



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 MAR 28 P 9:40
REGIONAL HEARING
CLERK

MAR 28 2013

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Suzanne M. Avena, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: In the Matter of Montefiore Medical Center
Docket Number RCRA-02-2012-7103

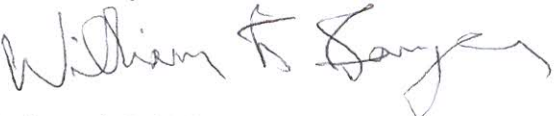
Dear Ms. Avena:

Enclosed is a ^{AN ORIGINAL} ~~copy~~ of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator (or his delegate) of the U.S. Environmental Protection Agency, Region 2. The original of this document will be filed with the Regional Hearing Clerk of EPA, Region 2. ^{OTHER}

Please note that payment is due within forty-five (45) days of effective date of this Consent Agreement and Final Order. Please arrange for payment of this penalty according to the instructions given in that Order.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3205.

Sincerely,


Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

cc: Russ Brauksieck, Chief
NYSDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of:

Montefiore Medical Center Inc.,

Respondent,

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2012-7103

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG 21
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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 December 29, 2011, 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 Montefiore Medical Center Inc. (hereinafter “Respondent” or “MMC”). The Complaint alleged that MMC violated requirements of the authorized New York hazardous waste program.

The Complainant and MMC 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). No adjudicated findings of fact or conclusions of law have been made. 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 August 2012, 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 MMC.
2. Respondent is a medical hospital/institution engaged in the business of researching, diagnosing and treating medical illnesses and diseases.
3. Respondent has various locations in the New York area including the following:
 - a. the main hospital which includes the buildings located next to each other at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467 ("Montefiore Moses Division" or "MosesD"), and
 - b. the buildings located at 1695 Eastchester Road, Bronx, NY 10461 ("Montefiore Medical Park" or "MedicalP").
4. MosesD and MedicalP each constitute a "Facility" within the meaning of 6 NYCRR § 370.2(b).
5. Respondent is a not-for-profit corporation organized in 1884 pursuant to the laws of the State of New York.
6. 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).
7. Respondent has been and remains the owner of the MosesD Facility.
8. Respondent has been and remains the operator of each Facility described in Paragraph 3 above.
9. Upon information and belief, Respondent, in carrying out its medical activities, including the research, 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 Facilities.
10. Upon information and belief, in carrying out its medical activities, including the research, diagnosis and treatment of illnesses and diseases, and in the course of normal building maintenance, Respondent has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at its Facilities.
11. Upon information and belief, in carrying out its medical activities, including the research, 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 one or more of its Facilities.
12. At all times relevant to the Complaint and subsequent thereto, Respondent has been a “generator” of “hazardous waste” as those terms are defined in 6 NYCRR § 370.2(b).
 13. As of October 2010 and prior and subsequent thereto, Respondent has been a generator of hazardous waste and “acute hazardous waste” within the meaning of 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii) at its Facilities.
 14. During the period from October 2007 through October 2010, Respondent generated at the MosesD Facility at least 1000 kilograms (“kg”) of hazardous waste in each calendar month.
 15. At the time of the Inspections (as defined below) and at times both prior thereto and subsequent thereto, Respondent was and is a large quantity generator at the MosesD Facility.
 16. As of January 2011, and at times both prior thereto and subsequent thereto, Respondent, at the MedicalP Facility, has generated, and continues to generate, (at least) 100 kg of hazardous waste in a calendar month.
 17. Respondent at the MedicalP Facility is considered a small quantity generator as that phrase is defined in 6 NYCRR § 370.2(b).
 18. Respondent’s Facilities are “existing hazardous waste management facilities” (or “existing facilities”) within the meaning of 6 NYCRR § 370.2(b).
 19. On or about October 12, 13, 18, 19, & 21, 2010, and January 3, 2011, duly authorized representatives of EPA conducted Compliance Evaluation Inspections (“Inspections”) of Respondent’s Facilities pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.
 - a. The MosesD Facility was inspected on or about October 12, 13, 18, 19 and 21, 2010; and
 - b. The MedicalP Facility was inspected on or about January 3, 2011.
 20. On or about April 1, 2011, EPA issued Respondent a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding its Facilities.
 21. On or about May 5, 2011, a duly authorized representative of the Respondent submitted its Response to the combined NOV and IRL.
 22. On December 29, 2011, 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 MosesD facility which are violations of 6 NYCRR § 373-3.3(b);
 - d. Failure to offer for shipment or ship its hazardous waste to an authorized facility which are violations of 6 NYCRR § 372.2(b)(5)(iii);
 - 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); and
 - f. Failure to send a one-time land disposal restrictions notification in violation of 6 NYCRR § 376.1(g)(1).
23. Respondent has not yet answered the Complaint.
24. Respondent has obtained several extensions of time in which to file its Answer to the Complaint as approved by the Regional Judicial Officer.

