

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2016 SEP 29 AM 11:46
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

OMNICARE, INC.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2016-0932

CONSENT AGREEMENT AND FINAL ORDER

I.

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Respondent, Omnicare, Inc., (“Respondent”) and concerns two (2) facilities in Oklahoma each with different levels of alleged noncompliance and for different periods. The facilities that are covered by this CAFO are listed below and collectively referred to as (the “Facilities”):
 - A. The facility located at 4141 Highline Boulevard, Suite 100, Oklahoma City, Oklahoma, 73108 (the “Oklahoma Facility”); and
 - B. The facility located at 5460 S. 103rd E. Ave, Tulsa, Oklahoma 74146 (the “Tulsa Facility”).
2. Notice of this action has been given to the state of Oklahoma, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).

Re: OMNICARE, INC.
RCRA-06-2016-0932

3. For the purpose of this CAFO, where applicable, citations are made only to the Code of Federal Regulations (“C.F.R.”) since the relevant Oklahoma Administrative Code, Title 252, Chapter 205, Sections 252:205-3-2 has incorporated by reference 40 C.F.R. Parts 260, 261, 262, and 270.
4. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
5. The Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims in the CAFO.
6. The CAFO resolves only those violations which are alleged herein.
7. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA’s allegations without further adjudication of issues of law or facts, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II.
JURISDICTION

8. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of

this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a Delaware corporation, authorized to do business in the state of Oklahoma.
11. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
12. Respondent owns or operates the Facilities at the respective locations identified in Paragraph 1.
13. The Facilities are pharmacies that dispenses prescription medications, including controlled medicines to patients who reside in long-term care facilities.
14. During the period from November 2014 through August 2015, EPA conducted a RCRA investigation and record review of Respondent’s activities as a generator of hazardous waste in Oklahoma, including information voluntarily provided to EPA by Respondent (the “Investigation”).
15. In 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained additional information on Respondent’s hazardous wastes that Respondent offered for transport and treatment from at least one of the Facilities (“Responses”).
16. During the Investigation and review of the Responses, EPA discovered that Respondent, generated and offered for transport and treatment, hazardous waste having the:
 - A. Characteristic of ignitability (D001);

Re: OMNICARE, INC.
RCRA-06-2016-0932

B. Characteristic for multiple toxicity waste D005, D007, D009, D010,
D011, D013, D024, D026; and

C. Listing for several P and U listed hazardous waste.

17. The Facilities are each a “facility” within the meaning of 40 C.F.R. § 260.10.

18. EPA determined that the Facilities are similar, in that the Facilities generate hazardous waste.

19. The waste streams identified in Paragraph 16 are “hazardous waste” as defined in 40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33.

20. From the Investigation and review of the Responses, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 16 in quantities that exceeded the threshold amount, of at a minimum, 1 kilogram (“kg”) of acutely hazardous waste per month, which qualified the Oklahoma City Facility for large quantity generator (“LQG”) status under 40 C.F.R. Part 262 for the periods that such wastes remained onsite.

21. Respondent is a “generator” of “hazardous waste” as those terms are defined in Sections 40 C.F.R. § 260.10.

22. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 40 C.F.R. Part 262.

OKLAHOMA CITY

Claim i. Notification Requirements

23. The allegations in Paragraphs 1-22 are realleged and incorporated by reference.

24. During the Investigation and review of the Responses, EPA determined that Respondent operated as a LQG at the Oklahoma City Facility during the period from 2011 through 2014.

Re: OMNICARE, INC.
RCRA-06-2016-0932

25. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the EPA or authorized state a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

26. Respondent did not file with EPA or Oklahoma an adequate and timely notification of its hazardous waste activities at the Oklahoma City Facility during the period from 2011 through 2014 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to File Biennial Reports

27. The allegations in Paragraphs 1-26 are realleged and incorporated by reference.

28. Pursuant to 40 C.F.R. § 262.41, a generator who ships any hazardous waste off-site for treatment, storage and/or disposal must prepare and submit a Biennial Report to EPA by March 1 of each even-numbered year as is required by 40 C.F.R. § 262.41.

29. For the years 2012 and 2014, neither the EPA nor the Oklahoma Department of Environmental Quality received the Biennial Reports that Respondent was required to file for its Oklahoma City Facility in violation of 40 C.F.R. § 262.41.

Claim iii. Failure to Comply with the Manifest Requirements

30. The allegations in Paragraphs 1-29 are realleged and incorporated by reference.

31. Pursuant to 40 C.F.R. § 262.20(a)(1) a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262.

Re: OMNICARE, INC.
RCRA-06-2016-0932

32. EPA reviewed several manifests prepared by Respondent from 2011 through 2014, and determined that 10 manifests, within said period, were not prepared as required by the regulations. Therefore Respondent violated 40 C.F.R. § 262.20(a)(1).

OKLAHOMA CITY and TULSA

Claim iv. Failure to make Adequate Hazardous Waste Determinations

33. The allegations in Paragraphs 1-32 are realleged and incorporated by reference.

34. Pursuant to 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

35. EPA reviewed Respondent's records for the period from 2010 through 2015, and determined that Respondent failed to make adequate hazardous waste determinations on all of Respondent's solid waste streams at the Facilities.

36. Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 262.11(c), by failing to make the requisite hazardous waste determination on all of the solid waste streams generated by Respondent at the Facilities during the period from 2011 through 2014.

IV.
COMPLIANCE ORDER

37. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within one hundred and eighty (180) calendar days of the effective date of this Order, Respondent shall provide the following to EPA in writing:

Re: OMNICARE, INC.
RCRA-06-2016-0932

- A. Respondent shall certify that it has assessed its solid waste streams at the Facilities to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOPs”) to ensure that Respondent is operating at the Facilities in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facilities and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

38. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Respondent and shall include the following certification:

“I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Re: OMNICARE, INC.
RCRA-06-2016-0932

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.

TERMS OF SETTLEMENT

i. Penalty Provisions

39. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of – Eighty-Five Thousand, Three Hundred and Ten Dollars (\$85,310.00).

40. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

41. The following are Respondent's options for transmitting the penalties:

Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express

Mail, the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Re: OMNICARE, INC.
RCRA-06-2016-0932

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of Omnicare, Inc., Docket No. RCRA-06-2016-0932) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

42. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

Re: OMNICARE, INC.
RCRA-06-2016-0932

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Cost

44. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

Re: OMNICARE, INC.
RCRA-06-2016-0932

iii. Termination and Satisfaction

45. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 38. Unless the EPA, objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

iv. Effective Date of Settlement


46. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Re: OMNICARE, INC.
RCRA-06-2016-0932

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 9/20/16



Omnicare, Inc.

FOR THE COMPLAINANT:

Date: 9.26.16



John Blevins
Director
Compliance Assurance and
Enforcement Division

Re: OMNICARE, INC.
RCRA-06-2016-0932

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 09-29-2016



Thomas Rucki
Regional Judicial Officer

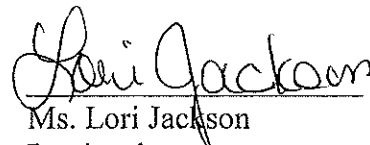
Re: OMNICARE, INC.
RCRA-06-2016-0932

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of Sept., 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Omicare Inc.,
c/o Frances E. Phillips
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201-4761


Ms. Lori Jackson
Paralegal