



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)).<sup>1</sup>
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.

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

