



AUG 13 2014

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

REGIONAL HEARING
CLERK

2014 AUG 14 PM 3: 57

U.S. Environmental
Protection Agency-Reg 2

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article number: 7005 3110 0000 5966 6050

Dr. John F. Williams, Jr., President
SUNY Downstate Medical Center
450 Clarkson Avenue
Brooklyn, NY 11203

Re: **In the Matter of SUNY Downstate Medical Center**
Docket Number RCRA-02-2014-7104

Dear Dr. Williams:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency (EPA), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the Consolidated Rules of Practice, which govern this proceeding. (A brief discussion of some of these rules appears in the latter part of the Complaint.) For your general information and use, I also enclose both an Information Sheet for U.S. EPA Small Business Resources which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on EPA's Supplemental Environmental Projects Policy. Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of:

SUNY Downstate Medical Center,

Respondent

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

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2014-7104

REGIONAL HEARING
CLERK

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U.S. Environmental
Protection Agency-Reg 2

COMPLAINT

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 (“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 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) serves notice of EPA’s preliminary determination that the SUNY Downstate Medical Center (hereinafter “Respondent” or “SUNY Downstate”) has violated requirements of the authorized New York State hazardous waste program.

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). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. 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) 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized State program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute this action, hereby alleges upon information and belief:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a) (4).
2. In accordance with Section 3008(a) (2) of RCRA, 42 U.S.C. § 6928(a) (2), EPA has given the State of New York prior notice of this action.

Respondent's Background

3. 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.
4. SUNY Downstate is comprised of the following institutions: College of Medicine, College of Health Related Professions; College of Nursing, School of Graduate Studies; School of Public Health; and the University Hospital of Brooklyn.
5. Respondent is located at 450 Clarkson Avenue, Brooklyn, New York 11203-2098.
6. The above-referenced location constitutes Respondent's "Facility" as that term is defined at 6 NYCRR § 370.2(b).
7. Respondent was founded in 1860 and is organized pursuant to the laws of the State of New York.
8. Respondent is a person as that term is defined in Section 1004(15) of the Act, 42 U.S.C. Section 6903(15), and in Title 6 of the New York Codes, Rules and Regulations at 6 NYCRR § 370.2(b).¹

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.

9. Respondent has been, and remains, the owner and/or operator of the Facility since at least October 1980.

Respondent's Generation of Waste

10. Upon information and belief, Respondent, in carrying out its medical, educational and research 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.

11. 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.

12. 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.

13. 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.

14. During June 2013, Respondent generated at its Facility at least 1000 kilograms ("kg") of hazardous waste in that calendar month.

15. 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".

16. Subsections 6 NYCRR 373-1.1(d) and 6 NYCRR 372.2(a)(8)(ii) provide, in part, that a generator of hazardous waste may accumulate hazardous waste on-site for a period of 90 days or less without being subject to hazardous waste 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).

17. Respondent's Facility is an "existing hazardous waste management facility" (or "existing facility") within the meaning of 6 NYCRR § 370.2(b).

Regulatory Filings

18. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA that it generated hazardous waste through a notification (EPA form 8700-12) for its facility.

19. In response to the Notification, EPA provided Respondent with the following EPA Identification Number: NYD991290909.

EPA Inspection

20. 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.

21. In the course of its operations, both prior to, and as of the date of the Inspection, SUNY Downstate had generated chemical wastes which had been stored in corroded, leaking, and/or contaminated containers which were unlabeled, and/or were unidentified, off-specification, and/or stored for an extensive period of time without the prospect of being used, and/or which were being stored in lieu of disposal at its Facility.

22. At the time of the Inspection, EPA’s inspector found the following conditions and those in Paragraph 69 below at the Facility:

(i) Basic Science Building, Room 6-85 A (Chemical Storage); one (500 ml) bottle of unlabeled liquid/chemical which had been stored in a satellite area and one (1 liter) container of xylene and one (400 ml) container of chloroform waste (both not labeled with the words “hazardous waste”), and one (400 ml) container of chloroform waste.

(ii) Basic Science Building, Room 5-24 (Core Lab); one cardboard box of old and abandoned chemicals, including a bottle of picric acid, lying on their sides and haphazardly packed in a cabinet. Stored in another cabinet, which was inaccessible and/or blocked and located in the back of the room, were containers of flammable liquids which appeared to not have been used for a long time.

(iii) Basic Science Building, Room 5-8 (Pharmacology); one 3 liter container with unidentified chemical/liquid was stored in a satellite accumulation area.

