

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

In The Matter of:

Lourdes Health System

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-02-2017-7103**

U.S. Environmental
Protection Agency Region 2
2017 APR -4 AM 8 35
REGIONAL HEARING
CLERK

I. 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 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the “Act” or “RCRA”), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) serves notice of the U.S. Environmental Protection Agency (EPA) preliminary determination that the Lourdes Health System has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its facilities.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey is authorized by EPA to conduct a hazardous waste program (the “authorized State Program”). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA’s authorization of New Jersey’s regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) §§ 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey’s authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations

authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

JURISDICTION

1. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a), 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

NOTICE

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), EPA has given the State of New Jersey notice of this action.

RESPONDENT

3. Respondent, Lourdes Health System, (“Respondent” or “Lourdes”), operates Our Lady of Lourdes Medical Center in Camden, New Jersey (the “Camden Facility”) and the Lourdes Medical Center of Burlington County in Willingboro, New Jersey (the “Willingboro Facility”) (collectively the “Facilities”).
4. Respondent’s Willingboro Facility is a community hospital that provides area residents with services such as cancer treatment, long-term acute care, behavioral health, and surgery.
5. Respondent’s Camden Facility is a teaching hospital that provides services such as cardiology, maternity, dialysis, organ transplantation, and surgery.
6. The Camden Facility is located on 1600 Haddon Avenue, Camden, New Jersey.
7. The Willingboro Facility is located on 218 A Sunset Road, Willingboro, New Jersey.
8. Respondent has been and remains the “owner” of the “Facilities” as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in the New Jersey Administrative Code (N.J.A.C.) 7:26G-4.1(a).

9. Respondent is a “person,” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
10. Respondent is the “operator,” as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a), of the Facilities described in paragraph 3 above.
11. Respondent currently generates and has been generating “solid waste,” as defined in C.F.R. § 260.10, as incorporated by reference in NJAC 7:26G-4.1(a).

GENERAL ALLEGATIONS

12. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.* The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. § 6922(a) and § 6924(a), promulgated regulations for the management of hazardous waste and setting standards, *inter alia*, for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. §§ 260 through 266 and §§ 268, 270 and 273.
13. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.
14. 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 through November 2, 2015 is \$37,500 per day of violation. *See* 40 C.F.R. Part 19.
15. New Jersey’s authorized hazardous waste program incorporates by reference, with minor modifications, the federal program set forth in 40 C.F.R. §§ 124, 260-266, 268 and 270. Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference.
16. Respondent is a “generator” of “hazardous waste,” as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
17. On or about February 28, 1994, Respondent notified EPA, pursuant to Section 3010 of RCRA, that it was a large quantity generator (“LQG”) of hazardous waste at its Willingboro Facility. (LQG means that a generator generates more than 1000 kilograms of non-acute hazardous waste in a calendar month or greater than 1 kilogram of acutely hazardous waste. EPA issued to Respondent EPA Identification Number NJD982179202 for that Facility.

18. On or about August 1, 1983, Respondent notified EPA, pursuant to Section 3010 of RCRA, that it was a LQG of hazardous waste at its Camden Facility. EPA issued to Respondent EPA Identification Number NJD071457295 for that Facility.
19. On or about April 17, 2015, a duly designated representative of EPA conducted an inspection of the Camden Facility (the "Camden Inspection"), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations.
20. On or about July 9, 2015, a duly designated representative of EPA conducted an inspection of the Willingboro Facility (the "Willingboro Inspection"), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations.
21. Based on the Camden Inspection and hazardous waste manifest data submitted by Respondent which indicate quantities of hazardous waste shipped off-site, it appears that Respondent was operating as a large quantity generator of hazardous waste ("LQG") at the Camden Facility in April of 2015. Respondent may, however, have generated less than 1000 kilograms per month in other months.
22. Based on the Willingboro Inspection and hazardous waste manifest data submitted by Respondent which indicate quantities of hazardous waste shipped off-site, it appears that Respondent was operating as a LQG of hazardous waste the Willingboro Facility in July of 2015. Respondent may, however, have generated less than 1000 kilograms per month in other months.
23. Respondent has previously notified EPA that it generates regulated quantities of hazardous waste at the Camden and Willingboro facilities, and EPA believes that Respondent is currently at least a small quantity generator ("SQG") at both Facilities, as that term is defined in 40 C.F.R. §260.10 and N.J.A.C. 7:26G-4.1(a). SQG means a generator who generates less than 1000 kilograms of hazardous waste in a calendar month.
24. The requirements for generators are set forth in 40 C.F.R. § 262, as incorporated by reference in N.J.A.C. 7:26G-6.1(a).

