



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 JUL 10 AM 12:18
REGIONAL HEARING
CLERK

July 10, 2007

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Suzanne M. Avena, Esq.
Garfunkel, Wild & Travis, P.C.
Attorney for Respondent
11 Great Neck Road
Great Neck, New York 11021

Re: In the Matter of Brooklyn Hospital Center
Docket No. RCRA-02-2007-7105

Dear Ms. Avena:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2 on June 29, 2007.

The schedule for payment of the penalty is set forth in Paragraph 6 of the Consent Agreement. Kindly have your client arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

A handwritten signature in cursive script that reads "Beverly Kolenberg".

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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REGIONAL HEARING
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-----X
In the Matter of :
:
BROOKLYN HOSPITAL CENTER : CONSENT AGREEMENT AND
: FINAL ORDER
:
Respondent : Docket No. RCRA-02-2007-7105
:
Proceeding Under Section 3008 :
of the Solid Waste Disposal :
Act, as amended. :
-----X

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act ("Act"), as amended by various statutes including the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. ("collectively referred to as "RCRA" or the "Act").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to Brooklyn Hospital Center on December 27, 2006.

It has been agreed by the parties that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b) is an appropriate means of resolving specified claims against Respondent without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Brooklyn Hospital Center a medical hospital/institution that is part of the New York Presbyterian Association ("Respondent").
2. Respondent is engaged in the business of diagnosing and treating medical conditions and diseases in a building located at 121 DeKalb Avenue, Brooklyn, New York 11201 (the "Facility").
3. 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).

4. Respondent has been and remains the "owner" of the Facility.
5. Respondent has been and remains the "operator" of the Facility.
6. In response to Respondent's Notification, dated February 1, 1984, that it generated hazardous waste, EPA provided Respondent with EPA Identification Number NYD 04155665.
7. On or about April 25, 2006 and May 1, 2006, duly authorized representatives of EPA conducted a multi-day Compliance Evaluation Inspection (the "Inspection") of the Facility.
8. At the time of EPA's Inspection, the Inspectors documented that Respondent generated spent fluorescent light bulbs, chemotherapy wastes and other solid wastes, as defined in 6 NYCRR § 371.1 (c) in the course of its operations at the Facility .
9. At the time of and prior to the Inspection, Respondent did not determine whether such solid wastes were hazardous wastes. Failure to make a hazardous waste determination constitutes a violation of 6 NYCRR § 372.2(a)(2).
10. At the time of and prior to the Inspection, Respondent had generated and offered for transport off-site, as regulated medical waste, vials containing more than 3% by weight of unused Cyclophosphamide, Daunomycin and Mitomycin without preparing a manifest, which is a violation of 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i).
11. At the time of and prior to the Inspection, Respondent had failed to submit a Land Disposal Restriction Notification stating whether its hazardous wastes were subject to the land disposal restrictions or certifying that its hazardous wastes met the treatment standards at 6 NYCRR § 376.4, which is a violation of 6 NYCRR § 376.1(g)(1).
12. At the time of the Inspection, Respondent had failed to make agreements with New York State emergency response teams, emergency response contractors and equipment suppliers, and failed to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the Facility. Failure to make such arrangements is a violation of 6 NYCRR § 373-3.3(g)(1)(i) and § 373-3.3(g)(1)(iii).
13. At the time of the Inspection, Respondent had failed to provide employees handling hazardous waste at the Facility with proper training in waste handling and emergency procedures and failed to institute a program to ensure the Facility's compliance with hazardous waste management regulations and implementation of emergency procedures, which is a violation of 6 NYCRR § 373-3.2(g).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA and the "Consolidated

Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (40 C.F.R. § 22.18), it is hereby agreed as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent admits the jurisdictional basis for this matter, neither admits nor denies the Findings of Fact and Conclusions of Law in this Consent Agreement, and waives its right to contest or appeal the attached Final Order.

2. Respondent shall submit, within twenty (20) days of the effective date of this Order, a certified statement signed by a responsible official of Respondent in the form below that it (1) has made a hazardous waste determination for all its solid wastes and chemotherapy wastes, (2) is preparing manifests for transportation of all hazardous wastes, (3) has sent the one-time Land Disposal Restriction Notification for each hazardous waste to its treatment, storage or disposal facility, (4) has made appropriate arrangements with emergency response authorities with regard to its potential need for future assistance, and (5) has provided training to its emergency coordinator and any employees handling hazardous waste.

a. The certification shall state:

To the best of my knowledge, after thorough investigation, I certify that all the information submitted to EPA is 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.

b. Respondent shall submit the certification to EPA by mailing the notice to

Mr. Abdool Jabar, Environmental Engineer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 22nd Floor
New York, N.Y. 10007-1866

3. 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 or conditions.

