

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of:

**Brookdale Hospital Center Housing
Company, Inc.**

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-02-2015-7102

REGIONAL HEARING
CLERK

2015 AUG -5 AM 11:13

U.S. Environmental
Protection Agency-Reg 2

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 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 Brookdale Hospital Center Housing Company, Inc. (hereinafter “Respondent” or “Brookdale Hospital”) 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) 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). 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 teaching, diagnosing, and treating medical illnesses and diseases. The institution has several buildings including the Radusky, Aaron, Strausberg, and CHC buildings.
4. Respondent is located at 1 Brookdale Plaza, Brooklyn, NY 11212.
5. The above-referenced location constitutes Respondent's "Facility" as that term is defined at 6 NYCRR § 370.2(b).
6. Respondent is a not-for-profit corporation organized in 1968 pursuant to the laws of the State of New York.
7. 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).
8. Respondent has been, and remains, the owner and/or operator of the Facility within the meaning of 6 NYCRR § 370.2(b).

Respondent's Generation of Waste

9. Respondent, in carrying out its medical activities, including the 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 Facility.

10. Respondent, in carrying out its medical activities, including the diagnosis and treatment of illnesses and diseases, and in the course of normal building maintenance, has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at its Facility.
11. Upon information and belief, in carrying out its medical activities, including the 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 its Facility.
12. Upon information and belief, prior and subsequent to October 2014, Respondent has been a generator of hazardous waste and “acute hazardous waste” within the meaning of 6 NYCRR § 370.2(b) at its Facility.
13. Subsections 6 NYCRR 373-1.1(d) and 6 NYCRR 372.2(a)(8)(iii) provide, in part, that a generator may accumulate non-acute hazardous waste on-site for a period of 180 days or less without being subject to the hazardous waste 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).
14. During the period from October 2011 through October 2014, Respondent generated at least 100 kilograms (“kg”) and less than 1000 kg of hazardous waste in each calendar month and upon information and belief generated less than a kg of acute waste in each calendar month.
15. Respondent is considered a small quantity generator as that phrase is defined in 6 NYCRR §370.2(b).
16. 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).
17. Respondent’s Facility is an “existing hazardous waste management facility” (or “existing Facility”) within the meaning of 6 NYCRR § 370.2(b).

Regulatory Filings

18. 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) on February 1, 1984.
19. In response to the Notification, EPA provided Respondent with the following EPA Identification Number: NYD06864656.

EPA Inspection

20. On or about October 7 & 8, 2014, a duly designated representative of EPA conducted a Compliance Evaluation Inspection (the "Inspection") of Respondent's Facility pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.
21. Prior to August 2013, Respondent determined that the following wastes were hazardous wastes:
 - a. pap smear vials containing methanol hazardous waste;
 - b. fluid resulting from the kinyoun staining process;
 - c. fluid resulting from the gram staining process; and
 - d. chemotherapy cyclophosphamide waste.
22. Prior to August 2013 and at times prior thereto, Respondent properly disposed of the following wastes as hazardous wastes:
 - a. pap smear vials containing methanol hazardous waste;
 - b. fluid resulting from the kinyoun staining process;
 - c. fluid resulting from the gram staining process; and
 - d. chemotherapy cyclophosphamide waste.
23. Prior to August 2013 and at times prior thereto, Respondent did not autoclave Pap smear vials containing methanol hazardous waste.
24. In August 2013, Respondent's Director of Environmental Health and Safety died.
25. After August 2013 and subsequent to the Director's death discussed in the previous paragraph, Brookdale Hospital became noncompliant with some of the rules and regulations of RCRA including the following:
 - a. autoclaving pap smear vials containing spent methanol and disposing of such hazardous waste as regulated medical waste;

- b. disposing of chemotherapy cyclophosphamide hazardous waste as medical waste; and
 - c. training on the handling and/or management of hazardous waste by Brookdale hospital staff responsible for handling such waste.
26. At the time of the Inspection and at times both prior thereto and subsequent thereto, Respondent was and is a small quantity generator.

