



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

SEP 27 2011

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

Gail S. Port, Esq  
Attorney for Maimonides Medical Center  
Proskauer  
Eleven Times Square  
New York, New York 10036-8299

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 SEP 27 P 3:32  
REGIONAL HEARING  
CLERK

Re: In the Matter of Maimonides Medical Center.  
Docket Number RCRA-02-2010-7110

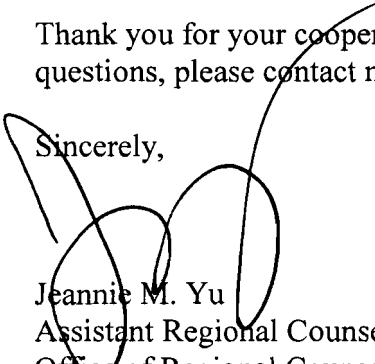
Dear Ms. Port:

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 ensure that your company makes arrangement for performance of compliance provisions in accordance with the timeframes(s) specified in the CA/FO.

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In The Matter of:

**Maimonides Medical Center,**

Respondent,

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

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

Docket No. RCRA-02-2010-7

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 SEP 27 P 3:32  
REGIONAL HEARING  
CLERK

**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.

On September 30, 2010, 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 Maimonides Medical Center Inc. The Complaint alleged that Maimonides Medical Center, Inc. violated requirements of the authorized New York hazardous waste program. Maimonides has informed EPA that it is a not for profit corporation and “Inc.” is not part of its formal name. Accordingly with the consent of the Respondent, Complainant amends the name of the Respondent that appeared in the Complaint issued in this matter to delete the “Inc.” (Maimonides Medical Center is hereinafter referred to as “Respondent” or “MMC”)

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. By entering into this CA/FO, MMC does not admit any liability arising out of the transactions or occurrences alleged in the Complaint.

#### EPA'S FINDINGS OF FACT

1. Respondent is MMC.
2. Respondent is a medical hospital/institution located at 4802 Tenth Avenue, Brooklyn, N.Y. 11219 (the "Facility")
3. Respondent is a corporation organized pursuant to, and existing under, the laws of New York.
4. Respondent was at all times relevant to the Complaint, and remains, the owner and operator of the Facility.
5. Respondent, in carrying out its medical activities, including the diagnoses 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 Facility.
6. In certain calendar months during the period from August 2008 through August 2009, Respondent generated at least 1000 kilograms ("kg") of hazardous waste in a calendar month.
7. On or about August 12 and 13, 2009, 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.
8. On or about December 1, 2009, EPA issued to the Respondent a combined Notice of Violation ("NOV") and Information Request Letter ("IRL").
9. On or about February 25, 2010, a duly authorized representative of the Respondent submitted its Response to the combined NOV and IRL and Respondent supplemented its Response at various times thereafter.

#### EPA'S CONCLUSIONS OF LAW

10. 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).
11. Respondent's property described in Paragraph 2 constitutes a "facility" within the meaning of 6 NYCRR § 370.2(b).
12. Respondent is the owner and operator of the Facility.

13. 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).
14. At certain times relevant to the Complaint, Respondent was a large quantity hazardous waste generator.
15. In the Complaint, EPA alleged that Respondent violated Subtitle C of RCRA and its implementing regulation, in the following ways:
  - a. Respondent failed to maintain its facility to minimize any unplanned sudden or non-sudden release of hazardous waste or a hazardous waste constituents to air, soil or surface water in violation of 6 NYCRR § 373-3.3(b);
  - b. Respondent failed 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).
  - c. Respondent failed to offer for shipment or ship its hazardous waste to an authorized facility in violation of 6 NYCRR § 372.2(b)(5)(iii).

### **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 allegations in the Complaint and the combined NOV and IRL; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to making full payment of the civil penalty in accordance with the terms and conditions set forth below; (e) agrees to pay any stipulated penalty due pursuant to the provisions of this CA/FO; (f) agrees to perform and implement the Supplemental Environmental Project (SEP) in accordance with the terms and conditions set forth herein; (g) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (h) waives its right to contest or appeal the Final Order. Nothing in this CA/FO shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing by MMC.

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, Respondent's facility is in compliance with all of the applicable RCRA regulations found at Subtitle C of RCRA and its implementing regulations, including New York's authorized hazardous waste regulations. Respondent shall hereafter comply with these hazardous waste **regulations including, but not limited to**, those cited in EPA's complaint.
2. MMC shall pay a civil penalty to EPA in the total amount of **NINE THOUSAND AND FIVE HUNDRED DOLLARS (\$9,500)**. 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 MAIMONIDES MEDICAL CENTER*, and shall bear thereon the Docket Number RCRA-02-2010-7110. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the due date).

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: Maimonides Medical Center.
- 7) Case Number: RCRA-02-2010-7110.