4. This Consent Agreement does not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law nor shall the Consent Agreement be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. Respondent consents to the payment of a civil penalty as set forth in this Consent

Agreement, and agrees to comply with the compliance provisions of this Consent Agreement, and to its conditions.

6. Respondent shall pay, by cashier's or certified check, a civil penalty in the total amount of **fifty-five thousand nine hundred and thirty-nine dollars (\$55,939.00)**. Payment shall be made in **three installments of \$18,647, \$18,646 and \$18,646**, respectively, payable to the **"Treasurer of the United States of America"** and shall be mailed to **EPA, Region 2 (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania 15251**. Each check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Brooklyn Hospital Center, Docket. No. RCRA-02-2007-7105.

Payment of the first installment of the penalty must be received at the above address on or before forty-five (45) calendar days after the date this Final Order is signed (the "due date"). The second payment must be received on or before 180 days after the due date, and the third payment must be received on or before 360 days after the due date. Respondent shall also send a copy of each check in payment of the installments to both:

Beverly Kolenberg
Assistant Regional Counsel,
United States Environmental Protection Agency,
290 Broadway, 17th Floor
New York, New York, 10007-1866

and

Karen Maples,
Region 2 Regional Hearing Clerk,
United States Environmental Protection Agency,
290 Broadway, 16th Floor
New York, New York, 10007-1866

a. Failure to pay the requisite 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. Further, if timely payment is not received, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the total unpaid principal amount from the due date of the installment payment through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on the total unpaid principal amount if any installment payment is not paid within 90 days of its due date.

d. The effective date of this Consent Agreement and Final Order shall be the date

it is filed with the Regional Hearing Clerk. Complainant shall endeavor to provide Respondent with timely notice of such filing.

7. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA in full settlement of the civil liabilities that might have attached to Respondent as a result of the violations alleged by EPA in the Complaint bearing the Docket No. RCRA-02-2007-7105.

8. The effect of settlement described in Paragraph 7, above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in the certification required by Paragraph 2, above.

9. Respondent has read the Consent Agreement, understands its terms, voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

10. Respondent waives its right to request a hearing on this Agreement, or the Final Order included herein, including any right to contest any allegations contained within those documents.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Respondent consents to service of a copy of the executed Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

13. 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.

14. All communications related to the terms and conditions of this Consent Agreement shall be sent to the designated representative of Respondent as stated below in this paragraph. In the event of a change in the designated representative, Respondent shall notify EPA in writing promptly.

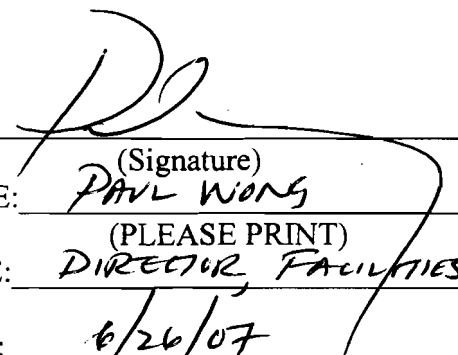
Paul Albertson, Senior Vice President
Ambulatory Care
The Brooklyn Hospital Center
121 DeKalb Avenue
Brooklyn, New York 11201

15. Each party hereto shall bear its own costs and fees in this matter.

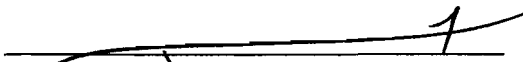
16. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

In the Matter of Brooklyn Hospital Center, Docket No. RCRA-02-2007-7105

RESPONDENT:

BY: 
NAME: PAUL WONG
(PLEASE PRINT)
TITLE: DIRECTOR, FACILITIES MGMT
DATE: 6/26/07

COMPLAINANT: United States Environmental Protection Agency
Region 2

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

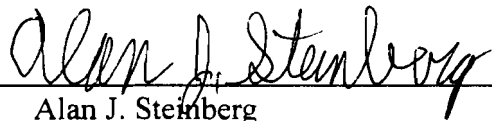
DATE: JUNE 27, 2007

In the Matter of Brooklyn Hospital Center, Docket No. RCRA-02-2007-7105

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

DATE: 6-29-07



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Brooklyn Hospital Center, Docket No. RCRA-02-2007-7105

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:

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

Copy by Certified Mail,
Return Receipt Requested:

Suzanne M. Avena, Esq.
Garfunkel, Wild & Travis, P.C.
Attorney for Brooklyn Hospital Center
11 Great Neck Road
Great Neck, New York 11021

Dated: JUL 10 2007

Smildred Baey