EPA Notice of Violations and Request for Information

27. On or about December 24, 2014, EPA issued to Respondent a combined Notice of Violations (“NOV”) and Information Request Letter (“IRL”) regarding its Facility.
28. 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 Facility and required Respondent to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
29. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.
30. On or about March 12, 2015, a duly authorized representative of Brookdale Hospital submitted the Respondent’s certified Response (“Response”) to the combined NOV and IRL attesting that the information provided in the Response was true and accurate.
31. In its Response, Brookdale Hospital stated that it had taken actions to correct the violations cited in EPA’s NOV including the following:
- a. The hazardous waste methanol in Pap smear vials (autoclaved and sent out as regulated medical waste at the time of the Inspection) was now disposed as hazardous waste.
 - b. Acetone and alcohol hazardous waste resulting from the gram staining process (disposed down the drain at the end of the process at the time of the Inspection) was now collected in containers marked “hazardous waste” and “gram stain” and disposed of as hazardous waste.
 - c. Empty hazardous waste arsenic trioxide containers (sent out as regulated medical waste at the time of the Inspection) were now sent out as P-listed hazardous waste.
 - d. Unused chemotherapy cyclophosphamide hazardous waste (disposed of as regulated medical waste at the time of the Inspection) was now disposed of as hazardous waste.

- e. Broken fluorescent light bulb waste and other universal waste were now separated in different containers (broken and unbroken bulbs were stored together at the time of the Inspection).
 - f. “Immediately after being notified by the EPA that Brookdale had exceeded its 180 day period, arrangements were made to immediately have the waste picked up and properly disposed of the accumulated waste.”
32. In its Response, Respondent stated that “a review of our records, shows a period from April 2014 through October 2014 where the storage period of hazardous waste exceeded 180 days.”
33. In its Response, Respondent stated that it “does not have copies of manifests or shipping papers used for the shipment of the unused cyclophosphamide, empty and partially empty arsenic trioxide containers and/or discarded thin prep vials indic[a]ting that such materials were shipped as regulated medical waste.”
34. In its Response, Respondent stated that it “resumed appropriate management of unused cyclophosphamide, empty and partially empty arsenic trioxide containers and discarded thin prep vials as hazardous waste on October 9th.”

COUNT 1 - Failure to Make Hazardous Waste Determinations

35. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 34, inclusive, with the same force and effect as if fully set forth below.
36. 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.
37. Respondent was at the time of the Inspection and at times prior thereto, a small quantity handler of universal waste as that term is defined at 6 NYCRR § 374-3.1(i).
38. Pursuant to 6 NYCRR § 374-3.2(h), a small quantity handler of universal waste must:
- (a) immediately contain all releases of universal wastes and other residues from universal wastes; and
 - (b) determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements.
39. At the time of the Inspection and at times prior thereto, Respondent stored broken and unbroken fluorescent bulb waste in two fiber containers.

40. At the time of the Inspection and at times prior thereto, Respondent disposed of broken and unbroken fluorescent bulb waste, stored together, as universal waste.
41. At the time of the Inspection and at times prior thereto, Respondent did not make a hazardous waste determination on the materials released from broken fluorescent bulbs.
42. At the time of the Inspection and at times prior thereto, empty (but not triple rinsed) and partially empty chemotherapy arsenic trioxide hazardous waste containers were sent out as regulated medical waste.
43. Arsenic trioxide waste is a P-listed acute hazardous waste.
44. At the time of the Inspection and at times prior thereto, Respondent failed to make a determination as to whether chemotherapy arsenic trioxide waste was a hazardous waste.
45. Respondent's failures to make hazardous waste determinations as stated in paragraphs "39-44" are violations of 6 NYCRR § 372.2(a)(2) or 6 NYCRR § 374-3.2(h).

COUNT 2 - Storage of Hazardous Waste Without a Permit

46. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "34", inclusive, with the same force and effect as if fully set forth below set forth herein.

