



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 09 2017

BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
and
BY EMAIL

Gail C. Saunders
Senior Counsel
Environmental Law Division
New York City Law Department
100 Church Street
New York, New York 10007

Re: The Matter Of The City Of New York Including The New York City Department Of Health
and Mental Hygiene, Docket Number RCRA-02-2016-7102

Dear Ms. Saunders:

Enclosed is a 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.

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: Kelly Lewandowski, Chief
NYSDEC

U.S. Environmental
Protection Agency-Region 2
2017 MAR -9 PM 8:16
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In The Matter of:

The City of New York

Including the

**New York City Department of Health
and Mental Hygiene,**

Respondent,

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

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**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2016-7102

REGISTRY OF PUBLIC
CENTRE
2017 JUN -9 AM 8:16
U.S. Environmental
Protection Agency

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 July 15, 2016, 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 City of New York (“NYC”) including the New York City Department of Health and Mental Hygiene (hereinafter “DOHMH”) (collectively known as the “Respondent”). The Complaint alleged that Respondent violated requirements of the authorized New York hazardous waste program.

The Complainant and Respondent 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. The recitation below of findings of fact and conclusions of law 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. DOHMH is a mayoral agency of the City of New York responsible for public health along with enforcement of public health rules and regulations and has executive or operational responsibilities for Public Health Laboratories (“PHL”).
2. PHL, located at 455 First Avenue, New York, New York 10016, is a laboratory authorized to perform certain clinical and environmental laboratory procedures pursuant to permits issued by the New York State Department of Health. In this capacity, PHL conducts testing for the diagnoses of causative agents of disease and environmental hazards.
3. PHL has occupied the above location since 1966.
4. NYC has legal responsibilities for DOHMH and is ultimately responsible for the operation of PHL.
5. The location discussed in paragraphs 2 and 3, above constitutes Respondent’s “Facility” as that term is defined at 6 NYCRR § 370.2(b).
6. Respondent has been and remains the owner and operator of the Facility within the meaning of 6 NYCRR § 370.2(b).
7. NYC 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)).¹
8. PHL, in carrying out its activities 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.
9. In carrying out its activities, and in the course of normal building maintenance operations, PHL has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at the Facility.

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

10. As of May 2015, and prior and subsequent thereto, Respondent has been a generator of hazardous waste at the Facility.
11. Subsections 6 NYCRR 373-1.1(d) and 6 NYCRR 372.2(a)(8)(ii) provide, in part, that a generator may accumulate hazardous waste on-site for a period of 180 days or less without being subject to the 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).
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. At the time of EPA's Inspection described in paragraph 15 below, and for the year prior thereto, Respondent was a small quantity generator as that phrase is defined in 6 NYCRR §370.2(b) at the Facility.
14. Respondent's Facility is an "existing hazardous waste management facility" (or "existing facility") within the meaning of 6 NYCRR § 370.2(b).
15. On or about May 11-12 and 20, 2015, a duly designated representative of EPA conducted a Compliance Evaluation Inspection ("Inspection") of Respondent's Facility pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.
16. On or about October 23, 2015, EPA issued to PHL a combined Notice of Violation ("NOV") and Information Request Letter ("IRL") regarding its Facility.
17. On or about November 23, 2015, a duly authorized representative of DOHMH/PHL submitted its certified Response to the combined NOV and IRL attesting that the information provided in the Response was true and accurate.
18. On July 15, 2016, 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); and
 - 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).
19. Respondent has obtained two 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 EPA's Findings of Fact and Conclusions of Law set forth in this Consent Agreement; (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 Facility is 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 at its Facility 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); and
 - b. 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 accumulating hazardous waste on site for no longer than the allowed time period.
3. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall 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

And

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, Room 1635
New York, New York 10007

EPA shall address any written communications to Respondent at the following address:

Gail C. Saunders
Senior Counsel
Environmental Law Division
New York City Law Department
100 Church Street
New York, New York 10007

4. Respondent shall pay a civil penalty to EPA in the total amount of **FORTY-THREE THOUSAND DOLLARS** (\$43,000). Such payment shall be made by 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 THE CITY OF NEW YORK INCLUDING THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE***, and shall bear thereon the **Docket Number RCRA-02-2016-7102**.

If Respondent chooses to make the payment by EFT, then Respondent 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: **IN THE MATTER OF THE CITY OF NEW YORK INCLUDING THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE**,
7. Case Number: **RCRA-02-2016-7102**.

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before sixty (60) calendar days of the Effective Date of this CA/FO.

- 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. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint. 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.

In The Matter Of The City Of New York Including The New York City Department Of Health
And Mental Hygiene, Docket Number RCRA-02-2016-7102

**RESPONDENT THE CITY OF NEW YORK INCLUDING THE NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

BY: Oxiris Barbot
Authorizing Signature

NAME: OXIRIS BARBOT
(PLEASE PRINT)

TITLE: First Deputy Commissioner

DATE: 2/22/17

In The Matter Of The City Of New York Including The New York City Department Of Health
And Mental Hygiene, Docket Number RCRA-02-2016-7102

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



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

FEB 28 2017

DATE: _____

In The Matter Of The City Of New York Including The New York City Department Of Health
And Mental Hygiene, Docket Number RCRA-02-2016-7102

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 40 C.F.R. § 22.31(b).



Catherine R. McCabe
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: _____

3/3/17

In The Matter Of The City Of New York Including The New York City Department Of Health
And Mental Hygiene, Docket Number RCRA-02-2016-7102

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:

Gail C. Saunders
Senior Counsel
Environmental Law Division
Representing The City Of New York Including The
New York City Department Of Health and Mental
Hygiene
New York City Law Department
100 Church Street
New York, New York 10007

Dated: 3/9/2017

Youn Myint