing Clerk

Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Ronald Reagan Building, Room M1200  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

### **E. Exhaustion of Administrative Remedies**

Where Respondent(s) fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; 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(s) 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 days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 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(s) 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(s) may comment on the charges made in the Complaint, and Respondent(s) may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions Respondent(s) has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent(s) 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(s), to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the



charges, if Respondent(s) can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent(s) is referred to 40 C.F.R. § 22.18.

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

Amy R. Chester  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16th floor  
New York, N.Y. 10007-1866

Telephone (212) 637-3213

The parties may engage in settlement discussions irrespective of whether Respondent(s) has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent(s)'s request for 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)'s obligation to file a timely Answer(s) 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 shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent(s) waives the right to contest the allegations in the Complaint and waives the 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 the 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 their 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(s) wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent(s) should promptly contact the Assistant Regional Counsel identified on the previous page.

**Dated:** SEPTEMBER 25, 2014  
New York, New York

**COMPLAINANT:**

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, NY 10007-1866

**To:** Nitin Sahney, President  
Omnicare, Inc.  
201 E 4th Street  
Suite 1500  
Cincinnati, Ohio 45202-4121

Jeffrey Marcus, Manager  
Omnicare of NY LLC doing business as Omnicare of Whippany  
121 Algonquin Parkway  
Whippany, New Jersey 07981

Sean Kane, Manager  
CHP Acquisition Corp. doing business as Omnicare of Southern New Jersey  
40 Twosome Drive, Unit 1  
Moorestown, New Jersey 08057

Karen Casey, Manager  
CARE4, LP doing business as Omnicare of Edison  
120 Fieldcrest Avenue  
Edison, New Jersey 08837




**cc:** Mike Hastry, Chief  
Bureau of Hazardous Waste Compliance and Enforcement  
Central Field Office, New Jersey Department of Environmental Protection  
300 Horizon Center  
P.O.Box 407  
Trenton, New Jersey 08625-0407

**In re: Omnicare, Inc.; Omnicare of NY LLC; CARE4 LP; and CHP Acquisition Corp.  
Docket Number RCRA-02-2014-7105**

**CERTIFICATE OF SERVICE**

This is to certify that on 10/2, 2014, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2014-7105 hereinafter referred to as the "Complaint"), together with Attachments I and II 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: Nitin Sahney, President Omnicare, Inc., 201 E 4th Street, Suite 1500, Cincinnati, Ohio 45202-4121; Jeffrey Marcus, Manager, Omnicare of NY LLC doing business as Omnicare of Whippany, 121 Algonquin Parkway, Whippany, New Jersey 07981; Sean Kane, Manager, CHP Acquisition Corp. doing business as Omnicare of Southern New Jersey, 40 Twosome Drive, Unit 1, Moorestown, New Jersey 08057; and Karen Casey, Manager, CARE4, LP doing business as Omnicare of Edison, 120 Fieldcrest Avenue, Edison, New Jersey 08837. On said day, I hand carried the original the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Name: 



## ATTACHMENT 1

### NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT Penalty Computation Worksheet (Counts 1 and 2)

Omnicare Facilities: Omnicare of Edison and Omnicare of Southern New Jersey.

Facility Address: 40 Twosome Drive, Suite 1, Moorestown, New Jersey 08057  
120 Fieldcrest Avenue, Edison, New Jersey 08837

Requirement Violated:

40 CFR § 262.12(a), as incorporated by reference by NJAC 7:26G-6.1(a) -

Failure to obtain an EPA identification number.

#### PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix		\$37,500
(a)	Potential for Harm.	MAJOR
(b)	Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.		\$4,255
3. Multiply line 2 by number of facilities minus 1.		\$4,255
4. Add line 1 and line 3.		\$41,755
5. Percent increase/decrease for good faith.		Not applicable
6. Percent increase for willfulness/negligence.		Not applicable
7. Percent increase for history of noncompliance.		Not applicable
8. Total lines 5 through 7.		Not applicable
9. Multiply line 4 by line 8.		Not applicable
10. Calculate economic benefit.		Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.		\$41,800*

\* Penalties have been rounded to the nearest hundred.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Counts 1 and 2)**

1. Gravity Based Penalty

a. Potential for Harm—The Potential for Harm was determined to be MAJOR. 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 noncompliance on the regulatory scheme. Obtaining an EPA identification number is an important part of the cradle to grave framework for ensuring the proper management of hazardous waste. This violation has a substantial adverse effect on the regulatory procedures for implementing the RCRA program.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR since each facility failed to have an EPA identification number and both stored and shipped waste prior to obtaining a number.