Legal Requirements for Permit and Exemptions

47. Respondent stores hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurs in various areas of the Facility including the hazardous waste container storage area and in numerous satellite accumulation areas.
48. 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 an existing Facility 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.

49. 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) and (h));
 - 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).
50. Six 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.
51. Pursuant to 6 NYCRR § 373-3.9 (d)(1), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
52. Pursuant to 6 NYCRR § 372.2(a)(8)(iii)(e) (3), the generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
53. Pursuant to 6 NYCRR § 373-3.3(f), the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.
54. Pursuant to 6 NYCRR § 373-3.9(e), a generator must inspect areas where hazardous waste containers are stored at least weekly, and to look for leaking containers, deterioration of containers and problems in the containment system caused by corrosion or other factors.

55. Pursuant to 6 NYCRR 373-3.3(g)((1)(i), an owner or operator must attempt to make arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility; properties of hazardous waste handled at the facility and their associated hazards; places where facility personnel would normally be working; entrances into and the roads inside the facility; and possible evacuation routes.

Facility's Storage of Hazardous Waste and Failures to Qualify for Exemption from Permitting Requirement

56. At the time of the Inspection, and upon information and belief, for some time prior thereto, Respondent stored containers of hazardous waste at the Facility.
57. Brookdale Hospital does not have interim status or a permit authorizing the storage of hazardous waste at its Facility.

Failure to label containers with accumulation start date

58. Upon information and belief, for some time prior thereto and at the time of the Inspection, eight 5 gallon hazardous waste containers were stored in the Hazardous Waste Container Storage Area, located in the Aaron building, and were not marked with accumulation start dates.

Failure to label containers with words "Hazardous Waste:"

59. Upon information and belief, for some time prior thereto and for at least one of the days of the Inspection, Respondent was storing the following containers of hazardous waste without marking them with the words "Hazardous Waste:"
- a. One 1 gallon container collecting waste methanol from a thin prep processor in the cytology area on the 2nd floor of Radusky building.
 - b. One 5 gallon container collecting fixer waste; one ½ gallon container collecting lead foil waste; and one 500 ml container of mercury and silver amalgam waste, all of which were located in the dental area on the 1st floor of CHC building.
 - c. A five gallon container of spent methanol waste located in the chemistry and hematology area on the 2nd floor of Radusky building.

Storing Hazardous Waste for more than one hundred and eighty days

60. At the time of the Inspection, Respondent had been storing at least four 5 gallon containers of spent solvent hazardous waste for more than 180 days in the hazardous waste storage area located in the Aaron building.

Failure to close containers

61. Upon information and belief, for some time prior thereto, and at the time of the Inspection, one ½ gallon container containing lead foils in the dental area on the 1st floor of CHC building was open and waste was neither being added to nor removed from the container.

Failure to make emergency arrangements

62. Upon information and belief, for some time prior thereto and at the time of the Inspection, Respondent had not made arrangements with the police and fire departments.

Failure to conduct weekly inspection

63. Upon information and belief, for some time prior thereto and at the time of the Inspection, Respondent had not conducted weekly inspections of the Facility's hazardous waste containers and the hazardous waste container storage area.

Failure to maintain aisle space in the container storage area

64. Upon information and belief, for some time prior thereto and at the time of the Inspection, the Respondent stored approximately 32 containers or drums of hazardous waste in the container storage area without adequate aisle space.

Failure to provide adequate training to employees handling hazardous waste

65. Upon information and belief, for some time prior thereto and at the time of the Inspection the person managing hazardous waste was not properly trained in managing hazardous waste.

Respondent's Violations of Hazardous Waste Permitting Rules

66. The aforementioned (paragraphs 58-65, above) instances of storage at Respondent's Facility constitutes "storage" within the meaning of:
 - a. Section 1004(33) of RCRA, 42 U.S.C. § 6903(33); and
 - b. Six NYCRR § 370.2(b).
67. Respondent did not satisfy the conditions that would have enabled it to store hazardous waste without a hazardous waste permit.