(iv) Basic Science Building, Room 4-125 (Pathology); 1 bottle of phosphoric acid with crystals encrusted on the cap; 22 (4 liter) containers of various acids (some of the labels were peeling off and/or some were improperly labeled only with the words “strong acid”); and 12 (250 milliliter (“ml”)) containers of chromerge (with leakage stains on top of its packing container) were improperly stored under the sink. Some of the acids were discolored. Most of the containers had not been used for a few years. In addition, there were several leaks under bottles of chemicals which had not been cleaned.

(v) Basic Science Building, Room 3-54 (Cell Biology-chemical storage); a cardboard box containing six bottles of potassium hydroxide of which at least one was leaking; one (1 liter) container of ammonium hydroxide, approximately 40 years old, was stored in a cabinet; and many (1 liter) containers containing chemicals, some dated March 2005

and/or with chemical labels that did not accurately identify its chemical contents, stored in another cabinet.

(vi) Hospital Building-Outside of Autopsy Room; a cabinet stored old chemicals from an abandoned laboratory including a cardboard box and a milk crate filled with containers of incompatible chemicals.

(vii) Hospital Building-Pharmacy; the unused portion of the chemotherapy hazardous waste, mitomycin C and cyclophosphamide, were sent out from the Facility as regulated medical waste, not as hazardous waste.

(viii) Basic Science Building-Paint shop; 2 cabinets containing many containers of chemicals.

(ix) In the satellite accumulation area located in Basic Science Building, Room 5-8; there was one unlabeled 3 liter container and one 1/2 gallon container of Paraformaldehyde waste not labeled "hazardous waste".

(x) Basic Science Building, Room 5-90A; one (1 gallon) of crystal violet/solvent waste was not labeled "hazardous waste".

(xi) Basic Science Building, Room 4-122; six unlabeled (1) gallon containers of hazardous waste.

(xiii) Basic Science Building, Room 4-113; one container with 1/4 liter of liquid Paraformaldehyde was not labeled "hazardous waste".

(xiv) Basic Science Building, Room 2-88; four (500ml) containers of hazardous waste, one was only labeled "hazardous waste", the other three were labeled with only the contents.

(xv) Hospital building Grossing Room; one (1) gallon container of hazardous waste not labeled with words "hazardous waste".

(xvi) Hospital Building, Cytology; one unlabeled (1 gallon) container of hazardous waste, approximately 1/3 full.

23. Prior to and/or at the time of EPA's Inspection, Respondent had generated and abandoned at least the following waste materials at its Facility:

(i) Basic Science Building, Room 5-24 (Core Lab), one cardboard box of old and abandoned chemicals, including a bottle of picric acid, lying on their sides and haphazardly packed in a cabinet. In another cabinet located in the back of the room

(which was inaccessible and/or blocked), Respondent stored containers of flammable liquids which did not appear to have been used for a long time.

(ii) Basic Science Building, Room 4-125 (Pathology), 1 bottle of phosphoric acid with crystals encrusted on the cap, sitting on top of a crystallized stain; 22 (4 liter) containers of various acids (some of the labels were peeling off and/or some were improperly labeled only with the words "strong acid"); and 12 (250 milliliter ("ml")) containers of chromerge (with leakage stains on top of its packing container) were improperly stored under the sink. Some of the acids were discolored. Most of the containers had not been used for a few years. In addition, there were several leaks under bottles of chemicals which had not been cleaned.

(iii) Basic Science Building, Room 3-54 (Cell Biology-chemical storage), a cardboard box containing six bottles of potassium hydroxide of which at least one was leaking; one (1 liter) container of ammonium hydroxide, approximately 40 years old, was stored in a cabinet; and many (1 liter) containers containing chemicals, some dated March 2005 and/or with chemical labels that did not accurately identify its chemical contents, stored in another cabinet.

(iv) Hospital Building-Outside of Autopsy Room, a cabinet contained old chemicals from an abandoned laboratory included a cardboard box and a milk crate filled with containers of incompatible chemicals. These chemicals were not used in the autopsy area.

24. Prior to EPA's Inspection, mitomycin c and cyclophosphamide were used at the Facility.

25. Unused mitomycin c and cyclophosphamide which can no longer be used, has no purpose, and/or is discarded are hazardous wastes.

26. At the time of the Inspection and at times prior thereto, Respondent shipped its chemotherapy waste as regulated medical waste instead of hazardous waste.

