

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of:

The Brookdale Hospital Medical Center

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery Act
as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2015-7102

REGIONAL HEARING
CLERK

2016 MAR-2 / AM 9:17

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes 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 Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279.

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). Since 1986, New York State has been authorized for many hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 75 Fed. Reg. 45489 (August 3, 2010).

On August 4, 2015, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the "Region"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent Brookdale Hospital Center Housing Company, Inc. (hereinafter "Respondent" or "Brookdale"). The Complaint alleged that Brookdale violated requirements of the authorized New York hazardous waste program. In a subsequent communication, Brookdale indicated that its actual corporate name is "The Brookdale Hospital Medical Center." With the Respondent's consent, Complainant on December 24, 2015 amended the Complaint to change the name of the Respondent to "The Brookdale Hospital Medical Center."

The Complainant and Brookdale agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). The parties have met and held settlement discussions. EPA's Findings of Fact and Conclusions of Law are based on information of which Complainant was aware as of October 2014, and the recitation below of such findings and conclusions is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is The Brookdale Hospital Medical Center located at 1 Brookdale Plaza, Brooklyn, NY 11212.
2. 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.
3. The above-referenced location constitutes Respondent's "Facility" as that term is defined at 6 New York Codes, Rules and Regulations "NYCRR" § 370.2(b).
4. Respondent is a not-for-profit corporation organized in 1968 pursuant to the laws of the State of New York.
5. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and 6 NYCRR § 370.2(b).
6. Respondent has been, and remains, the owner and/or operator of the Facility within the meaning of 6 NYCRR § 370.2(b).
7. 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.
8. Prior and subsequent to October 2014, Respondent has been a generator of hazardous waste within the meaning of 6 NYCRR § 370.2(b) at its Facility.
9. 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).

10. 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 to EPA's knowledge generated less than one kg of acute hazardous waste in each calendar month.
11. Respondent is considered a small quantity generator as that phrase is defined in 6 NYCRR §370.2(b).
12. 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).
13. 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.
14. On or about December 24, 2014, EPA issued to Respondent a combined Notice of Violations ("NOV") and Information Request Letter ("IRL") regarding its Facility.
15. On or about March 12, 2015, a duly authorized representative of Brookdale submitted the Respondent's certified Response ("Response") to the combined NOV and IRL.
16. On August 4, 2015, EPA issued a Complaint to the Respondent alleging the following violations of Subtitle C of RCRA and its implementing regulation:
 - a. Failure to make hazardous waste determinations which constitutes a violation of 6 NYCRR § 372.2(a)(2);
 - b. Operation of a hazardous waste management facility without having obtained a permit or qualifying for interim status which constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(a);
 - c. Failure to minimize the risk of fire, explosion and releases at the facility which is a violation of 6 NYCRR § 373-3.3(b);
 - d. Failure to offer for shipment or ship its hazardous waste to an authorized facility which is a violation of 6 NYCRR § 372.2(b)(5)(iii); and
 - e. Failure to prepare hazardous waste manifests when offering hazardous wastes for transport in violation of 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i).
17. Respondent has obtained several extensions of time in which to file its Answer to the Complaint as approved by the Regional Judicial Officer and has not yet answered the Complaint.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the above EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty and other terms of settlement set forth below; and (d) waives its right to contest or appeal the Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, that its facilities are in compliance with applicable RCRA regulations found at Subtitle C of RCRA and its implementing regulations, including New York's authorized hazardous waste regulations.
2. Respondent shall hereafter comply with the hazardous waste rules cited in EPA's Complaint to the extent applicable to Respondent, including but not limited to the following:
 - a. making hazardous waste determinations for each solid waste previously generated at its facility (to the extent Respondent has not done so) and for each solid waste newly generated at its facility pursuant to 6 NYCRR § 372.2(a)(2);
 - b. maintaining and operating the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 6 NYCRR § 373-3.3(b);
 - c. shipping its chemotherapy hazardous waste to an authorized facility pursuant to 6 NYCRR § 372.2(b)(5)(iii);
 - d. preparing a hazardous waste manifest when offering its chemotherapy hazardous wastes for transport off site pursuant to 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i);
 - e. complying with all applicable provisions for the short term accumulation of hazardous waste by generators as set forth or referenced in 6 NYCRR § 372.2(a)(8)(ii) and accumulate hazardous waste on site for no longer than the allowed time period; and
 - f. as an alternative to compliance with the generator provisions identified in subparagraph 2.e of this Consent Agreement, obtaining and complying with a

hazardous waste storage permit from the New York State Department of Environmental Conservation. However, Respondent must comply with the appropriate requirements referred to in subparagraph 2.e above until such permit is obtained and in effect.

3. Any responses, documentation, and evidence submitted in connection with this Consent Agreement 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

4. Brookdale shall pay a civil penalty to EPA in the total amount of **THIRTY-FIVE THOUSAND EIGHT HUNDRED AND THIRTY-THREE DOLLARS (\$35,833)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF BROOKDALE HOSPITAL MEDICAL CENTER***, and shall bear thereon the **Docket Number RCRA-02-2015-7102**. If Brookdale chooses to make the payment by EFT, then Brookdale shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
- 6) Name of Respondent: **The Brookdale Hospital Medical Center**
- 7) Case Number: **RCRA-02-2015-7102**.

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before forty-five (45) calendar days of the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Brookdale shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Jeannie M. Yu, Esq.,
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866

and

Karen Maples,
Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1631
New York, New York 10007-1866

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment.
5. Complainant shall mail to Respondent a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
 6. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.

7. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
8. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
9. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
10. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
11. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
12. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
13. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
14. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
15. Each party hereto shall bear its own costs and fees in this matter.
16. Pursuant to 40 C.F.R. § 22 31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT:

THE BROOKDALE HOSPITAL MEDICAL CENTER

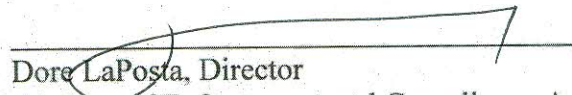
BY: Mark E. Toney
Authorizing Signature

NAME: MARK E. TONEY
(PLEASE PRINT)

TITLE: PRESIDENT & CEO

DATE: 1-26-16

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: FEBRUARY 28, 2016

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and is issued as an Order pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b) (3)18), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007

DATE: February 25, 2016

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Lisa D. Hayes
Assistant General Counsel
The Brookdale Hospital Medical Center
1 Brookdale Plaza
Brooklyn, New York 11212-3198

Dated:

2/26/14

Lisa D. Hayes