EPA Investigative and Initial Enforcement Activities

25. On or about June 8, 2015, Respondent submitted documentation to EPA in response to its review of EPA's Camden Inspection report (the "June Response").
26. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, on or about January 16, 2016, EPA issued an Information Request Letter (the "January 2016 IRL") and a Notice of Violation ("NOV") to Respondent regarding its management of hazardous waste at its Facilities.

27. On or about February 16, 2016, Respondent submitted its response to the January 2016 IRL (the "February Response").

Count 1

Failure to Make Hazardous Waste Determinations - Camden Facility

28. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
29. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference in NJAC 7:26G-6.1(a), a person who generates a "solid waste" must determine whether that solid waste is a hazardous waste using the procedures specified therein.
30. Pursuant to 40 C.F.R. § 261.2, as incorporated by reference in NJAC 7:26G-5.1(a), subject to certain exclusions inapplicable here, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined at 40 C.F.R. Part 261.2(a)(1).
31. At the time of the Camden Inspection, Respondent stated that ethyl alcohol was used in specimen staining operations and the resultant waste was disposed by being poured down a sink [leading to the Camden County Waste Water Treatment Facility]. According to the June Response, the waste has since been collected for disposal as hazardous waste.
32. At the time of the Camden Inspection, a Facility representative stated that approximately 2.4 liters of 95-100 % ethyl alcohol were disposed down the drain each operating day.
33. In the June Response, Respondent stated that: "The Ethyl alcohol (absolute and 95%) used in the Histology stainer was disposed of into the drain up through 4/17/15."
34. The regulations governing wastewater discharges to a publicly owned treatment works are sometimes referred to as "pretreatment standards," meaning that some wastes must be treated before being discharged to comply with the standards. The National Pretreatment Standards at 40 CFR Part 403.5 contain specific standards prohibiting all users from discharging certain pollutants into a sewer system, including the discharge of flammable or explosive pollutants including, but not limited to, waste streams with a closed cup flash point of less than 140 degrees Fahrenheit.
35. 95% Ethyl alcohol is a flammable liquid and, when disposed, is an ignitable hazardous waste (EPA waste code D001) because its flashpoint of 65 degrees Fahrenheit is lower than the 140 degrees Fahrenheit regulatory standard of ignitability at 40 C.F.R. Section 261.21(a)(1).

36. As of the time of the Camden Inspection, Respondent had not determined if the ethyl alcohol identified above constituted hazardous waste.
37. In the June Response, Respondent stated that: "On 4/20/15 implemented new procedure whereby ethyl alcohol is collected in 5 gallon containers. The 5 gallon containers will be removed by outside vendor, Veolia along with the other hazardous waste..."
38. At the time of the Camden Inspection, a Facility representative stated that chemicals present in the Pharmacy were used in the past for compounding but had not been used for many years and would not be used in the future. EPA observed that these chemicals included a pint size container of hydrochloric acid and two 1-gallon bottles of acetone.
39. Hydrochloric acid, when disposed, is a corrosive hazardous waste (EPA waste code D002) because its pH of 0.1 is below the pH of 2 regulatory standard of corrosivity at 40 C.F.R. Section 261.22(a)(1).
40. Acetone is a flammable liquid and, when disposed, is an ignitable hazardous waste (EPA waste code D001) because its flashpoint of -4 degrees Fahrenheit is lower than the 140 degrees Fahrenheit degrees regulatory standard of ignitability at 40 C.F.R. Section 261.21(a)(1).
41. As of to the time of the Camden Inspection, Respondent had not determined if the hydrochloric acid and acetone identified above constituted hazardous wastes.
42. Respondent documented in the June Response that it had removed "legacy hazardous chemicals" including acetone and hydrochloric acid in its Pharmacy which had been shipped off-site under a hazardous waste manifest dated 5/22/15 that included flammable and corrosive liquids identified as EPA waste codes D001 and D002, respectively.
43. Respondent's failure to comply with 40 C.F.R. §262.11, as incorporated by N.J.A.C. 7:26G-6.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

Count 2

Storage of Hazardous Waste without a Permit - Camden and Willingboro Facilities

44. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

Legal Requirements for Permit and Exemptions

45. Respondent stores hazardous waste at its facilities for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurs in various facility locations including the Camden and Willingboro hazardous waste storage areas.

