

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
CLERK

2015 APR 29 AM 8 15

U.S. Environmental
Protection Agency-Reg 2

In The Matter of:

SUNY Downstate 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-02-2014-7104

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 other 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 13, 2014, 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 SUNY Downstate Medical Center Inc. (hereinafter “Respondent” or “SUNY DMC”). The Complaint alleged that SUNY DMC violated requirements of the authorized New York hazardous waste program.

The Complainant and SUNY DMC 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 June 2013, 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 SUNY DMC.
2. Respondent is a medical hospital, engaged in the business of diagnosing and treating medical illnesses and diseases, and a professional school, university, and/or institution, teaching medical/health education, and conducting medical and biotechnical research.
3. Respondent is located at 450 Clarkson Avenue, Brooklyn, New York 11203-2098.
4. The above-referenced location constitutes Respondent's "Facility" as that term is defined at 6 NYCRR § 370.2(b).
5. Respondent was founded in 1860 and is organized 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. § 690305), and 6 NYCRR § 370.2(b).
7. Respondent has been, and remains, the owner and/or operator of the Facility since at least October 1980.
8. Upon information and belief, Respondent, in carrying out its medical, educational and research activities, and in the course of normal building maintenance, has been generating, and continues to generate, "solid waste" (within the meaning of 6 NYCRR § 371.1(c)) at its Facility.
9. Upon information and belief, in carrying out its medical, educational and research activities, and in the course of normal building maintenance, Respondent has been generating, and continues to generate, "hazardous waste", as defined in 6 NYCRR Part 371.1(d), at its Facility.
10. Upon information and belief, in carrying out its medical, educational and research activities, Respondent has been generating, and continues to generate, "acute hazardous waste" as defined in 6 NYCRR § 370.2, at its Facility.
11. As of June 3, 2013 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 Facility.

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. During June 2013, Respondent generated at its Facility at least 1000 kilograms (“kg”) of hazardous waste in that calendar month.
14. A generator which generates at least 1,000 kg of non-acute hazardous waste in a calendar month or which generates at least 1 kg of acute hazardous waste in a calendar month is often referred to as a “large quantity generator”.
15. At the time of the Inspection and at times prior thereto, SUNY DMC was a large quantity generator.
16. Respondent’s Facilities are “existing hazardous waste management facilities” (or “existing facilities”) within the meaning of 6 NYCRR § 370.2(b).
17. On or about June 3, 4, 12, and 24, 2013, 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.
18. On or about December 5, 2013, EPA issued to Respondent a combined Notice of Violation (NOV) and Information Request Letter (“IRL”) regarding its Facility.
19. On or about March 19, 2014, a duly authorized representative of the Respondent submitted a certified Response to the combined NOV and IRL, attesting that the information provided in the Response was true and accurate.
20. On August 13, 2014, EPA issued a Complaint to the Respondent alleging the following violations of Subtitle C of RCRA and its implementing regulation:
 - a. Failures to make hazardous waste determinations which constitute violations 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 constitute a violation of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(a);
 - c. Failures to minimize the risk of fire, explosion and releases at its facility which are violations of 6 NYCRR § 373-3.3(b);
 - d. Failures to offer for shipment or ship its hazardous waste to an authorized facility which are violations of 6 NYCRR § 372.2(b)(5)(iii); and
 - e. Failures 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).
21. Respondent has not yet answered the Complaint.
22. Respondent has obtained several extensions of time in which 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 of this document, that, to the best of its knowledge and belief, that its operations at the Facility 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 referred to in Paragraph 1 and those cited in EPA's Complaint, including but not limited to requirements to:
 - i. make hazardous waste determinations for each solid waste previously generated at the facility (to the extent Respondent has not done so) and for each solid waste newly generated at the 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;
 - iv. as an alternative to compliance with the generator provisions identified in Paragraph 2.iii, above, obtain and comply with a hazardous waste storage permit from the New York State Department of Environmental Conservation. If Respondent chooses this option, Respondent must comply with the appropriate requirements cited in Paragraph 2.iii. above until such permit is obtained;
 - v. ship its chemotherapy hazardous waste to an authorized facility pursuant to 6 NYCRR § 372.2(b)(5)(iii); and

vi. 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).

3. All responses, documentation, and evidence submitted in response to 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. SUNY DMC shall pay a civil penalty to EPA in the total amount of **ONE HUNDRED ELEVEN THOUSAND, EIGHT HUNDRED AND EIGHTY-EIGHT DOLLARS** (\$111,888). 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 SUNY DOWNSTATE MEDICAL CENTER INC.***, and shall bear thereon the **Docket Number RCRA-02-2014-7104**. If SUNY DMC chooses to make the payment by EFT, then SUNY DMC 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: SUNY Downstate Medical Center Inc.**
- 7) **Case Number: RCRA-02-2014-7104.**

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, SUNY DMC 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.
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. The signatory for the Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and 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.
13. Respondent agrees that all terms of settlement are set forth herein.
14. Each party hereto shall bear its own costs and fees in this matter.

RESPONDENT:

SUNY DOWNSTATE MEDICAL CENTER INC.

BY: Astra Dowell
Authorizing Signature

NAME: ASTRA Dowell
(PLEASE PRINT)

TITLE: EVP/COO

DATE: 4/16/15

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**

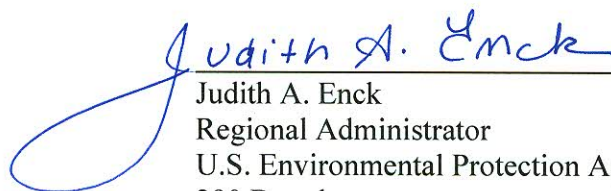


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance U.S.
Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: APRIL 22, 2015

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 as an Order, pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b) (3), effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.



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

APR 24 2015

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:

William Versfelt
Assistant Counsel
Office of General Counsel
SUNY Downstate Medical Center
450 Clarkson Avenue
Brooklyn, New York 11203

Dated: 4/29, 2015