27. Upon information and belief, in the course of its operations, both prior to and as of the dates of the Inspection, SUNY Downstate had generated various wastes exhibiting the characteristics of "ignitability"(within the meaning of 6 NYCRR § 371.3(b)), "corrosivity" (within the meaning of 6 NYCRR § 371.3(c)), "reactivity" (within the meaning of 6 NYCRR § 371.3(d)) and/or "toxicity" (within the meaning of 6 NYCRR § 371.3(e)).

EPA Notice of Violations and Request for Information

28. On or about December 5, 2013, EPA issued to Respondent a combined Notice of Violation (NOV) and Information Request Letter ("IRL") regarding its Facility.

29. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that EPA had identified a number of potential RCRA violations at its

Facility and required Respondent to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.

30. The IRL which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.

31. 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.

32. In its response to the IRL, SUNY Downstate provided manifest information and indicated that hazardous wastes identified in the paragraphs 22-25, 41, 59, & 69 had been removed from the Facility and were disposed of by the Facility's hazardous waste vendor.

33. In its response to the IRL, SUNY Downstate admitted that "at the time of the Inspection SUNY DOWNSTATE did not ship its chemotherapy waste to an authorized facility."

34. On or about June 6, 2013, during the Inspection Respondent shipped offsite for disposal approximately 500 pounds of hazardous waste from the Facility.

35. On or about June 28, 2013, Respondent manifested over nine hundred and twenty-five pounds of hazardous waste off-site for disposal.

36. On or about August 21st, 2013, Respondent manifested over one thousand, five hundred and fifty pounds of hazardous waste off-site for disposal.

COUNTS

Count 1

Failure to Make Timely Hazardous Waste Determinations

37. Complainant re-alleges each allegation contained in the above paragraphs 1 through 36 as if fully set forth herein.

38. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates "solid waste" must determine if the solid waste is a hazardous waste using the procedures set forth therein.

39. Pursuant to 6 NYCRR§ 371.1(c), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" which is any material that is "abandoned," "recycled" or "inherently waste-like," as those terms are further defined.

40. Pursuant to 6 NYCRR § 371.1(c)(3), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

41. At the time of the Inspection, SUNY Downstate had failed to make hazardous waste determinations for abandoned chemicals in the following rooms:

- i. Basic Science Building, Room 5-24 (Core Lab):
 - (a) one cardboard box filled with old and abandoned chemicals, including a bottle of picric acid, lying on their sides and haphazardly packed in a cabinet;
 - (b) a second cabinet located in the back of the room held containers of flammable liquids. The cabinet was inaccessible and/or blocked and it appeared that the containers had not been used for a long time; and
 - (c) all of the containers in both cabinets did not have identifying markings and were not labeled with the words "hazardous waste".
- ii. Basic Science Building, Room 4-125 (Pathology):
 - (a) 1 bottle of phosphoric acid (with crystals encrusted on the outside of the cap) was sitting on top of a crystallized stain;
 - (b) There were 22 (4 liter) containers of acids, most were not properly labeled, some were discolored,
 - (c) There were 12 (250 ml) containers of chromerge which had not been used in a few years; and
 - (d) All the materials described in the three preceding paragraphs above were stored under a sink, on top of some unidentified chemical leaks.
- iii. Basic Science Building, Room 3-54 (Cell Biology-chemical storage area):
 - (a) a cardboard box containing six bottles of potassium hydroxide of which at least one was leaking;
 - (b) one (1 liter) container of ammonium hydroxide, approximately 40 years old, which was stored in a cabinet; and
 - (c) many (1 liter) containers containing chemicals, some dated March 2005 and/or with chemical labels that did not accurately identify its chemical contents, which were stored in another cabinet.

iv. Hospital Building-Outside of Autopsy Room: a cabinet storing chemicals including a cardboard box and a milk crate holding containers of old chemicals from an abandoned laboratory; some of the chemicals were incompatible.

v. Hospital Building-Pharmacy: the unused portion of mitomycin C and cyclophosphamide, chemotherapy hazardous wastes, which were sent offsite as regulated medical waste.

42. Much of the hazardous waste shipped offsite as described in paragraph 34, 35 & 36 came from the abandoned waste located in the Rooms referenced in Paragraphs 23 & 41 above.

43. Respondent "abandoned" each of the materials identified in Paragraph 41 by storing or accumulating them before or in lieu of being disposed.

44. Each of the materials identified in Paragraph 41 above was a "discarded material" and "solid waste," as defined in 6 NYCRR § 371.1(c).

45. At the beginning of the Inspection and at times prior thereto, Respondent had not determined if any of the materials identified in Paragraph 41, above constituted a hazardous waste.

46. Respondent's failure to determine if each solid waste generated at its Facility constitutes a hazardous waste is a violation of 6 NYCRR § 372.2(a) (2).

