



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

COPY

SEP 30 2010

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 OCT 12 A 9:12  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Pamela Brier, President  
Maimonides Medical Center, Inc.  
4802 Tenth Avenue  
Brooklyn, NY 11219

Re: **In the Matter of Maimonides Medical Center**  
**Docket No.: RCRA-02-2010-7110**

Dear Ms. Brier:

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, 17th 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 later part of the Complaint.)

For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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**

-----X  
In The Matter of :  
 :  
Maimonides Medical Center Inc., : **COMPLAINT, COMPLIANCE ORDER,**  
 : **AND NOTICE OF OPPORTUNITY**  
 : **FOR HEARING**  
 :  
 : **Docket Number RCRA-02-2010-7110**  
 :  
Respondent, :  
 :  
 :  
Proceeding under Section 3008 of the :  
Solid Waste Disposal Act, as amended. :  
-----X

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 OCT 12 A 9:12  
REGIONAL HEARING  
CLERK

**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 Maimonides Medical Center Inc. (hereinafter "Respondent" or "MMC") has violated requirements of the authorized New York 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) and 75 Fed. Reg. 45489 (August 3, 2010). 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/institution engaged in the business of diagnosing and treating medical illnesses and diseases.
4. Respondent is located in buildings located at 4802 Tenth Avenue, Brooklyn, N.Y. 11219.
5. Respondent is a corporation.
6. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules and Regulations 6 NYCRR § 370.2(b).
7. Respondent's property described in Paragraph 4 constitutes a "facility" (hereinafter the "Facility") within the meaning of 6 NYCRR § 370.2(b).
8. Respondent has been and remains the owner of the Facility.
9. Respondent has been and remains the operator of the Facility.

#### **Respondent's Generation of Waste**

10. 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.
11. 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) “hazardous waste ” (within the meaning of 6 NYCRR § 371.1(d)) at its Facility.

12. During the period from August 2008 through August 2009, Respondent generated at least 1000 kilograms (“kg”) of hazardous waste in each calendar month.
13. Prior to and on August 12 and 13, 2009, Respondent stored hazardous waste at its Facility.
14. Pursuant to the regulations at 6 NYCRR § 372.2, a generator who generates at least 1,000 kilograms or more of hazardous waste in a calendar month (often referred to as a “Large Quantity Generator”) may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status provided it complies with all the applicable conditions set forth or cross referenced in 6 NYCRR § 372.2(a)(8)(ii).
15. Respondent’s Facility is an “existing hazardous waste management facility” (or “existing facility”) within the meaning of 6 NYCRR § 370.2(b).

#### **Past Regulatory Filings**

16. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent, through a notification (EPA form 8700-12) (“Notification”), dated October 6, 1987, informed EPA that it generated hazardous waste.
17. In response to the Notification, EPA provided Respondent with EPA Identification Number NYD057381535.

#### **Audit Agreement History**

18. In 2003, EPA and the Respondent entered into a Facility Audit Agreement pursuant to which Respondent conducted an audit of its compliance with federal environmental requirements including RCRA. The agreement provided that MMC would disclose and correct identified violations at its Facility for which, in exchange, EPA agreed to not seek gravity based penalties. The agreement also provided that MMC would take the steps necessary to prevent the recurrence of violations
19. On May 10, 2004, in accordance with the Audit Agreement, MMC made a Disclosure Report submittal in which it reported numerous regulatory violations including the following:
  - a Failure to use a manifest with every off-site shipment of hazardous waste; and
  - b Failure to store spent lamps in a manner that prevented releases.

20. In addition to disclosure of its regulatory violations, MMC outlined future steps to prevent recurrence of each of the violations identified in its Audit Agreement Disclosure Report.
21. On October 7, 2005, EPA issued MMC a "Notice of Determination" in which it waived a potential civil penalty of \$316,550 which it had calculated using the RCRA Civil Penalty and other EPA Penalty Policies for the numerous RCRA and other regulatory deficiencies identified during the audit including the two mentioned in Paragraph 19 above.