68. Respondent never obtained a RCRA hazardous waste permit or qualified for interim status.
69. At the time of the Inspection and at times prior thereto, Respondent was required to obtain a permit for the storage of hazardous waste at the Facility.
70. Respondent's aforementioned operation of a 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.

71. Complainant repeats and re-alleges each allegation contained in paragraphs “1” through “34” inclusive, with the same force and effect as if fully set forth herein.
72. 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.
73. Methanol is a highly flammable liquid and a dangerous fire hazard.
74. Methanol must be stored in tightly closed containers in a cool, well-ventilated area away from any heat source.
75. All hazardous waste containing methanol are ignitable hazardous waste.
76. At the time of the Inspection and at times prior, Respondent autoclaved Pap smear vials containing methanol hazardous waste.
77. Autoclave equipment utilizes high temperatures above 150 degrees Fahrenheit in order to sterilize objects, instruments, and/or equipment.
78. Respondent's autoclaving of an ignitable hazardous waste solvent could potentially have caused an explosion and/or fire.

79. At the time of the Inspection and at times prior thereto, the following staining procedures were conducted on the 5th floor of Strausberg building:
 - a. kinyoun staining in the microbiology/ parasitology area, and
 - b. gram staining in the microbiology area.
80. The kinyoun and gram staining hazardous waste fluids were ignitable hazardous wastes.
81. At the time of the Inspection and at times prior thereto, the following hazardous waste fluids were disposed into the drain that led to the Facility's sewer system:
 - a. kinyoun staining in the microbiology/ parasitology area, and
 - b. gram staining in the microbiology area.
82. Disposal of kinyoun and gram hazardous waste staining fluids into the sink could potentially cause an explosion.
83. Upon information and belief, at times prior thereto and at the time of the Inspection, Brookdale Hospital staff responsible for the handling and/or managing of hazardous waste lacked adequate or had no training on the handling and/or managing of such hazardous waste.
84. Respondent's aforementioned failure to maintain and operate its 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 to an Authorized Facility

85. Complainant re-alleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.
86. Pursuant to 6 NYCRR § 372.2(b)(5)(iii), a generator must offer for shipment or ship hazardous waste to an authorized facility which is defined in 6 NYCRR 370.2(b) to be a facility authorized to accept hazardous waste for treatment, storage, or disposal.
87. Upon information and belief, at the time of the Inspection and at times prior, Respondent generated and offered for shipment and shipped the following wastes:
 - a. autoclaved pap smear vials containing spent methanol as regulated medical waste;

- b. empty and partially empty chemotherapy arsenic trioxide containers as regulated medical waste; and
 - c. chemotherapy cyclophosphamide as regulated medical waste.
88. The following wastes generated by the Respondent constitute a hazardous waste:
- a. autoclaved pap smear vials containing spent methanol;
 - b. empty and partially empty chemotherapy arsenic trioxide containers; and
 - c. chemotherapy cyclophosphamide.
89. Respondent failed to offer for shipment or to ship the following hazardous wastes to an authorized facility:
- a. autoclaved pap smear vials containing spent methanol;
 - b. empty and partially empty chemotherapy arsenic trioxide containers; and
 - c. chemotherapy cyclophosphamide.
90. 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

91. Complainant re-alleges each allegation contained in paragraphs "1" through "34," inclusive, as if fully set forth herein.
92. 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.
93. Upon information and belief, at the time of the Inspection and at times prior thereto, Respondent had generated and offered for transportation the following hazardous wastes, as medical waste, without preparing a hazardous waste manifest:
- a. autoclaved pap smear vials containing methanol;
 - b. empty and partially empty chemotherapy arsenic trioxide containers; and
 - c. chemotherapy cyclophosphamide.
94. Respondent's failures to prepare a hazardous waste manifest when offering the hazardous wastes identified in Paragraph 93 above for transportation are violations of 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i).