47. Respondent's failure to comply with 6 NYCRR § 372.2(a) (2) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 2

Storage of Hazardous Waste Without a Permit

48. Complainant repeats and realleges each allegation contained in paragraphs 1 through 36, inclusive, with the same force and effect as if fully set forth below set forth herein.

Legal Requirements for Permit and Exemptions

49. Respondent has stored hazardous waste at its Facility for finite periods of time of varying length, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurred in various locations including numerous satellite accumulation areas located at SUNY Downstate's Facility.

50. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:

i. Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of existing facilities for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and

ii. 6 NYCRR § 373-1.2(a), provides that no person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.

51. Six NYCRR § 372.2(a)(8)(i)(‘a’) provides, that a generator of hazardous waste can be exempt from the permit requirements and still accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, and provided further that the generator complies with the use and management standards set forth in 6 NYCRR § 373-3.9(b)-(d), and marks the containers with the words “Hazardous Waste” and with other words that identify the contents of the containers.

52. Except as otherwise provided for small quantity generators, 6 NYCRR § 372.2(a)(8)(ii) provides, in part, that a generator may accumulate hazardous waste on-site of generation for a period of 90 days or less under the provisions therein specified and found in subparagraphs 373-1.1(d)(1)(iii). The provisions (all in 6 NYCRR), *inter alia*, are:

i. § 373-1.1(d)(1)(iii)(‘a’) sets requirements for liquid hazardous waste in containers under 8,800 gallons,

ii. § 373-1.1(d)(1)(iii)(‘c’)(‘1’) requires that the waste be placed in containers and the generator complies with the requirements of 373-3.9 which sets the requirements for Use and Management of Containers.

iii. § 373-1.1(d)(1)(iii)(‘c’)(‘2’) requires that the date on which each period of accumulation of hazardous waste begins is clearly marked and visible for inspection on each container.

iv. § 373-1.1(d)(1)(iii)(‘c’)(‘3’) requires that a label or sign stating ‘Hazardous Waste’ must identify all areas, tanks, and containers used to accumulate hazardous waste. In addition, tanks and containers must be marked with other words to identify their contents.

v. § 373-1.1(d)(1)(iii)(‘c’)(‘5’) requires that the generator complies with the requirements for personnel training in section 373-3.2 of this Part, preparedness and prevention in section 373-3.3 and contingency plans and emergency procedures in section 373-3.4, and with subparagraph 376.1(g)(1)(iv).

53. 6 NYCRR § 373-3.9(e) requires the generator to inspect areas where hazardous waste containers are stored at least weekly, and to look for leaking containers, deteriorations of containers and problems in the containment system caused by corrosion or other factors.

54. Pursuant to 6 NYCRR § 373-3-2(g)(1), facility personnel must successfully complete a program of classroom instruction or on-the-job training. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

55. At the times of the Inspection, and upon information and belief for some time prior thereto, Respondent stored containers at its SUNY Downstate Facility.

56. Many of the aforementioned containers held hazardous waste.

57. The SUNY Downstate does not have interim status or a permit authorizing the storage of hazardous waste at its Facility.

Failure to label with accumulation start date

58. At the time of Inspection of the SUNY Downstate Facility, and for some time prior thereto, the following containers of hazardous wastes were not marked with accumulation start dates.

- i. hazardous wastes in the 2 cabinets stored in the Paint Shop in the Basic Science Building.
- ii. many containers stored outside of the autopsy room in the Hospital Building; and
- iii. a cardboard box of old and abandoned, haphazardly stored chemicals (including picric acid) in the Basic Science Building, Room 5-24.

Failure to label with words "Hazardous Waste" and with words to identify their contents:

59. At the time of the Inspection, SUNY Downstate stored hazardous waste in containers which were not marked with the words "hazardous waste" and other words to identify their contents as indicated below:

- i. one container of unlabeled material in the satellite accumulation area and one (1 liter) container of xylene and one (400 ml) container of chloroform waste both were not labeled with the words "hazardous waste" were stored in the Basic Science Building, Room 6-85A;