46. 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:
- a. 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
 - b. 40 C.F.R. Part 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(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.
47. A large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided it complies with the conditions set forth in or referred to in 40 C.F.R. 262.34(a), as incorporated by reference in N.J.A.C. 7:26G-6.1(a).
48. A small quantity generator may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 40 C.F.R. §262.34(d) as incorporated by reference in N.J.A.C. 7:26G-6.1(a).

Storage of hazardous waste

49. At and before the time of the Camden and Willingboro Inspections, Respondent was storing hazardous waste in containers at these Facilities.

Container Storage Requirement

Failure to mark containers in Hazardous Waste Storage Area with the words "Hazardous Waste" - Willingboro Facility

50. Both 40 C.F.R. § 262.34(a)(3) as incorporated by reference in N.J.A.C. 7:26G-6.1(a) (applicable to LQGs) and 40 C.F.R. § 262.34 (d)(4) which references 40 C.F.R. § 262.34(a)(3), as incorporated by reference in N.J.A.C. 7:26G-6.1(a) (applicable to SQGs), require each container or tank to be labeled or marked clearly with the words "Hazardous Waste."
- a. The Willingboro Facility's Hazardous Waste Storage Area is a locked cage outside of the main building. At the time of the Willingboro Inspection, all waste observed in this area by EPA was labeled "Universal Waste" and no waste was labeled

“Hazardous Waste.” The following was observed by EPA in the cage: 125 ml trichloroacetic acid, and 2 ounces of benzoin tincture compound.

- b. Trichloroacetic acid, when disposed, is a corrosive hazardous waste (EPA waste code D002) because its pH of 1 is below the pH 2 regulatory standard of corrosivity at 40 C.F.R. Section 261.22(a)(1).
- c. Benzoin tincture compound is a flammable liquid and, when disposed, is an ignitable hazardous waste (EPA waste code D001) because its flashpoint of 55 degrees Fahrenheit is lower than the 140 degrees Fahrenheit degrees regulatory standard of ignitability at 40 C.F.R. Section 262.21(a)(1).
- d. Respondent documented in the June Response that it had properly labeled as hazardous waste and subsequently shipped trichloroacetic acid and benzoin tincture compound off-site under a hazardous waste manifest dated 7/13/15 that included corrosive and flammable liquids identified as EPA waste codes D002 and D001, respectively.

Preparedness and Prevention Requirements

Failure to post emergency information - Camden and Willingboro Facilities

51. Pursuant to 40 C.F.R. §262.34(a)(4) which references 40 C.F.R. Part 265 Subpart D [including 40 C.F.R. § 265.52] as incorporated by reference by N.J.A.C. 7:26-G-9.1(a), a large quantity generator must document in a contingency plan the name and address of the emergency coordinator(s) for the facility. Pursuant to 40 CFR §262.34(d)(5)(ii)(A), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a small quantity generator must post, next to the telephone, the name and telephone number of the emergency coordinator.
- a. At the time of the Camden Inspection, the identity and the phone number of the emergency coordinator were not documented in a contingency plan for the Camden Facility and were not posted next to the telephone in the hazardous waste storage areas.
 - b. At the time of the Willingboro Inspection, the identity and the phone number of the emergency coordinator were not documented in a contingency plan for the Willingboro Facility and were not posted next to the telephone in the hazardous waste storage area for the Pharmacy.
 - c. Respondent stated in the February Response, with respect to the Camden Facility, that “the identity and phone number of the emergency coordinator has been posted next to the telephones in the hazardous waste storage areas.”