### **EPA's Investigative Activities**

22. 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.
23. Respondent employs fluorescent light bulbs for lighting purposes in its operations.
24. Prior to and at the time of the Inspection, the Respondent had been crushing spent fluorescent light bulbs with a bulb crusher at the Facility.
25. Based on EPA's Inspection, Respondent discontinued use of the bulb crusher on August 12, 2009.
26. Prior to, at the time of and subsequent to the inspection, Respondent dispensed the following chemotherapy drugs:
  - a. mitomycin C (U010),
  - b. cyclophosphamide (U058),
  - c. daunomycin (U059), and
  - d. arsenic trioxide (P012).
27. From approximately 2004 to 2007, Respondent sent out the following chemotherapy drugs as regulated medical waste:
  - a. arsenic trioxide (P012),
  - b. cyclophosphamide (U058),
  - c. daunomycin (U059),
  - d. melphalan (U150),
  - e. mitomycin C (U010),
  - f. streptozotocin (U206), and
  - g. uracil mustard (U237).
28. From January 2007 to December 2007, Respondent sent out the following chemotherapy drugs as regulated medical waste:

- a. arsenic trioxide (P012),
  - b. cyclophosphamide (U058), and
  - c. daunomycin (U059).
29. Respondent discarded vials from the Facility containing more than 3 % by weight of the unused chemotherapy drugs, identified in Paragraphs 26 - 28 above, where the waste drugs were not removed using the practices normally employed to remove materials from that type of container.
  30. Vials containing, or that had contained, unused arsenic trioxide, a chemotherapy waste identified above, had not been triple rinsed and was discarded by the Facility.
  31. The unused waste drugs described in Paragraphs 26-28 were hazardous waste.

### **Notice of Violation, Request for Information and Response**

32. On or about December 1, 2009, EPA issued to the Respondent a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”).
33. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified a number of potential RCRA violations at its Facility and required the Facility to provide to EPA detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
34. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and required that the Respondent submit specified types of documentation relating to hazardous waste activities at its Facility.
35. On or about February 25, 2010, a duly authorized representative of the Respondent submitted the Respondent’s Response to the combined NOV and IRL attesting that the information provided in the Response was true and accurate.
36. On or about April 5, 2010, EPA notified Respondent that it had not provided all the information requested by the IRL.
37. On or about April 5, 2010, Respondent emailed EPA additional information indicating that from January 2007 to December 2007, waste arsenic trioxide, waste cyclophosphamide, and waste daunomycin were generated and sent out as regulated medical waste.
38. On or about May 5, 2010, Respondent submitted completed contingency and closure plans for the Facility.

### **Count 1 – Failure to Minimize Releases**

39. Complainant re-alleges each allegation contained in Paragraphs "1" through "38", inclusive, as if fully set forth herein.
40. Pursuant to 6 NYCRR § 373-3.3(b), a facility must be maintained and operated to minimize the possibility of a fire or explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water.
41. Prior to and at the time of the inspection, in an area designated "Engineering", adjacent to the container storage area, Respondent attached the bulb crusher to a shop vacuum with a connecting hose and vented the shop vacuum into the building ventilation system.
42. All fluorescent light bulbs contain mercury, a hazardous constituent.
43. Respondent's crushing of fluorescent light bulbs released mercury into the bulb crusher.
44. The shop vacuum sucked up the air within the bulb crusher and released it into the Facility's ventilation system.
45. Respondent's venting of the shop vacuum into the Facility's ventilation system released mercury into the air.
46. At the time of the Inspection, glass dust, broken glass and broken light bulbs were observed on top of the bulb crusher.
47. The presence of glass dust, broken glass and broken light bulbs outside of the bulb crusher indicated that Respondent did not properly operate the crusher.
48. The presence of glass dust, broken glass and broken light bulbs outside of the bulb crusher indicated that mercury vapors were released into the air outside of the bulb crusher.
49. Respondent's "MMC Bulb Crushing Protocol" dated January 12, 2006 states that a dust mask is to be worn when crushing bulbs.
50. A dust mask does not provide adequate respiratory protection from mercury.
51. Bulbs that were improperly crushed in the bulb crushing unit may have released a hazardous waste constituent (i.e., mercury) to the air.
52. Improper crushing of fluorescent bulbs may result in the release into the air of volatile mercury which can threaten human health or the environment.



53. Bulbs that were improperly crushed in the bulb crushing unit may have exposed the bulb crusher operator to the releases of mercury.
54. The Respondent's failure to maintain its facility to minimize any unplanned sudden or non-sudden release of hazardous waste or a hazardous waste constituent to air, soil or surface water is a violation of 6 NYCRR § 373-3.3(b).