- ii. in the satellite accumulation area located in Basic Science Building, Room 5-8, there was one unlabeled 3 liter container and one 1/2 gallon container of Paraformaldehyde waste not labeled "hazardous waste";
- iii. one (1) gallon of crystal violet/solvent waste was not labeled "hazardous waste" located in the Basic Science Building, room 5-90A;
- iv. Six unlabeled (1) gallon containers of hazardous waste were stored in the Basic Science Building, Room 4-122;
- v. one container with 1/4 liter of liquid labeled Paraformaldehyde was not labeled "hazardous waste" was stored in basic Science Building, Room 4-113;
- vi. four (500 ml) containers of hazardous waste, one was only labeled hazardous waste, the other three were labeled with only the contents (all four located in the Basic Science Building, Room 2-88);
- vii. one (1) gallon container located in the Hospital Building, Grossing Room;
- viii. one unlabeled (1 gallon) container of hazardous waste, approximately 1/3 full, stored in Hospital Building, Cytology;
- ix. many (1 liter) containers containing chemicals, (not marked with the words "hazardous waste") some dated March 2005 and/or with chemical labels that did not accurately identify its chemical contents, were stored in a cabinet in Basic Science building, room 3-54; and
- x. a number of containers of chemicals, which had been determined to be hazardous waste approximately two weeks prior to the Inspection, were stored in two cabinets in the Paint Room without being marked with the words "hazardous waste".

Failure to satisfy training requirements

60. At the time of the Inspection, the designated hazardous waste coordinator of the Facility had not taken required training for the past three years.

Failed to Conduct weekly inspections

61. As of the time of the Inspection, Respondent had not at least ten times conducted a weekly inspection of its hazardous waste container storage area, located in University Hospital building-Room ALL1-305A during the past 3 years.

Respondent's Violations of Hazardous Waste Permitting Rules at the SUNY Downstate Facility

62. As a result of Respondent's failures and the facts alleged in the paragraphs above, Respondent was not eligible for a permit exemption otherwise available to large quantity generators and Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2(a) for the storage of hazardous waste at SUNY Downstate.

63. The aforementioned (paragraphs 55, 56, 58 & 59, above) instances of storage at the SUNY Downstate Facility constitute "storage" within the meaning of:

- i. Section 1004(33) of RCRA, 42 U.S.C. § 6903(33); and
- ii. Six NYCRR § 370.2(b).

64. Respondent never obtained a RCRA hazardous waste permit or qualified for interim status at the SUNY Downstate Facility.

65. At the time of the Inspection and at times prior thereto, Respondent was required to obtain a permit for the storage of hazardous waste at the SUNY Downstate Facility.

66. Respondent's aforementioned operations of a hazardous waste management facility without having obtained a permit or qualifying for interim status constitutes a violation of each of the following:

- i. Section 3005 of the Act, 42 U.S.C. § 6925; and
- ii. Six NYCRR § 373-1.2(a).

Count 3
Failure To Minimize Potential Releases

67. Complainant re-alleges each allegation contained in the above paragraphs 1 through 36 as if fully set forth herein.

68. Six NYCRR 373-3.3(b) requires, in part, that a facility must be maintained and operated to minimize 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 health and environment.

69. At the time of the Inspection and at times prior to, Respondent failed to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents through numerous actions or inactions including but not necessarily limited to the following situations:

- i. In the Basic Science Building, Room 6-87 and 2-91, storage of unsealed containers of ethyl ether for more than six months without conducting the

required peroxide testing which is required by the Facility's chemical hygiene plan and OSHA;

- ii. In the Basic Science Building, Room 5-89A, storage of one (200 ml) container of phosphoric acid which was encrusted with crystals;
- iii. In the Basic Science Building, Room 5-24 core lab, storage of one cardboard box of old and abandoned chemicals, including a bottle of picric acid, lying on their sides and haphazardly packed in a cabinet;
- iv. In the Basic Science Building, Room 4-125, storage of one bottle of phosphoric acid (encrusted with crystals) was stored, sitting on top of a crystallized stain, with 22 (4 liter) containers of acids (some of which were discolored), and 12 old containers of chromerge (which had not been used for a few years); all these chemicals were stored under a sink, on top of leaks. Another cupboard had signs of leaks and stored incompatible chemicals stored next to each other;
- v. In the Basic Science Building, Room 3-54, storage of a cardboard box containing six bottles of potassium hydroxide of which at least one was leaking;
- vi. In the Hospital Building, outside of the Autopsy Room, a cabinet containing old chemicals, including one cardboard box and one milk crate of unknown chemicals. Some of the chemicals stored in the cabinet were incompatible.
- vii. Facility-wide, in a number of laboratories, chemicals were stored above eye-level violating the Facility's chemical hygiene plan.
- viii. Facility-wide, in a number of laboratories, chemicals were stored alphabetically instead of by chemical compatibility.
- ix. Facility-wide, in a number of laboratories, acids and bases were stored without having secondary containment.
- x. In the Basic Science Building, in Rooms 4-125 and 3-54, there was evidence of the leakage of chemicals which had not been cleaned up.
- xi. Facility-wide, in a number of laboratories, chemicals were stored on wooden shelves which violated the Facility's chemical hygiene plan.
- xii. Facility-wide, oxidizers were not stored separately from other chemicals.
- xiii. Facility-wide, bottles of chemicals were stored stacked on top of each other.