52. Pursuant to 40 C.F.R. §262.34(a)(4) which references 40 C.F.R. Part 265 Subpart D [including 40 C.F.R. § 265.52] as incorporated by reference by N.J.A.C. 7:26-G-9.1(a), a large quantity generator must document in a contingency plan the location of fire extinguishers and spill control material and if present a fire alarm for the facility. Pursuant to 40 CFR § 262.34(d)(5)(ii)(B), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a small quantity generator must post, next to the telephone, the location of fire extinguishers and spill control material and, if present, fire alarm,
- a. At the time of the Camden Inspection, the location of fire extinguishers and spill control material was not documented in a contingency plan for the facility and was not posted next to the telephone in hazardous waste storage areas.
 - b. At the time of the Willingboro Inspection, the location of fire extinguishers and spill control material was not documented in a contingency plan for the facility and was not posted next to the telephone in the hazardous waste storage area for the Pharmacy.
 - c. Respondent stated in the February Response, with respect to the Camden Facility, that “emergency postings have been placed in hazardous waste storage areas detailing the location of fire extinguishers and spill control material. These have been posted next to the telephone.”
 - d. Respondent stated in the February Response, with respect to the Willingboro Facility, that “the facility has posted the location of fire extinguisher and spill control material next to the phone.”

Failure to conduct weekly inspections - Willingboro Facility

53. Pursuant to 40 C.F.R. § 262.34(a)(1)(i) (applicable to LQGs) and C.F.R. § 262.34(d)(2) (applicable to SQGs) which both reference Subpart I of 40 C.F.R. Part 265 [including 40 C.F.R. § 265.174] and which are both incorporated by reference by NJAC 7:26G-9.1(a), a generator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion and other factors.
- a. At the time of the Willingboro Inspection and at times prior thereto, the Respondent had failed to conduct weekly inspections of the hazardous waste storage area during periods of waste storage.
 - b. Respondent stated in the February Response, with respect to the Willingboro Facility, that “The [Willingboro] facility has adopted a practice of inspection, at least weekly, areas where containers are stored.”

Failure to Make Arrangements with Local Authorities - Camden Facility

54. Pursuant to 40 CFR § 262.34(a)(4)(applicable to LQGs) and 40 CFR § 262.34(d)(4) (applicable to SQGs) which both reference Subpart C of 40 C.F.R. Part 265 [including 40 CFR § 265.37(a)(1)], and which are incorporated by reference by N.J.A.C. 7:26G-9.1(a), a generator must attempt to make arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.
- a. At the time of the Camden inspection and at times prior thereto, the Respondent had failed to make arrangements with local authorities.
 - b. Respondent stated in the February Response, with respect to the Camden Facility, that “the facility has provided the Camden County Police Department, the Camden Fire Department, and the Camden County Emergency Operations Center with copies of facility maps illustrating the layout of the facility, properties of hazardous waste handled at the facility, and associated hazards, places where facility personnel would normally be working, entrances to the facility, and possible evacuation routes.”

Storage of Hazardous Waste Without a Permit

55. At the time of the Camden and Willingboro Inspections, and at times prior thereto, Respondent had failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.
56. Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a).
57. Respondent had not applied for a permit to store hazardous waste at its Facilities and had not applied for interim status pursuant to 40 C.F.R. § 270.70 as incorporated by reference in N.J.A.C.7:26G-12.1(a).
58. At the time of the Camden and Willingboro Inspections, and for times prior thereto, Respondent had been operating existing hazardous waste management facilities without having qualified for interim status at its Facilities.
59. At the time of the Camden and Willingboro Inspections, and at times prior thereto, Respondent had been operating these Facilities as existing hazardous waste management facilities without having obtained RCRA permits.

60. Respondent's aforementioned operation of its waste management Facilities without having obtained a permit or qualifying for interim status constituted a violation of each of the following:

a. Section 3005 of the Act, 42 U.S.C. § 6925; and

b. 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a).

61. Respondent's failure to comply with Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

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: <https://www.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. This 2003 RCRA Civil Penalty 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 through 2015 ("Inflation Adjustment Act"), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the December 6, 2013 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalties Policies to Account for Inflation (applicable to violations that occurred between December 7, 2013 and November 2, 2015)". Additional adjustments have more recently been made pursuant to the July 27, 2016 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015)."

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$95,284 per day for each violation occurring after November 2, 2015 (where the penalty is assessed on or after January 15, 2017). See 40 C.F.R. Part 19 and 82 Fed. Reg. 3633 (January 12, 2017).