The applicable cell ranges from \$28,330 to \$37,500. Due to the seriousness of the violation, the high point of the range was selected.

c. Multiple/Multi-day —Failure to obtain an EPA identification number is being considered a one-time event. The violation, however, occurred at two Omnicare facilities. Therefore, a multiple of 1 (2 facilities minus 1) was selected for the multi-day component.

The applicable cell ranges from \$1,420 to 7,090. The mid-point for the cell matrix (\$4,255) was selected.

2. Adjustment Factors

a. Good Faith - Based upon facility specific factors and available information, 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



3. Economic Benefit – Respondents would have been able to timely obtain an EPA identification number for each of the facilities at low cost.

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

Omnicare Facilities: Omnicare of Whippany; Omnicare of Southern New Jersey and Omnicare of Edison

Facility Address: 121 Algonquin Parkway, Whippany, New Jersey 07981  
40 Twosome Drive, Suite 1, Moorestown, New Jersey 08057  
120 Fieldcrest Avenue, Edison, New Jersey 08837

Requirement Violated:

40 C.F.R. § 262.11, as incorporated by NJAC 7:26G- 6.1(a)

Failure to make a hazardous waste determination

**PENALTY AMOUNT FOR REFERRAL**

1. Gravity based penalty from matrix		\$24,790
(a)	Potential for Harm.	MAJOR
(b)	Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.		\$ 3,370
3. Multiply line 2 by number of facilities minus 1 (3 -1 =2)		\$ 6,740
4. Add line 1 and line 3.		\$ 31,530
5. Percent increase/decrease for good faith.		Not applicable
6. Percent increase for willfulness/negligence.		Not applicable
7. Percent increase for history of noncompliance.		Not applicable
8. Total lines 5 through 7.		Not applicable
9. Multiply line 4 by line 8.		Not applicable
10. Calculate economic benefit.		Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.		\$31,500*

\* Penalties have been rounded to the nearest hundred.



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

1. Gravity Based Penalty

- a. Potential for Harm – The Potential for Harm was determined to be MAJOR. 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 noncompliance on the regulatory scheme. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be treated as such. In this instance, each Respondent failed to determine if spent fluorescent light bulbs generated at their respective facilities, which were potentially hazardous, constituted hazardous waste. As a result of the failure to characterize the waste, the potential for mismanagement was increased.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Each Respondent failed to make a hazardous waste determination for spent fluorescent light bulbs regularly generated by Respondents in the course of carrying out normal activities. The extent of deviation was mitigated however because each Respondent made hazardous waste determinations for other waste streams generated at their respective facilities.

The applicable cell ranges from \$21,250 to \$28,330. The mid-point for the cell matrix was selected.

- c. Multiple/Multi-day – This violation occurred at all three Omnicare facilities. Therefore, a 2 multiple (3 facilities minus 1) was selected for the multi-day component.

The applicable cell ranges from \$1,070 to \$5,670. The mid-point for the cell matrix was selected.

2. Adjustment Factors

- a. Good Faith - Based upon presently available information, 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
3. Economic Benefit – No penalty is being sought to recoup Respondent(s)'s economic benefit for this violation since each Respondent and/or its employees should have been able to make such determinations at a low cost to that Respondent.



## ATTACHMENT II

Gravity-based penalty matrix  
to supplement the RCRA Civil Penalty Policy  
for violations that occur after January 12, 2009\*

Extent of Deviation from Requirement

Potential for  
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
MODERATE	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
MINOR	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

**\*All penalties calculated in this action have been rounded to the nearest \$100.**

Multi-Day Matrix of Minimum Daily Penalties  
 To Supplement the RCRA Civil Penalty Policy  
 For Violations That Occur After January 12, 2009\*

Extent of Deviation from Requirement

	MAJOR	MODERATE	MINOR
Potential for Harm	MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070
	MODERATE	\$3,120 to \$570	\$2,230 to \$360
	MINOR	\$850 to \$150	\$430 to \$150

\* All penalties calculated in this action have been rounded to the nearest \$100



**bcc:**

M. LaReau, DECA/RCB  
L. Voo, DECA/RCB  
A. Chester, ORC/WTS  
W. Sawyer, ORC/WTS  
H. Maciejko (2DEPP-RPB)  
John Martin (PAD – POB)  
RCRA File