- xiv. Facility-wide, bottles of chemicals were stored with the edges of the bottle hanging off the shelf.

70. Each action or inaction set forth in the Paragraph 69 above constitutes a failure by Respondent to maintain or operate its Facility in a manner minimizing 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, and each action or inaction constitutes a violation of 6 NYCRR § 373-3.3(b).

71. Respondent's violation of 6 NYCRR § 373-3.3(b) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

Count 4

Respondent's Failures to Ship Hazardous Waste to an Authorized Facility

72. Complainant re-alleges each allegation contained in the above paragraphs 1 through 36 as if fully set forth herein.

73. Pursuant to 6 NYCRR § 372.2(b)(5)(iii), a generator must offer for shipment or ship hazardous waste to an authorized facility.

74. Upon information and belief, at the time of the Inspection and prior thereto, Respondent had generated and offered for shipment and shipped, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste described in Paragraphs 24-26 to a regulated medical waste facility.

75. At the time of the Inspection and at times prior thereto, Respondent did not offer for shipment or ship, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste described in Paragraphs 24-26 to an authorized hazardous waste facility.

76. Respondent's failures to offer for shipment or ship its hazardous waste to an authorized facility are violations of 6 NYCRR § 372.2(b) (5)(iii).

Count 5

Respondent's Failures to Use Manifests for the Transportation of Hazardous Wastes from its Facility

77. Complainant re-alleges each allegation contained in the above paragraphs 1 through 36 as if fully set forth herein.

78. Pursuant to 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i), a generator who transports, or offers for transportation, hazardous waste must prepare a manifest according to the manifest

instructions provided in Appendix 30 of Title 6 NYCRR Part 372. No generator may offer a shipment of hazardous waste for transport off-site without an accompanying manifest.

79. Upon information and belief, prior to the Inspection, Respondent had generated and offered for transportation, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste and chemotherapy contaminated hazardous waste identified in Paragraphs 24-26 above without preparing a hazardous waste manifest.

80. Respondent's failures to prepare a hazardous waste manifest when offering the hazardous wastes identified in Paragraphs 24-26 above for transportation are violations of 6 NYCRR § § 372.2(b)(1) and 372.2(b)(5)(i).

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. The penalty amounts in the 2003 RCRA Civil Penalty policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the December 29, 2008 document entitled "Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)"; and the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule" (with a further revision not relevant to this action on April 6, 2010.) This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a) (3) of RCRA, 42 U.S.C. 6928(a) (3), for violations after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included

in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments I and II, below, below.

Count 1:	\$55,230
Count 2:	\$24,900
Count 3:	\$51,680
Counts 4 & 5:	\$24,900
TOTAL	\$156,710

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct, to the extent possible, the violations alleged in Counts 1 through 5 of this Complaint. Respondent shall thereafter maintain compliance at its Facility with the requirements cited in Counts 1 to 5.

This Compliance Order shall take effect with respect to the Respondent within thirty (30) days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008). Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the EPA or the State of New York.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 - 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. §22.27(c). 40 C.F.R. § 22.17(d).

D. Filing Of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board (EAB see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so within thirty (30) days after the initial decision is served. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five days shall be added to the time allowed by these rules for the

filing of a responsive pleading or document. Note that the 45-day period provided for in 40 C.F.R. §22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. §22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866
212-637-3205

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b) (1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

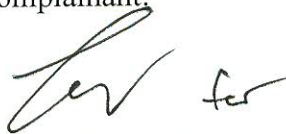
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR
CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date 8/13/14

To: John Larosa., President
SUNY Downstate Medical Center
450 Clarkson Avenue
Brooklyn, New York 11203

cc: Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

ATTACHMENT 1

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)**

Respondent: SUNY Downstate Medical Center

**Facility Addresses: 450 Clarkson Avenue
Brooklyn, NY 11203**

Requirement Violated: Failure to make hazardous waste determinations.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$24,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$ 3,370
3. Multiply line 2 by number of days of violation minus 1.	\$30,330
4. Add line 1 and line 3	\$55,230
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$55,230

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1. Gravity Based Penalty

Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is maximized. This follows because, if the owner/operator is unaware that the facility is generating hazardous waste, there is a much greater likelihood that the owner/operator will not comply with the applicable provisions of the regulatory scheme. In this case, the Potential for Harm was determined to be MAJOR due to the large number of abandoned and/or old chemicals which had not been properly characterized creating the potential for harm.

Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE: Hazardous waste determinations were not conducted on a large number containers (some old and/or leaking) containing various types of chemical wastes stored at the facility; and all chemotherapy and chemotherapy contaminated wastes at the facility prior to the Inspection. By failing to make a hazardous waste determination, Respondent did not realize it had to manage the chemicals and/or containers as hazardous waste; some of these wastes were discarded or sent to an incorrect disposal facility. The Respondent did not determine whether these abandoned and/or old chemicals were regulated hazardous wastes, thereby precluding compliance with regulations intended to protect human health and the environment. During and after the Inspection, SUNY Downstate manifested out to an authorized facility at least 10 chemical waste streams. The extent of deviation is classified as MODERATE because the waste streams were 10% of these waste streams generated by the Facility and it had properly made hazardous waste determinations on most of its hazardous waste.

The applicable cell ranges from \$28,329 to \$21,250. The mid-point (\$24,900) for the cell was selected, in consideration of the fact that Respondent had characterized some of its solid wastes and the fact that the chemotherapy wastes, although not managed as hazardous wastes, were transported to a medical waste incinerator.

- 2. Multiple/Multi-day** – There were at least ten waste stream for which hazardous waste determinations were not timely made. EPA has used its discretion in using the multi-day matrix in calculating the penalty for the 10 waste streams minus 1.

3. Adjustment Factors

- a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, No adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable.
- d. Ability to Pay - Not applicable
- e. Environmental Project - Not applicable
- f. Other Unique Factors – Not applicable
- g. Economic Benefit – Not assessed at this time.
- h. Recalculation of Penalty Based on New Information: - Not applicable.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

Respondent: SUNY Downstate Medical Center

Facility Address: 450 Clarkson Avenue
Brooklyn, NY 11203

Requirements Violated: Operating a Hazardous Waste Storage Facility Without a Permit

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$24,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$24,900
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$24,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in these violations was determined to be MAJOR. Storage of hazardous waste without a permit is a serious violation and has substantial adverse effects on the program. The Respondent effectively did not comply with some storage requirements and with some training and inspection requirements resulting in the following: improper handling and management of hazardous waste at its SUNY Downstate Facility, including the storing of some hazardous waste in unlabeled, partially labeled and/or inaccurately labeled containers; storing old abandoned/orphaned chemicals for long periods of time; and failing to satisfy training requirements. These failures to obtain a permit or to comply with other standards produced a major potential for harm.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with many regulations that must be met by LQGs to be exempt from RCRA permitting. However, Respondent had complied with regulations for some hazardous wastes: other containers of hazardous waste at the Facility were labeled as hazardous waste and other words to identify its contents; marked with accumulation start dates; stored for allowable periods of time; and met other program requirements. In light of this, the extent of deviation is classified as moderate.

The applicable cell ranges from \$21,250 to \$28,329. The mid-point for the cell matrix (\$24,900) was selected. Although Respondent was in compliance with some requirements, Respondent violated many requirements that had to be complied with to be exempt from permitting at its SUNY Downstate Facility.

2. **Multiple/Multi-day** - Not assessed at this time.

3. Adjustment Factors

- a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection. No adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable

- c. History of Compliance - Not applicable.
- d. Ability to Pay - Not applicable.
- e. Environmental Project - Not applicable.
- f. Other Unique Factors - Not applicable.
- g. Economic Benefit – Not assessed at this time.
- h. Recalculation of Penalty Based on New Information - Not applicable.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

Respondent: SUNY Downstate Medical Center

**Facility Addresses: 450 Clarkson Avenue
Brooklyn, NY 11203**

Requirement Violated: Failure to Minimize Releases

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$37,500
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select the appropriate multiple day matrix cell.	\$ 7,090
3. Multiply line 2 by the number of days of violation minus 1.	\$14,180
4. Add line 1 and line 3	\$51,680
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$51,680

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in this violation was determined to be MAJOR. The high end of the range was selected because at least one of the waste streams could have been explosive. Respondent allowed chemical wastes at its facility to be stored in an unsafe manner. Demonstrative of this situation include the following conditions: chemicals including picric acid, were haphazardly packed in a cardboard box with other chemicals; 6 bottles of potassium hydroxide (of which at least one was leaking) was stored in a cardboard box; failure to perform every six months peroxide testing required by the Facility's Chemical Hygiene Plan and OSHA, on unsealed containers of ethyl ethers; storage of oxidizers (which should be stored separately) among other chemicals in a cabinet; leaks of unknown chemicals were not cleaned up; chemicals were stored on top of such leaks; and facility wide, chemicals were stored above eye level, alphabetically (instead of compatibility), acids and bases without secondary containment, stacked on top of each other and hanging off the edge of shelves. These actions and inactions had a major potential for harm.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The SUNY Downstate facility was operated in multiple ways that did not minimize the potential for releases to the environment. For example, it allowed chemicals to be released into the environment by storing them in corroded, leaking and/or contaminated containers. Two chemicals that can cause explosions were handled improperly.