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://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. The penalty amounts in the 2003 RCRA Civil Penalty policy have been amended to reflect inflation adjustments. The adjustments relevant to the time period of the alleged violations cited in this Complaint were made pursuant to the following: the December 29, 2008 document entitled "Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)"; the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule" (with a further revision not relevant to this action on April 6, 2010); and the memorandum entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalties Policies to Account for Inflation" (Effective December 6, 2013.) 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. 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.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed a civil penalty of thirty-nine thousand eight hundred and fourteen dollars (\$39,814) 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 proposed penalty is broken down as follows:

Count 1, 4, & 5:	\$15,300
Count 2:	\$13,455
Count 3:	\$ 9,210
TOTAL:	\$37,965

**Total Penalty Incorporating December 2013 Inflation Adjustment of Calculated Penalty¹:
\$ 39, 814**

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:

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct, to the extent possible, the violations alleged in Counts 1 through 5 of this Complaint. Respondent shall thereafter maintain compliance at its Facility with the requirements cited in Counts 1 to 5.

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. 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 Facility. 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 Facility.

¹ See

<http://www2.epa.gov/sites/production/files/201401/documents/guidancetoamendepapenaltypolicyforinflation.pdf>

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

Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent 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 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 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 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 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. Filing Of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on 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 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 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 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:


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

Date AUGUST 4, 2015

To: Mark Toney
CEO and President
Brookdale Hospital Housing Center Housing Company, Inc.
1 Brookdale Plaza,
Brooklyn, NY 11212

cc: Kelly Lewandowski, 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

bcc: John J Martin (PAD)
Hanna Maciejko (CASD-HWPB)
Leonard Voo (DECA-RCB)
Derval Thomas (DECA-RCB)
William K. Sawyer (2ORC-WTS)
Abdool Jabar (DECA-RCB)
Jeannie M. Yu (ORC-WTS)

CERTIFICATE OF SERVICE

This is to certify that on the day of August 5, 2015, 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-02-2015-7102, 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 Mark Toney, CEO and President, Brookdale Hospital Center Housing Company, Inc., 1 Brookdale Plaza, Brooklyn, NY 11212.

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: 8/5/2015,
New York, New York

Yong Ngure

ATTACHMENT 1

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1, 4, & 5)**

Respondent: Brookdale Hospital Center Housing Company, Inc.

Facility Address: 1 Brookdale Plaza, Brooklyn, NY 11212

**Requirements Violated: Count 1 - Failing to Make Hazardous Waste Determinations
Count 4 - Failure to Ship Hazardous Waste to an Authorized Facility
Count 5 - Failure to Use a Manifest for Transportation of Hazardous Wastes**

1. Gravity-based penalty from matrix	\$ 13,455
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$ 1,845
3. Multiply line 2 by number of waste streams minus 1.	\$ 1,845
4. Add line 1 and line 3	\$ 15,300
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.	Preliminarily determined to be less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 15,300

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1, 4 & 5)

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm present in these violations was determined to be Moderate. 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 determinations, 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 Respondent did not make the required hazardous waste determinations for two waste streams.

In addition, the Respondent did not send certain wastes to a properly authorized facility. Brookdale Hospital sent empty (but not triple rinsed) and partially empty arsenic trioxide containers (one of the wastes for which a proper hazardous determination had not been made), cyclophosphamide, and vials of autoclaved spent methanol hazardous waste to a medical waste incinerator which was not authorized to accept hazardous wastes. The medical waste incinerator did not have the safety features of a hazardous waste incinerator thereby creating additional risk. Further, the Respondent failed to prepare manifests for shipments to the receiving facility resulting in an 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 empty and partially empty arsenic trioxide containers, cyclophosphamide, and vials of autoclaved spent methanol, neither the receiving facility nor the transporter were notified that the wastes they received or transported were a hazardous waste subject to regulatory requirements intended to ensure the protection of human health and the environment.

In this case, the Potential for Harm was determined to be Moderate due to the small amounts of hazardous waste in each of the two waste streams and in the shipments in counts 4 and 5. Because of the overall small amounts of hazardous waste generated by the Respondent and the fact that the three counts all involve one waste stream in common, EPA is using its enforcement discretion to consolidate the penalties in Counts 1, 4 & 5.

