

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

FILED

Mar 08, 2024

10:27 am

U.S. EPA REGION 3
HEARING CLERK

IN THE MATTER OF:

)
) DOCKET NO.: RCRA-03-2024-0064
)

Meritus Health

)
)
) Respondent,
)

) EXPEDITED SETTLEMENT AGREEMENT AND
) FINAL ORDER
)

Meritus Medical Center
11116 Medical Campus Road
Hagerstown, Maryland 21742,

)
)
) Facility
)
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)
)

) Proceeding under Section
) 3008(a) and (g) of the Resource
) Conservation and Recovery Act, as
) amended, 42 U.S.C. § 6928(a) and (g)
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EXPEDITED SETTLEMENT AGREEMENT

1. Meritus Health ("Respondent"), and the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") enter into this Expedited Settlement Agreement ("Agreement") pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C § 6928(a) and (g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated the authority to enter into this Agreement to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency, Region 3 ("EPA") has jurisdiction over this matter pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. §§ 22.1(a)(4) and 22.4 of the Consolidated Rules of Practice.
3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA has authorized the State of Maryland to administer a hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. The provisions of the current authorized Maryland Hazardous Waste Management Regulation, codified at Code of Maryland Regulations ("COMAR") Title 10, Subtitle 51 *et seq*, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
4. On December 20, 2023, EPA sent a letter to the State of Maryland, through the Maryland

- Department of the Environment (“MDE”), giving prior notice of this enforcement action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. At its facility, located at 11116 Medical Campus Road, Hagerstown, Maryland 21742 (“Facility”), Respondent is a 300-bed community acute hospital. On February 23, 2022, Respondent submitted a notification to MDE that the Facility was a large quantity generator (“LQG”) of hazardous waste at the Facility, and MDE assigned RCRA ID No MDR000524548. Respondent does not have a permit for the treatment, storage or disposal of hazardous waste at the Facility.
 6. Complainant alleges that, at all times relevant to the allegations described in this Agreement, Respondent was and continues to be an institution and is therefore a “person,” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61), and at all times relevant to the allegations in this Agreement was the “operator” and the “owner” of a “facility,” described in Paragraph 5, as the terms “facility”, “owner” and “operator” are defined in COMAR 26.13.01.03B(23), (58), and (59).
 7. At all times relevant to the allegations described in this Agreement, Respondent “stored” waste pharmaceuticals with EPA Hazardous Waste Number(s) D001, D002, D005, D009, D011, D024, U010, U035, U058, U150, U188, U236, U248, P075, P001, and P188, which are “hazardous waste(s)” at the Facility, as the terms “stored” and “hazardous waste are defined in COMAR 26.13.01.03B(31) and (76).
 8. On May 16, 2023, EPA representatives conducted a Compliance Evaluation Inspection at the Facility to determine compliance with the applicable hazardous waste regulations, and on October 5, 2023, EPA sent an information request letter to the Respondent pursuant to RCRA, requesting information about the Facility regarding its compliance with the applicable hazardous waste regulations. On October 23, 2023, Respondent provided a response to EPA’s information request.
 9. Based on the observations during the Inspection, and on the information Respondent provided in response to EPA’s information request, Complainant alleges and finds that Respondent failed to comply with specific requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*, its implementing regulations at 40 C.F.R. Parts 262, 264, 265, and the federally-authorized Maryland hazardous waste management regulations set forth in COMAR, Title 26, Subtitle 13 *et seq.*
 10. Complainant has identified the following violations at the Facility:
 - a. From at least May 16, 2023 until May 17, 2023, Respondent operated the Facility without a permit, in violation of COMAR 26.13.07.01. The following acts or omissions prevented Respondent from meeting the regulatory permit exemption conditions set forth at COMAR 26.13.03.05E:

- (1) Respondent failed to meet a condition of the generator permit exemption in COMAR 26.13.03.05E(3)(a), which requires compliance with COMAR 23.13.05.09D, when it failed to keep its satellite accumulation area (“SAA”) containers closed during periods when waste was not added or removed into and from them. EPA inspector observed open containers of hazardous waste in several of the nursing stations in the Facility. At the time of the observations, waste was not being added or removed from the containers;
 - (2) Respondent failed to meet a condition of the generator permit exemption in COMAR 26.13.03.05E(1)(d), which requires compliance with COMAR 26.13.05.09E, when it failed to conduct weekly inspections of the hazardous waste accumulation area (“HWAA”) during the following weeks in calendar year 2022: week of March 6, week of March 13, week of March 20, week of March 27, week of May 22, week of June 19, and week of June 26.
 - (3) Respondent failed to meet a condition of the generator permit exemption in COMAR 26.13.03.05E(2), which requires compliance with COMAR 26.13.05.04C(4) and (5), when it failed to have the required contents in the contingency plan. From at least May 16, 2023 until May 17, 2023, the contingency plan did not include the persons who would act as the emergency coordinator or alternate, and did not include a list of emergency equipment.
 - (4) Respondent failed to meet a condition of the generator permit exemption in COMAR 26.13.03.05E(2), which requires compliance with COMAR 26.13.05.02G(1)(b), when it failed to train required personnel in the management of hazardous waste. During a review of training records by the EPA inspector, no training was observed for required employees regarding the management of hazardous waste.
- b. On May 16, 2023, Respondent failed to have adequate aisle space in the HWAA, in violation of COMAR 26.13.05.03F. In Environmental Services, the EPA inspector observed a cart that was obstructing access to the HWAA.
- c. On May 16, 2023, Respondent failed to properly label universal waste (“UW”) batteries and failed to demonstrate the length of time in which UW batteries have been accumulated, in violation of COMAR 26.13.10.17A(2)(a) & 26.13.10.17(B)(3).
- i. In Room 1825, the EPA inspector observed a box containing UW batteries. The box did not have a date that indicated when the batteries were initially accumulated. Respondent did not have a means to track how long the UW batteries had been accumulating in the box.
 - ii. In Room 1827, the EPA inspector observed several batteries stacked in a

corner near the door. The terminals were taped over at the time of the observation. The individual batteries did not have either of the following phrases: "Universal waste – Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)". None of the batteries were dated, and Respondent did not have a means to track how long the UW batteries had been accumulating.

- d. On May 16, 2023, Respondent failed to properly label UW lamps, failed to demonstrate the length of time in which UW lamps have been accumulated, and failed to close containers of UW lamps when not adding or removing lamps, in violation of COMAR 26.13.10.15B(1)(d), 26.13.10.17A(2)(e), & 26.13.10.17B(3). In the Mechanical Area of Facilities Engineering, the EPA inspector observed boxes containing UW lamps. Nine of the boxes were open and UW lamps were not being added or removed. None of the boxes were dated or had the phrases: "Universal Waste – Lamp(s)," "Waste Lamp(s)," or "Used Lamps(s)". Respondent did not have a means in which to track the accumulation of UW lamps.
- e. Respondent failed to conduct weekly inspections of the HWAA, in violation of COMAR 26.13.05.09E. Respondent did not conduct weekly inspections of the HWAA during the following weeks in calendar year 2022: week of March 6, week of March 13, week of March 20, week of March 27, week of May 22, week of June 19, and week of June 26.
- f. Respondent failed to train required personnel in the management of hazardous waste, in violation of COMAR 26.13.05.02G(1)(b). During a review of training records by the EPA inspector, no training was observed for required employees regarding the management of hazardous waste. Anyone who handles hazardous waste, inspects the HWAA, signs hazardous waste manifests, or is designated as the emergency coordinator (or alternate) in the contingency plan requires training in the management of hazardous waste.
- g. Respondent failed to make a waste determination at the point of generation, in violation of COMAR 26.13.03.02. Respondent generates waste personal protective equipment ("PPE") during pharmaceutical activities. No waste determination had been made regarding the waste PPE. Waste PPE is disposed of as non-hazardous waste.
- h. Respondent failed to submit its 2019 biennial report by March 1, 2020, in violation of COMAR 26.13.05.05F(3)(b). The 2019 biennial report was submitted on April 14, 2020, 44 days after March 1, 2020.
- i. From at least May 16, 2023 until May 17, 2023, Respondent failed to have the required content in the contingency plan, in violation of COMAR 26.13.05.04C(4) & 26.13.05.04C(5). During the review of the contingency plan by the EPA inspector, the persons who would act as the emergency coordinator or alternate, and a list of

emergency equipment was not observed.