The applicable cell ranges from \$28,330 to \$37,500. The high-point (\$37,500) for the cell was selected, in consideration of the fact that Respondent stored many chemicals improperly.

- 2. Multiple/Multi-day** – For at least 3 days (June 3-5, 2013), Respondent failed to minimize potential releases into the environment. During the Inspection, on June 6, 2013, Respondent shipped most of the problematic hazardous waste identified during the June 3-5, 2013 Inspection days to an authorized facility. EPA has used its discretion in using the multi-day matrix in calculating the penalty for three days minus 1.

3 Adjustment Factors

- a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

- b. Willfulness/Negligence – Not Applicable.
- c. History of Compliance - Not applicable.
- d. Ability to Pay - Not applicable.
- e. Environmental Project - Not applicable.
- f. Other Unique Factors - Not applicable.
- g. Economic Benefit - Not assessed at this time.
- h. Recalculation of Penalty Based on New Information - Not applicable.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 4 & 5)

Respondent: SUNY Downstate Medical Center

Facility Addresses: 450 Clarkson Avenue
Brooklyn, NY 11203

Violations: Count 4 -Failure to Ship Hazardous Waste to an Authorized Facility
Count 5 -Failure to Use a Manifest for Transportation of Hazardous Wastes

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$24,900
(a) Potential for harm.	MAJOR
(b) Extent of Deviation	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3.	\$24,900
5. Percent decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$24,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet (Counts 4 and 5)

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm was determined to be MAJOR. Respondent did not send certain wastes to the proper facility. The medical waste incinerator was not authorized to accept hazardous wastes. The medical waste incinerator did not have the safety features of a hazardous waste incinerator thereby creating additional risk. Respondent systematically failed to prepare manifests for shipments to the receiving facilities. The manifest system is the basis for the cradle-to-grave tracking of hazardous waste which is one of the fundamental tenets underlying the RCRA program. By failing to prepare a manifest for the hazardous chemotherapy wastes shipped to a medical waste incinerator, neither the receiving facility nor the transporter were notified that the chemotherapy wastes they received or transported were a hazardous waste subject to regulatory requirements intended to ensure the protection of human health and the environment. These failures can potentially result in a substantial adverse impact upon the RCRA program.
- b. Extent of Deviation - The extent of deviation present in these violations was determined to be MODERATE. Although the Respondent mishandled each of the chemotherapy hazardous wastes during the relevant time period, the chemotherapy waste was sent to a medical waste incinerator and Respondent did handle other hazardous wastes properly. The Facility appears to have handled the chemotherapy waste properly after the Inspection.

The applicable cell ranges from \$21,250 to \$28,329. The mid-point was chosen

2 **Multiple/Multi-day-** EPA did not impose penalties for multiple instances for this count.

3 Adjustment Factors

- a. Good Faith – Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.
- b. Willfulness/Negligence Not applicable.
- c. History of Compliance Not applicable.
- d. Ability to Pay Not applicable.

- e. Environmental Project Not applicable.
- f. Other Unique Factors Not applicable.
- g. Economic Benefit - Not assessed at this time.

ATTACHMENT II-TABLE I
GRAVITY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$37,500 to \$28,330	\$28,329 to \$21,250	\$21,249 to \$15,580
	MODERATE	\$15,580 to \$11,330	\$11,329 to \$7,090	\$7089 to \$4,250
	MINOR	\$4,250 to \$2,130	\$2,129 TO \$710	\$709 TO \$150

MULTI-DAY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		Major	Moderate	Minor
	Major	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	Moderate	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	Minor	\$850 to \$150	\$430 to \$150	\$150

CERTIFICATE OF SERVICE

This is to certify that on the day of August 14, 2014, I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number RCRA-02-2014-7104, together with Attachments I and II (collectively henceforth referred to as the Complaint, and with a copy of the CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to John LaRosa, President, SUNY Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, New York 11203

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: Sandra e. Piay
New York, New York