- b. Extent of Deviation - The extent of deviation present in this violation was determined to be Major: The applicable cell ranges from \$11,330 to \$15,580.

The mid-point (\$13,455) was selected because Respondent had characterized most of its waste streams except for two and had previously properly disposed of two of the hazardous waste streams cited in counts 4 and 5.

2. **Multi day/Multiple waste streams** - EPA used its discretion and used the multiple waste streams penalty for each of the two waste streams minus one waste stream. No multi-day penalty is being sought for counts 4 and 5 because of the small number of violative shipments. The mid-point was chosen because of the small amount of hazardous waste in each waste stream.

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: Brookdale Hospital Center Housing Company, Inc.

Facility Address: 1 Brookdale Plaza, Brooklyn, NY 11212

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

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$13,455
(a) Potential for harm.	MODERATE
(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	\$13,455
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.	Preliminarily determined to be less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 13,455

**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 Moderate. Storage of hazardous waste without a permit is a serious violation and has substantial adverse effects on the program. The person in charge of managing hazardous waste at the Brookdale Hospital Facility was not properly trained in the handling and/or management of hazardous waste and many RCRA regulations pertaining to storage of hazardous waste were violated. These included the following: failure to label containers with accumulation start date and/or words "hazardous waste;" storage of hazardous waste for more than 180 days; failure to close containers; failure to make emergency arrangements; failure to conduct weekly inspections; failure to maintain an aisle space in the container storage area; and failure to provide adequate training to staff employees handling hazardous waste. Moderate potential for harm chosen because the amount of waste involved was not significant.
- b. Extent of Deviation -The extent of deviation present in this violation was determined to be MAJOR. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with many regulations that must be met in order to be exempt from RCRA permitting.

The applicable cell ranges from \$11,330 to \$15,580. The mid-point for the cell matrix (\$13,455) was selected because although Respondent violated many requirements that had to be complied with to be exempt from permitting at its Facility, Brookdale Hospital was in compliance with many other hazardous waste requirements at the time of the Inspection.

- 2. Multiple/Multi-day** – EPA in its enforcement discretion is not assessing a multiple/multiday penalty at this time because of the overall small quantity of hazardous waste involved.

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 3)**

Respondent: Respondent: Brookdale Hospital Center Housing Company, Inc.

Facility Address: 1 Brookdale Plaza, Brooklyn, NY 11212

Requirement Violated: Failure of Respondent to Minimize Releases

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$ 9,210
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MODERATE
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.	Preliminarily determined to be less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 9,210

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 Moderate. Most of the violations stem from the fact that the Brookdale Hospital staff responsible for the handling and/or management of hazardous waste lacked adequate hazardous waste training and/or knowledge. Respondent autoclaved vials of ignitable methanol hazardous waste at high temperatures over 150 degrees Fahrenheit. Autoclaving methanol hazardous waste could have potentially caused a fire or explosion. Additionally, the potential for harm was heightened by the fact that at the time of the Inspection and at times prior thereto, the Respondent also disposed and/or released its stain/spent solvent waste, determined to be hazardous waste prior to August 2013, down the drain into the Facility's sewage system. Moderate potential for harm because of the small amounts of hazardous waste involved.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be Moderate. Although the Facility mismanaged some of its hazardous waste, the BUMHC handled the bulk of its hazardous waste appropriately.

The applicable cell ranges from \$7,090 to \$ 11,329. The mid-point (\$9210) for the cell was selected, in consideration of the fact that Respondent stored many chemicals properly.

2. **Multiple/Multi-day** - EPA in its enforcement discretion is not assessing a multiple/multiday penalty at this time because of the overall small quantity of hazardous waste involved.

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.
- h. Economic Benefit – Preliminarily determined to be less than \$5,000.

ATTACHMENT II-TABLE I
GRAVITY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		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

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		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