

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In The Matter of:

Jersey City Medical Center,

Respondent.

Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended.

CONSENT AGREEMENT

AND

FINAL ORDER

Docket Number: RCRA-02-2020-7102

PRELIMINARY STATEMENT

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

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this CA/FO is an appropriate means of resolving the RCRA claims specified herein against Jersey City Medical Center ("Respondent" or "JCMC"), without litigation. To that end, the parties have met and negotiated this settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is JCMC.
2. JCMC is a not-for-profit corporation organized pursuant to the laws of the State of New Jersey.
3. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a)).

4. JCMC is, and has been since 2010, the owner and operator of a medical hospital/institution, situated at 355 Grant Street, Jersey City, New Jersey 07302 ("Jersey City facility"), engaged in the business of diagnosing and treating medical illnesses and diseases with a full range of services such as obstetrics, operating rooms, same day surgery, pediatrics, imaging and diagnostics, and cardiology, which includes a cardiac catheterization laboratory.
5. JCMC, since at least 2010, is and has been both the "owner" and "operator" of the facility as both terms are defined in 40 C.F.R. § 260.10 as incorporated by N.J.A.C. 7:26G-4.1(a).
6. JCMC in carrying out its medical activities, including the diagnosis and treatment of illnesses and diseases, and in the course of normal building maintenance, has been generating, and continues to generate, "hazardous waste," as defined in 40 C.F.R. § 261.3 as incorporated by reference in N.J.A.C. 7:26G-5.1(a), at its facility.
7. JCMC, in carrying out its medical activities, including the diagnosis and treatment of illnesses and diseases, has been generating, and continues to generate, "acute hazardous waste," as defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a), at its facility.
8. As of December 2017, and subsequent to the December 2017 inspection, JCMC has continued to generate between 100 kilograms ("kgs") and 1,000 kgs of non-acute hazardous waste in a calendar month.
9. Based upon information provided by JCMC, JCMC is a "small quantity generator" of hazardous waste as that phrase is defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
10. On or about December 12, 2017 and, again, on December 19, 2017, duly designated representatives of EPA conducted an inspection of the Jersey City facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine JCMC's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations (the "December 2017 Inspections").
11. On or about February 7, 2019, EPA issued to JCMC a combined Notice of Violation ("NOV") and Request for Information ("IRL").
12. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed JCMC that EPA had identified a number of potential RCRA violations at its facility and requested it to provide a description and documentation of the actions it had taken to correct the violations identified by EPA in that NOV.
13. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to JCMC's handling of hazardous waste and acute hazardous waste at its Jersey City facility.
14. On or about March 28, 2019, JCMC submitted its response to the combined NOV and IRL ("March 28, 2019 Response").
15. As a result of the December 12, 2017 Inspection (information from the December 19 inspection is not germane to the case) and JCMC's responses to both the February 7, 2019

combined NOV and IRL, EPA representatives determined that Respondent at the time of the December 12 Inspection had failed to: (1) make hazardous waste determinations for waste-streams found at the Jersey City facility and (2) meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status and had stored hazardous waste at the Jersey City facility.

16. EPA and JCMC met on January 23, 2020 to discuss the EPA determinations described in Paragraph 16, *supra*, and agreed to settle this matter by entering into this Consent Agreement.

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, 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 basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. JCMC shall hereinafter, at its facility, comply with all applicable RCRA requirements relating to the generation, management and disposal off-site of all hazardous waste stored for short time-periods at its Jersey City facility.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is in compliance with all the applicable requirements of RCRA relating to the generation, management and disposal off-site of all hazardous waste stored at its Jersey City facility.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect JCMC's obligation to comply with all applicable federal, state and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
4. Respondent shall pay a civil penalty to EPA in the total amount of **FORTY THOUSAND (\$40,000) DOLLARS**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer. 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 JERSEY CITY MEDICAL CENTER* and shall bear thereon the Docket No. RCRA-02-2020-7102. 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 8010727 Environmental Protection Agency.
 - 6) Name of Respondent: Jersey City Medical Center
 - 7) Number: RCRA-02-2020-7102
5. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the "due date")
- 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
 - d. The civil penalty provided for herein constitutes "penalt[ies]" within the meaning of 26 U.S.C. § 162(f) and is not deductible expenditures for purposes of federal or state law.
6. Complainant shall mail to Respondent (to the representatives designated in Paragraph 7, *infra*, 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.

7. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

William Chernes, Enforcement Officer
RCRA Compliance Branch
Enforcement & Compliance Assistance Division
US Environmental Protection Agency, Region 2, 21st Floor
290 Broadway
New York, New York 10007-1866

and

Gary H. Nurkin, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, Room 1621
New York, New York 10007

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to the payment of the penalty) to Respondent at the following address:

Mr. John P. Lacy, Esq.
Connell Foley LLP
One Newark Center
1085 Raymond Blvd., 19th Floor
Newark, NJ 07102

8. Full payment of the penalty described in Paragraphs 4 and 5 of the Consent Agreement, *supra*, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in paragraph 15, *supra*, of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty 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.
9. The provisions of this Consent Agreement shall be binding upon both Complainant and Respondent along with their authorized representatives and successors or assigns.
10. JCMC waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.

11. The undersigned signatory for Respondent certifies that he\she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
12. Each party hereto agrees to bear its own costs and attorneys' fees in this matter.

RESPONDENT JERSEY CITY MEDICAL CENTER Docket No: RCRA 02-2020-7102

:

BY: 

NAME: David A. Mebane

(PLEASE PRINT)

TITLE: EVP & General Counsel

DATE: 7/15/2020

COMPLAINANT:

**KATHLEEN
ANDERSON**

Digitally signed by
KATHLEEN ANDERSON
Date: 2020.07.28
13:27:16 -04'00'

Dore LaPosta, Director

Enforcement and Compliance Assistance Division

U.S. Environmental Protection Agency, Region 2

290 Broadway

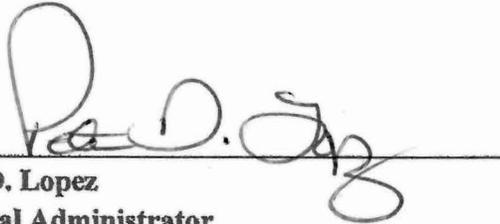
New York, New York 10007-1866

DATE: _____

In the Matter of Jersey City Medical Center
Docket No. RCRA-02-2020-7102

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Jersey City Medical Center*, bearing Docket No. RCRA-02-2020-7102. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency

DATE: 7/28/2020

In the Matter of Jersey City Medical Center
Docket Number RCRA 02-2020-7102

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 email

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866
maples.karen@epa.gov

Copy by email

Mr. John P. Lacey, Esq.
Connell Foley LLP
One Newark Center
1085 Raymond Blvd., 19th Floor
Newark, NJ 07102
JLacey@connellfoley.com>

Date: July 30, 2020

New York, New York

Gary H. Nurkin