Such EFT must be received on or before 45 calendar days after 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.
- 3 Complainant shall mail to Respondent (to the representatives designated in paragraph 4, below) 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.
  - 4 Except as provided in Paragraph 2, above, in this section (and 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, by email and also by either regular first class mail or overnight courier service to:

Abdool Jabar  
Environmental Engineer  
Division of Enforcement and Compliance  
US Environmental Protection Agency  
290 Broadway

21st Floor  
New York, New York 10007  
Email: [jabar.abdool@epa.gov](mailto:jabar.abdool@epa.gov)

and

Jeannie M. Yu  
Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway  
16th Floor  
New York, New York 10007  
Email: [yu.jeannie@epa.gov](mailto:yu.jeannie@epa.gov)

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

Gail S. Port, Esq  
Counsel for Maimonides Medical Center  
Proskauer  
Eleven Times Square  
New York, New York, 10036-8299  
Email: [gport@proskauer.com](mailto:gport@proskauer.com)

and

Karen Kobus  
Vice President  
Maimonides Medical Center  
4802 Tenth Avenue  
Brooklyn, New York 11219  
Email: [kkobus@maimonidesmed.org](mailto:kkobus@maimonidesmed.org)

5. 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.
6. As a SEP, Respondent will implement a "closed chemotherapy treatment system" for the preparation and administration of chemotherapy drugs to patients at its facility for a period of 5 years. This closed system will function to seal off the intravenous ("IV") port(s) which is used in administering chemotherapy drugs to patients, when a disconnection occurs. Without the closed system, during the

preparation and administration of chemotherapy drugs, residual chemotherapy fluid may unintentionally leak from the junction port of an IV line. The SEP is designed to reduce this unintended leakage. This SEP will result in the protection of human health and welfare of patients and hospital personnel and could potentially decrease the amount of hazardous chemotherapy waste generated.

7. The total expenditure for the SEP over the 5 year period during which it is implemented shall be not less than **ONE HUNDRED AND TWO THOUSAND AND FIVE HUNDRED DOLLARS** (\$102,500).
8. MMC shall implement the above SEP at its facility within sixty (60) calendar days from the Effective Date and shall continue implementing the SEP for five (5) years after commencing it. The SEP will be considered completed after the “closed chemotherapy treatment system” has operated for five years and upon EPA’s acceptance of the SEP Completion Report (as discussed in Paragraph 10, below), the review of which EPA shall not unreasonably delay.
9. Respondent shall submit a progress report to EPA in a form mutually agreeable to both parties (e.g. email in word or pdf format, by mail, etc.) one hundred and eighty (180) calendar days after the effective date of the CA/FO and every 180 days thereafter until the “closed chemotherapy treatment system” has been operated for five years. Unless otherwise agreed, in each progress report, Respondent shall provide the following:
  - a. document all expenditures made in connection with the SEP;
  - b. identify any issues or problems that have arisen in connection with Respondent’s implementation of the SEP or any of its components, and discuss how any such issues or problems were addressed;
  - c. identify the total weight of the chemotherapy contaminated waste, including those components which contain waste chemotherapy drugs, and contaminated gauze, linens and/or disposable pads, that are listed on hazardous waste manifests;
  - d. A copy of hazardous waste manifests used to ship chemotherapy wastes off-site for disposal; and
  - e. A description of any and all releases of chemotherapy drugs that may have occurred using the closed chemotherapy treatment system, and any changes in the process and/or procedures to prevent future accidental spills.



10. Respondent shall submit a SEP Completion Report within 90 days from the date when the “closed chemotherapy treatment system” has been in operation for five years. This report shall contain at least the following information:
  - a. a detailed description of the SEP as implemented;
  - b. itemized total costs incurred (i.e. materials, labor and/or other costs) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made (if the itemization and documentation have been previously provided with a progress report, it will suffice to refer to the prior submittal);
  - c. a description of any issues or problems encountered and the solutions thereto;
  - d. a calculation by weight, as identified on hazardous waste manifests, of the total amount of chemotherapy waste that was properly discarded and prevented from release;
  - e. an evaluation and benefit analysis on the use of the “closed chemotherapy treatment” system at the facility, lessons learned regarding the use of a “closed chemotherapy treatment” system, and whether such a system should be recommended to other healthcare facilities;
  - f. description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible). Unless otherwise agreed, the final report should give, at a minimum, a description of the potential environmental benefits (i.e. minimizing exposure of employees to chemotherapy drugs, preventing generation of chemo contaminated gauze, pads, gowns, and/or linens, etc.); and
  - g. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order;
11. Following receipt of the Completion Report described in the paragraph 10 above, EPA will notify MMC in writing that it:
  - a. accepts the Completion Report; or
  - b. rejects the Completion Report, with identification of any questions it has and/or deficiencies in the report, and following the process set forth in paragraph 13 below, EPA will grant MMC an additional thirty (30) calendar days to answer any questions, to correct any deficiencies in the Completion Report, and to resubmit an amended report if required.

12. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth below, unless an extension has been granted as set forth in Paragraph 23.
13. If EPA elects to exercise the option in paragraph 11(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to that within 10 business days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such notification of deficiency or disapproval. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 25 below.
14. Delays:
  - a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within 14 business days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.
  - b. If the parties agree that the delay or anticipated delay in the completion of the SEP under this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
  - c. In the event that EPA does not agree that a delay in completing the SEP in compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP required under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
15. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of its SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within ten (10) business days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. The provisions of this paragraph shall remain in effect for seven (7) years from the Effective Date of this CA/FO.
16. In all documents or reports, including, without limitation, any Progress Report and SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by an official, officer, director or agent, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”
17. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 16, 20, 21, and 22 was inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA later determines that the certification in any of these Paragraphs was not materially accurate, Respondent shall pay a stipulated penalty in the amount of \$30,000. This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.
18. 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 in compliance with the terms and conditions of this Consent Agreement.

19. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or state permit.
20. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP as set forth herein by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent was not performing and had not planned before October 1, 2010 to perform any of the work that is part of this SEP.
21. Respondent further certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for the actions that constitute the SEP, and that Respondent in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998). Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.
22. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.
23. EPA, Region 2, may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.

24. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CA/FO and whether costs are creditable to the SEP shall be in the sole discretion of EPA.
25. Stipulated penalties will be calculated as follows:
- a. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in Paragraph 6 above, and/or to the extent that the actual allowable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP described in Paragraph 7 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
    - (i) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Thirty Thousand Dollars (\$30,000)**. Payment shall be transmitted using the same procedure specified in Paragraph 2 above.
    - (ii) If installation of the closed chemotherapy system is completed but the SEP is not operated for five years, and Respondent:
      - a. made good faith and timely efforts to complete the project; and
      - b. certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, and EPA accepts that such expenditures are creditable to the SEP, Respondent shall not pay any stipulated penalty.
    - (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty in the amount determined as follows:

$$\text{Stipulated penalty} = \left[ \frac{\$102,500 - \$ \text{allowable SEP expenditures}}{\$ 102,500} \right] \times \$ 28,500$$

- b. Stipulated penalties shall accrue for failure to timely submit any Progress Report or SEP Completion Report. Respondent shall pay a stipulated penalty in the amount of \$200 per day for days 1-20, \$500 per day for days 21-60, and \$1000 per day after 60 days. Such penalties shall begin to accrue on the day after the Progress Report or Completion Report is due and shall continue to accrue until the report is submitted.
- c. Unless Respondent writes EPA pursuant to Paragraph 25(d) below, Respondent shall pay stipulated penalties within 30 days of receipt of a written demand by EPA for such penalties. Method of payment shall be in accordance

with the provisions of Paragraph 2, herein. Interest and late charges shall be assessed as stated in Paragraph 2, herein.


- d. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this CA/FO (including any technical, financial or other information that Respondent deems relevant).
  - e. Failure of Respondent to pay any stipulated penalty due pursuant to paragraph "25c" or "26" to EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.
26. The Director, may, in his/her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA or for good cause as independently determined by the Complainant. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this CA/FO, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of its receipt of such written notice from EPA.
27. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP has been installed and is being maintained and/or operated properly and in conformity with the representations made herein. The provisions of this paragraph shall remain effective for five (5) years from the commencement of the SEP pursuant to paragraph 8 or from the Effective Date of this CA/FO until one (1) year after satisfactory completion of the SEP (including submittal of the SEP Completion Report), whichever is later.
28. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
29. This CA/FO 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.

30. The provisions of this CA/FO shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
31. This CA/FO 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 CA/FO or any of its terms and conditions.
32. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
33. 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.
34. 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.
35. 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.
36. Each party hereto shall bear its own costs and fees in this matter.
37. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of this CA/FO shall be the date it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. EPA shall provide written notice of the filing of the CA/FO with the Regional Hearing Clerk to MMC and its counsel Proskauer on or close to the date of said filing.

In the Matter of Maimonides Medical Center, Docket Number RCRA-02-2010-7110

RESPONDENT:

**MAIMONIDES MEDICAL CENTER**

BY:   
\_\_\_\_\_  
Authorizing Signature

NAME: Pamela S. Brier  
(PLEASE PRINT)

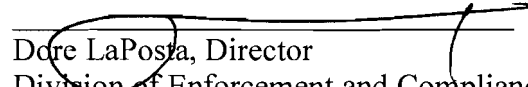
TITLE: President and Chief Executive Officer

DATE: 9/20/2011



In the Matter of Maimonides Medical Center Docket Number RCRA-02-2010-7110

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

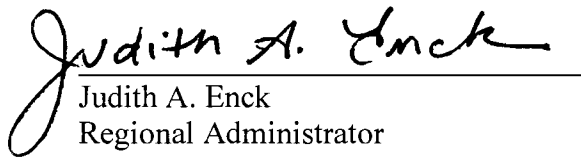
  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: SEPTEMBER 23, 2011

In the Matter of Maimonides Medical Center Docket Number RCRA-02-2010-7110

**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.



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

SEP 23 2011

In the Matter of Maimonides Medical Center Docket Number RCRA-02-2010-7110

**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 S. Port, Esq  
Attorney for Maimonides Medical Center  
**Proskauer**  
Eleven Times Square  
New York, New York 10036-8299

Dated: SEP 27, 2011

*Smildred N. Bae*  
*3*