11. Complainant and Respondent agree that settlement of this matter for a total penalty of **ELEVEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$11,250.00)** is in the public interest. In calculating this amount, Complainant considered the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 ("RCRA Penalty Policy"), and the 2021 RCRA Expedited Settlement Agreement Pilot.
12. Respondent agrees that, within 30 days of the effective date of this Agreement, Respondent shall make a payment of **ELEVEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$11,250.00)** to "United States Treasury" with the case name, address and docket number of this Agreement (RCRA-03-2024-0064), for the amount specified above. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
13. Within 24 hours of payment, Respondent shall also send proof of payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer), by electronic mail to:

Jeremy Dearden, Physical Scientist (3ED22)
U.S. EPA, Region 3
dearden.jeremy@epa.gov

and

Regional Hearing Clerk (3RC00)
U.S. EPA, Region 3
R3_Hearing_Clerk@epa.gov

14. In signing this Agreement, Respondent: admits the jurisdictional allegations in this Agreement; neither admits nor denies the specific factual allegations in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; agrees to bear its own costs and attorney's fees; and agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

15. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) the alleged violations have been corrected, and (2) any documentation or information provided to EPA was true and accurate.
16. This Agreement and the attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
17. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the RCRA, the RCRA regulations promulgated, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
18. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
19. This Agreement is effective upon filing, in accordance with 40 C.F.R. § 22.31(b).
20. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Meritus Health.
21. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: dearden.jeremy@epa.gov (for Complainant), and Maulik.joshi@meritushealth.com (for Respondent).
22. By signing this Agreement, Respondent acknowledges that this Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge

and belief, this Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

For Respondent: Meritus Health

Date: 2/26/24

By: Maulik Joshi
Dr. Maulik Joshi, Dr.P.H.
President & CEO

For Complainant: U.S. Environmental Protection Agency, Region 3

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

[Digital Signature and Date]

Karen Melvin, Director

Enforcement and Compliance Assurance Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

FILED
Mar 08, 2024
10:28 am
U.S. EPA REGION 3
HEARING CLERK

IN THE MATTER OF:)	DOCKET NO.: RCRA-03-2024-0064
)	
Meritus Health)	
)	
Respondent,)	EXPEDITED SETTLEMENT AGREEMENT AND
)	FINAL ORDER
)	
Meritus Medical Center)	Proceeding under Section
11116 Medical Campus Road)	3008(a) and (g) of the Resource
Hagerstown, Maryland 21742,)	Conservation and Recovery Act, as
)	amended, 42 U.S.C. § 6928(a) and (g)
Facility)	
)	
)	
)	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region 3, and Respondent, Meritus Health, have executed a document entitled "Expedited Settlement Agreement," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein took into account the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 ("RCRA Penalty Policy"), and the 2021 RCRA Expedited Settlement Agreement Pilot.

NOW, THEREFORE, PURSUANT TO 3008(g) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. Section 6991e, and Section 22.18(b)(3) of the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of ELEVEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$11,250.00), in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 et seq., and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

[Digital Signature and Date]

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Meritus Health	:	
11116 Medical Campus Road	:	U.S. EPA Docket No. RCRA-03-2024-0064
Hagerstown, Maryland 21742	:	
	:	
Respondent.	:	Proceeding under Section
	:	3008(a) and (g) of the Resource
	:	Conservation and Recovery Act, as
Meritus Medical Center	:	amended, 42 U.S.C. § 6928(a) and (g)
11116 Medical Campus Road	:	
Hagerstown, Maryland 21742	:	
	:	
Facility	:	

CERTIFICATE OF SERVICE

I certify that the foregoing *Expedited Settlement Agreement and Final Order* was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the *Expedited Settlement Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Maulik Joshi, Dr.P.H.
Meritus Health
Maulik.joshi@meritushealth.com
11116 Medical Campus Road
Hagerstown, Maryland 21742

Jeremy Dearden
Physical Scientist
U.S. EPA, Region 3
Dearden.jeremy@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3