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 also included in Attachment II.

Count 1: \$27,300; 40 C.F.R. § 262.11

Count 2: \$11,500; RCRA § 3005 and 40 C.F.R. § 270.1(c)

Total Proposed Penalty for Counts 1 and 2 Rounded to the Nearest Hundredth and Incorporating the December 2013 Adjustment of Calculated Penalty is: \$38,800.

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 past violations alleged in Counts 1 and 2 of this Complaint. Respondent shall thereafter maintain compliance at its Facilities with the requirements cited in Counts 1 and 2.

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:

Ms. Emily McCleary
Senior Enforcement Team
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 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 Facilities. 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 Facilities.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, the Debt Collection Improvement Act of 1996, and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 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 \$57,391 for each day of continued noncompliance (82 Fed. Reg. 3633, January 12, 2017). Such continued noncompliance may also result in suspension or revocation of any permits issued to this violator whether issued by the EPA or the State of New Jersey.

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. § 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. § 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 ("Consolidated Rules of Practice"), 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. Also enclosed are revisions to the Consolidated Rules of Practice published in the Federal Register on January 9, 2017, but whose effective date has been delayed until May 22, 2017 (82 Fed. Reg. 2230, January 9, 2017 and 82 Fed. Reg. 14324, March 20, 2017). These revisions simplify the administrative processing of cases by removing inconsistencies and codifying electronic filing and service procedures.

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 are 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(s) to the Complaint, and such Answer(s) 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(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer(s) 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 the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) 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(s) facts that constitute or that might constitute the grounds of its 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(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 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. § 22.

C. Failure to Answer

If Respondent fails in their Answer(s) 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(s) 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(s) 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 Environmental Appeals Board 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 the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected 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, and/or (2) 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:

Stuart Keith, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, N.Y. 10007-1866
Telephone (212) 637-3217

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 request for 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(s) 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 shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the 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).

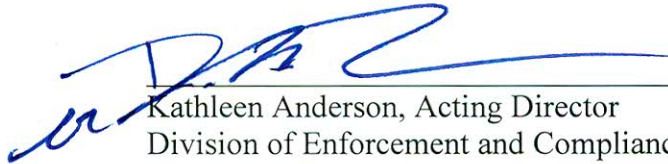
Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their 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 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: March 31, 2017
New York, New York

COMPLAINANT:



Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To: Mr. Alexander J. Hatala
President
Lourdes Health System
1600 Haddon Avenue
Camden, NJ 08103

cc: Charles Maack, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office, New Jersey Department of Environmental Protection
300 Horizon Center
P.O. Box 407
Trenton, New Jersey 08625-0407

In the Matter of Lourdes Health System, Docket Number RCRA-02-2017-7103

ATTACHMENT I

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet (Count 1)

Respondent: Lourdes Health System

Facility Address: 1600 Haddon Avenue, Camden, NJ 08103

Requirement Violated:

40 C.F.R. § 262.11 (N.J.A.C. 7:26G-6.1 (a)). Failure to make hazardous waste determinations.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$25,997
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1.	Not applicable
4. Add line 1 and line 3.	\$25,997
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10, adjust for inflation and round to nearest hundred for penalty amount to be inserted into the complaint.	\$27,300*

* Matrix penalty amount (\$25,997) adjusted for inflation using a multiplier of 1.0487 = \$27,263

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

12. Gravity Based Penalty

Potential for Harm – The potential for harm for failure to make a hazardous waste determination was determined to be MAJOR. 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/or the adverse impact of the noncompliance on the RCRA statutory or regulatory program. In general, if an owner/operator is unaware that it is generating a hazardous waste, there is a greater likelihood that the owner/operator will not comply with other applicable provisions of the RCRA regulatory program, and that hazardous waste may be disposed of improperly and potentially released to the environment. In this case, Respondent indicated that it had for some time poured an ignitable hazardous waste down a drain leading into a municipal waste water treatment facility, rather than sending the hazardous waste by manifested shipment to a permitted hazardous waste treatment, storage, or disposal facility. In addition, at least two other wastes were stored that had not been properly identified as hazardous.