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 as 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 operations at the MosesD and MedicalP 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 regulations set forth in Paragraph 1 and those cited in EPA's Complaint, including but not limited to the following:
 - a. At its MosesD Facility:

- i. make 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);
 - ii. maintain and operate 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);
 - iii. comply 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 ninety (90) days; and
 - iv. as an alternative to compliance with the generator provisions identified in subparagraph 2.a.iii of this Consent Agreement, obtain and comply 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.a.iii above until such permit is obtained.
- b. At its MedicalP facility:
 - i. ship its chemotherapy hazardous waste to an authorized facility pursuant to 6 NYCRR § 372.2(b)(5)(iii);
 - ii. prepare 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); and
 - iii. to the extent it has not done so, send a one-time land disposal restrictions notification pursuant to 6 NYCRR § 376.1(g)(1).
3. All responses, documentation, and evidence submitted in response to this Consent Agreement should be sent to:

Mr. Charles Zafonte
Multimedia Enforcement Coordinator
Division of Enforcement and Compliance Assistance
Compliance and Program Support Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

And

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. MMC shall pay a civil penalty to EPA in the total amount of **ONE HUNDRED THOUSAND DOLLARS** (\$100,000). 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 MONTEFIORE MEDICAL CENTER INC.***, and shall bear thereon the **Docket Number RCRA-02-2012-7103**. If MMC chooses to make the payment by EFT, then MMC 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: Montefiore Medical Center Inc.**
- 7) **Case Number: RCRA-02-2012-7103.**

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, MMC 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 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.
 - d. The Effective Date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.
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. 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.
 9. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

10. 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.
11. Respondent waives its right to request a hearing on the Complaint, this 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.
12. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
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. Each party hereto shall bear its own costs and fees in this matter.
15. Respondent agrees that all terms of settlement are set forth herein.
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:

MONTEFIORE MEDICAL CENTER INC.

BY: 
Authorizing Signature

NAME: Philip O. Ozuah, MD, PhD
(PLEASE PRINT)

TITLE: EVP and COO

DATE: 3/20/13

In the Matter of Montefiore Medical Center Inc. Docket Number RCRA-02-2012-7103

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**

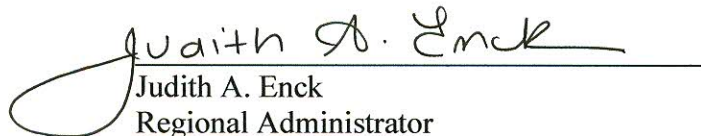


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: March 26, 2013

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and 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 of EPA, Region 2.

A handwritten signature in black ink that reads "Judith A. Enck". The signature is written in a cursive style with a large, looping initial "J". A horizontal line is drawn across the signature.

Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

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:

Suzanne M. Avena
Counsel for Montefiore Medical Center Inc.
Garfunkel Wild P.C.
111 Great Neck Road, 6th Floor
Great Neck, New York 11021

Dated: March 29, 2013

Suzanne M. Avena