### **Count 2 - Failure to Use Manifests for Transportation of Hazardous Wastes**

55. Complainant re-alleges each allegation contained in Paragraphs "1" through "38", inclusive, as if fully set forth herein.
56. 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.
57. From the period 2005 to 2007, Respondent had generated and offered for transport off-site, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste described in Paragraphs 26 - 28 without preparing a hazardous waste manifest.
58. Respondent's failures to prepare a hazardous waste manifest when offering the hazardous wastes identified in Paragraphs 26 - 28 above for transport are violations of 6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i).

### **Count 3 - Failure to Ship Hazardous Waste to an Authorized Facility**

59. Complainant re-alleges each allegation contained in Paragraphs "1" through "38", inclusive, as if fully set forth herein.
60. Pursuant to 6 NYCRR § 372.2(b)(5)(iii), a generator must offer for shipment or ship hazardous waste to an authorized facility.
61. From the period 2005 to 2007, Respondent had generated and offered for transport off-site, as regulated medical waste, vials of unused waste medication containing 3% or more by weight of the waste described in Paragraphs 26 - 28 to a regulated medical waste facility.
62. From 2005 thru 2007, Respondent failed to ship vials of unused waste medication containing 3% or more by weight of the waste described in Paragraphs 26 - 28 to an authorized hazardous waste facility.

63. 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).

### **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." 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 occurring between March 15, 2004 and January 12, 2009 is \$ 32,500 per day of violation. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after March 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

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 September 21, 2004 document entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation rule (pursuant to Debt Collection Improvement Act of 1996, effective October 1, 2004)"; the January 11, 2005 document entitled "Revised Penalty Matrices for the RCRA Civil Penalty Policy"; the December 29, 2008 document entitled "Amendment's to EPA's Civil Penalty Policies to Implement the 2008 Civil 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). The RCRA Civil Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that Respondent be assessed the civil penalty as set out below 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 II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and using the RCRA Civil Penalty Policy, the Complainant

herewith proposes the assessment of a civil penalty in the total amount of **Fifty-Five Thousand, Six Hundred Sixty-Five dollars** against the Respondent as follows:

Count/ Counts	Citation	Violation	Amount
1	6 NYCRR § 373-3.3(b)	Failure to minimize releases	\$32,915
2 -3	6 NYCRR §§ 372.2(b)(1) and 372.2(b)(5)(i); and 6 NYCRR § 372.2(b)(5)(iii)	Failure to use manifests Failure to send hazardous waste to an authorized facility	\$22,750
		Total	\$55,665

### **III. COMPLIANCE ORDER**

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 3 in the previous section. Respondent shall thereafter maintain compliance at its Facility with the requirements cited in counts 1 to 3.

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).

Any responses, documentation, and evidence submitted concerning this Compliance Order shall 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 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.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation were promulgated 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." These rules 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**

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 thirty (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. 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 "[w]ithin 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.

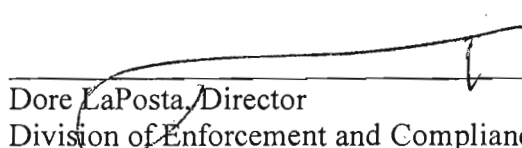
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the 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 the Consent Agreement and its complying with the terms and conditions set forth in the 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:

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

Date: SEPTEMBER 30, 2010

To: Pamela Brier, President  
Maimonides Medical Center Inc.  
4802 10<sup>th</sup> Avenue  
Brooklyn, New York 11219

cc: Thomas Killeen, Chief  
Hazardous Waste Compliance Section  
Bureau of Hazardous Waste Management  
New York State Department of Environmental Conservation  
625 Broadway, 8<sup>th</sup> Floor  
Albany, New York 12233-7250



**CERTIFICATE OF SERVICE**

This is to certify that on the day of OCT - 7, 2010, 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-02-2010-7110, 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 the following:

Pamela Brier, President  
Maimonides Medical Center Inc.  
4802 10<sup>th</sup> Avenue  
Brooklyn, New York 11219

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, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: OCT - 7, 2010  
New York, New York

Smidreel N. Bae  
Signature

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

**Respondent:** The Maimonides Hospital Center  
**Address:** 4802 Tenth Avenue, Brooklyn, N.Y. 11219  
**Violation:** Count 1 - Failure to Minimize Releases

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$32,915
(a) Potential for harm.	MAJOR
(b) Extent of Deviation	MAJOR
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.	\$32,915
5. Percent increase/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.	\$32,915