- a. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent failed to make a hazardous waste determination for three wastes, including a waste regularly generated by Respondent in the course of its normal laboratory procedures. This failure contributed to the repeated improper disposal of an ignitable hazardous waste. Respondent had, however, properly determined that other solid wastes it generated were hazardous wastes. In addition, the amount of two of the wastes for which a determination had not been made was small.
- b. Gravity-based – The applicable cell ranges from \$22,285 to \$29,709. The mid-point of the range was selected.
- c. Multiple/Multi-day - Failure to make a hazardous waste determination is a one-time event.

13. Adjustment Factors

- a. Good Faith - Based upon presently available information, 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

14. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit is less than \$3,880 and is thus, per the RCRA Civil Penalty Policy, considered *de minimis*.

In the Matter of Lourdes Health System, Docket Number RCRA-02-2017-7103

ATTACHMENT II

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

Respondent: Lourdes Health System
Facility Addresses: 1600 Haddon Avenue, Camden, NJ 08103
218 A Sunset Road, Willingboro, NJ 08046

Requirement Violated:
40 C.F.R. § 270.1 as incorporated by reference in N.J.A.C. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925. Failure to obtain a RCRA permit or interim status for the storage of hazardous waste.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$9,658
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$1,295
3. Multiply line 2 by number of days of violation minus 1 (30 days minus 1).	\$1,295
4. Add line 1 and line 3.	\$10,953
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10, adjust for inflation and round to nearest hundred for penalty amount to be inserted into the complaint.	\$11,500*

* Matrix penalty amount (\$10,953) adjusted for inflation using a multiplier of 1.0487 = \$11,486

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

12. Gravity Based Penalty

a. Potential for Harm – The Potential for Harm resulting from this violation was determined to be MODERATE. Respondent’s operation of its Camden and Willingboro Facilities without a permit or interim status or, in the alternative, by failing to comply with conditions for the safe, short-term accumulation of hazardous waste posed a significant adverse effect on the purposes and procedures for implementing the RCRA regulatory program. Nonetheless, while Respondent failed to comply with certain hazardous waste management standards for emergency preparedness and prevention and the inspection and labeling of hazardous waste containers, it did perform other required regulatory actions, including properly labeling hazardous waste storage areas, thereby reducing the potential for harm.

b. Extent of Deviation – The extent of deviation present in this violation was determined to be MODERATE. Respondent deviated significantly from the required regulatory conditions for accumulating hazardous waste without a permit. Although Respondent did not meet all the regulatory conditions for accumulating hazardous waste without a permit, it did meet some conditions such as having hazardous waste training and putting accumulation start dates on hazardous waste containers.

c. Gravity-based – The applicable cell ranges from \$7,435 to \$11,881. The mid-point of the penalty cell matrix was selected.

d. Multiple/Multi-day – Multi-day penalties were assessed because Respondent failed to obtain a RCRA permit or interim status for the storage of hazardous waste at two facilities. The applicable cell ranges from \$360 to \$2,230. The mid-point of the penalty cell matrix was selected.

13. Adjustment Factors

- a. Good Faith - Based upon presently available information, 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

14. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit of the violation is less than \$3,880 and is thus, per the RCRA Civil Penalty Policy, considered *de minimis*.

ATTACHMENT III

<p>Gravity-based Penalty Matrix To Supplement the RCRA Civil Penalty Policy For Violations That Occur After January 12, 2009*</p>
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Extent of Deviation from Requirement

	MAJOR	MODERATE	MINOR
Potential for Harm	MAJOR	MODERATE	MINOR
	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

*** All penalties calculated in this action have been rounded to the nearest \$100.**

ATTACHMENT IV

**Multi-Day Matrix of Minimum Daily Penalties
To Supplement the RCRA Civil Penalty Policy
For Violations That Occur After January 12, 2009***

Extent of Deviation from Requirement

	MAJOR	MODERATE	MINOR
Potential for Harm	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	\$850 to \$150	\$430 to \$150	\$150

* All penalties calculated in this action have been rounded to the nearest \$100

CERTIFICATE OF SERVICE

This is to certify that on April 4, 2017, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2017-7103 hereinafter referred to as the "Complaint"), together with Attachments I, II, III, IV, 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 Alexander J. Hatala, President, Lourdes Health System, 1600 Haddon Avenue, Camden, NJ 08103. On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Name: 