**NARRATIVE EXPLANATION TO SUPPORT PENALTY AMOUNT**  
**Penalty Computation Worksheet (Counts 2&3)**

**1. Gravity Based Penalty**

(a) **Potential for Harm:** The potential for harm is major. The Facility used a bulb crusher to crush its non-green tipped fluorescent light bulbs which contain mercury. The Facility attached, using a hose, the bulb crusher to a shop vacuum and attached, using another hose, the shop vacuum to the building ventilation system. By setting up the bulb crusher in this manner, MMC vented the mercury vapors stored in the bulb crusher into the hospital's ventilation system and ultimately into the outside environment. In addition, glass dust, broken glass, and broken light bulbs were on top of the bulb crusher. This indicated that mercury was released from the bulb crusher into the air outside the bulb crusher. MMC's bulb crushing protocol requires that the operator wear a dust mask. The operator would be at risk of inhaling mercury vapors because a dust mask does not provide proper respiratory protection against mercury. Additionally, any dust that got onto the operator's clothing could contain mercury that might have been transported with the worker to other work and home environments. MMC's use of the bulb crusher in this manner presents a potential danger to human health and the environment

(b) **Extent of Deviation:** The Extent of Deviation was determined to be major because the Facility was not operated in a manner to prevent releases to the environment. The Facility connected the bulb crusher to the ventilation system and vented mercury into the hospital's ventilation system and into the outside environment.

The midpoint of the matrix was chosen.

**2. Multiple/Multi-Day:** Not Applicable

**3. Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

(a) **Good faith:** EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

(b) **Willfulness/Negligence:** No adjustment up or down is being made at this time.

(c) **History of Compliance:** Not applicable

(d) **Ability to Pay:** Not applicable

(e) **Environmental Project:** Not applicable

(f) **Other Unique Factors:** Not applicable

3. **Economic Benefit:** Preliminarily determined to be less than \$ 5,000.
4. **Recalculation of Penalty Based on New Information:** Not Applicable

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Counts 2&3)**

**Respondent:** The Maimonides Hospital Center

**Address:** 4802 Tenth Avenue, Brooklyn, N.Y. 11219

**Violation:** Count 2 - Failure to Use a Manifest for Transportation of Hazardous Wastes  
Count 3 - Failure to Ship Hazardous Waste to an Authorized Facility

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$22,750
(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.	\$22,750
5. Percent increase/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.	\$22,750

**NARRATIVE EXPLANATION TO SUPPORT PENALTY AMOUNT**  
**Penalty Computation Worksheet (Counts 2&3)**

**1. Gravity Based Penalty**

(a) **Potential for Harm**: The potential for harm was determined to be MAJOR. Respondent systematically failed to prepare manifests for the shipments to the receiving facilities having a substantial adverse impact upon the RCRA program. 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. The medical waste incinerator was not authorized to accept hazardous wastes and this also had an adverse impact on the RCRA program. The medical waste incinerator also did not have the safety features of a hazardous waste incinerator thereby creating additional risk.

(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 waste during the relevant time period, the chemotherapy waste was sent to a medical waste incinerator and Respondent did generate other hazardous wastes that it handled properly. The Facility appears to have handled the chemotherapy waste properly prior to 2004 and after December 2007.

The applicable cell ranges from \$ 19,500 to \$25,999. The mid-point was chosen

2. **Multiple/Multi-Day**- EPA did not impose multi-day penalties for this count due to the small amounts of chemotherapy wastes shipped and the fact that such wastes were incinerated.

**3. Adjustment Factors**

- (a) **Good Faith** –The Inspection indicates that manifest violations have recurred at the Facility despite the prior facility audit agreement history with EPA. No adjustment up or down has been made at this time.
- (b) **Willfulness/Negligence** - No adjustment up or down is being made at this time.
- (c) **History of Compliance** Not applicable
- (d) **Ability to Pay** Not applicable
- (e) **Environmental Project** Not applicable
- (f) **Other Unique Factors** Not applicable

**4. Economic Benefit:** Preliminarily determined to be less than \$ 5,000.

**5. Recalculation of Penalty Based on New Information:** Not applicable

**ATTACHMENT II-TABLE I**  
**GRAVITY MATRIX**

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



**ATTACHMENT II-TABLE II**  
**GRAVITY BASED MATRIX**

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
P O T E N T I A L  F O R  H A R M	MAJOR	\$32,500 to 26,000	\$25,999 to 19,500	\$19,499 to 14,300
	MODERATE	\$14,299 to 10,400	\$10,399 to 6,500	\$6,499 to 3,900
	MINOR	\$3,899 to 1,950	\$1,949 TO 650	\$649 TO 130