

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

In the Matter of:

Meadowlands Hospital Medical Center

Respondent.

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

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING**

Docket No. RCRA-02-2016-7105

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 United States Environmental Protection Agency's ("EPA") preliminary determination that Meadowlands Hospital Medical Center has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its Secaucus, New Jersey Facility.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (August 2, 1999). There were later 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

U.S. Environmental
Protection Agency
2016 SEP 28 AM 8:00
REGIONAL HEARING
CLERK

Fed. Reg. 76995 (December 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some minor modifications, the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some minor 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 (October 21, 1996). The regulations authorized in 2003 can be found at 31 N.J.R. 166 (January 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the provisions of the authorized State program and 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 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 Jersey prior notice of this action.

RESPONDENT

3. Respondent is Meadowlands Hospital Medical Center ("MHMC" or "Respondent").
4. MHMC is situated at 55 Meadowlands Parkway, Secaucus, New Jersey 07094.
5. Respondent is a not-for-profit corporation organized pursuant to the laws of the State of New Jersey.

GENERAL ALLEGATIONS

6. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste and used oil. 42 U.S.C. § 6901 et seq.
7. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste

including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 279.

8. 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, which includes the regulations referenced below.
9. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Administrative Code (N.J.A.C.) 7:26G-4.1(a).
10. The Secaucus, New Jersey location where Respondent conducts its business activities constitutes an “existing hazardous waste management facility” or “existing facility” as those phrases are defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a) (hereinafter “facility”).
11. Respondent, since at least 2010, is and has been the “owner” of the facility 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).
12. Respondent, since at least 2010, is and has been the “operator” of the facility 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).
13. In or about May 1989, Respondent’s predecessor notified EPA, pursuant to Section 3010 of RCRA, that it was a “generator” of hazardous waste at its Facility at 55 Meadowlands Parkway, Secaucus, New Jersey.
14. In or about, May 1989, EPA issued to Respondent’s predecessor EPA Identification Number NJD040742017 at the Facility.

Description of MHMC Operations

15. Respondent is and has been since 2010, the owner and operator of a medical hospital/institution engaged in the business of diagnosing and treating medical illnesses and diseases with a full range of services such as obstetrics, operating rooms, same day surgery, pediatrics, imaging and diagnostics, and cardiology, which includes a cardiac catheterization laboratory.
16. Respondent, in carrying out its medical activities, including the diagnosis 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,” as defined in 40 C.F.R. § 261.2 as incorporated by reference in N.J.A.C. 7:26G-5.1(a), at its facility.

17. Respondent in carrying out its medical activities, including the diagnosis and treatment of illnesses and diseases, and in the course of normal building maintenance, has been generating, and continues to generate, “hazardous waste,” as defined in 40 C.F.R. § 261.3 as incorporated by reference in N.J.A.C. 7:26G-5.1(a), at its facility.
18. Respondent, in carrying out its medical activities, including the diagnosis and treatment of illnesses and diseases, has been generating, and continues to generate, “acute hazardous waste,” as defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a), at its facility.
19. As of April 2015, and prior and subsequent thereto, Respondent has been a generator of “hazardous waste” and “acute hazardous waste” within the meaning of 40 C.F.R. 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a) at its facility.
20. As of April 2015, and prior and subsequent thereto, Respondent has generated and continues to generate (at least) 100 kilograms (“kgs”) of hazardous waste in a calendar month.
21. MHMC is a “small quantity generator” of hazardous waste as that phrase is defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
22. 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). 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).

EPA’s Investigative Activities

23. On or about April 30, 2015, a duly designated representative of EPA conducted an inspection of the Facility, 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 (the “2015 Inspection”).
24. At and before the time of the 2015 Inspection, hazardous waste containers in the Hazardous Waste Storage Area were not clearly marked with the date when its period of accumulation of hazardous waste in the container began, with the exception of two 55-gallon drums containing hazardous waste xylene and alcohol.
25. At and before the time of the 2015 Inspection, there was no spill control equipment in or near the Hazardous Waste Storage Area.

26. At and before the time of the 2015 Inspection, there were no fire extinguishers in or near the Hazardous Waste Storage Area.
27. At and before the time of the 2015 Inspection, there was no internal communication system or alarm at or near the Hazardous Waste Storage Area.

Information Requests, NOVs and Responses

28. On or about July 1, 2015, EPA, pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, issued to Respondent an Information Request Letter (the “July IRL”). The July IRL sought information and required Respondent to submit specific types of documentation relating to its generation and management of both acute hazardous waste and hazardous waste at its facility.
29. On or about August 4, 2015, Respondent submitted its response to the July 2015 IRL (the “August Response”).
30. On or about November 25, 2015, EPA issued to Respondent a combined Notice of Violation (“NOV”) and Request for Information (“IRL”).
31. 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 requested Respondent to provide a description and documentation of the actions it had taken to correct the violations identified by EPA in that NOV.
32. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to Respondent’s handling of hazardous waste and acute hazardous waste at its Secaucus facility.
33. On or about December 20, 2015, the Respondent submitted its response to the combined NOV and IRL (“December Response”).
34. In its December Response, MHMC admitted “prior to January 2015 [MHMC] was using the red bagged medical waste bags for disposal [of Warfarin].”
35. In its December Response, MHMC admitted “non-chemo drugs such as Warfarin, nicotine, insulin, etc.” were not disposed of as hazardous waste until January 2015.
36. In its December Response, MHMC admitted that the Hazardous Waste Storage Area was not inspected on a weekly basis until February 2015.

Count 1 - Failure to Make Hazardous Waste Determinations

37. Complainant repeats and realleges each allegation contained in paragraphs “1” through “36,” inclusive, with the same force and effect as if fully set forth below.
38. Pursuant to 40 C.F.R. § 262.11 as incorporated by reference in N.J.A.C.7:26G-6.1(a), a person who generates “solid waste,” must determine if the solid waste is a hazardous waste using the method set forth therein.
39. Pursuant to 40 C.F.R. § 261.2(b)(3) as incorporated by reference in N.J.A.C. 7:25G-5.1(a) materials are solid wastes if they are “abandoned by being disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of....”
40. Prior to January 2015, MHMC routinely discarded non-chemotherapy drugs such as Warfarin, nicotine and/or insulin as red bagged medical waste without determining whether each of those non-chemotherapy drugs was a hazardous waste.
41. Each of the materials identified in paragraph “40,” above, was a “discarded material” and “solid waste,” as defined in 40 C.F.R. § 261.2 as incorporated by reference in NJAC 7:26G-5.1(a).
42. As of and prior to January 2015, MHMC had not determined whether each of non-chemotherapy drugs identified in paragraph “40,” above, constituted a hazardous waste.
43. Since at least January 2015, MHMC has been disposing each of the non-chemotherapy drugs identified in paragraph “40,” above, as a hazardous waste.
44. Respondent’s failure to have made a hazardous waste determination for each of the non-chemotherapy drugs identified in paragraph “40,” above constitutes a violation of 40 C.F.R. § 262.11 as incorporated by reference in N.J.A.C. 7:26G-6.1(a).

COUNT 2 - Storage of Hazardous Waste Without a Permit

45. Complainant repeats and realleges each allegation contained in paragraphs “1” through “44,” inclusive, with the same force and effect as if fully set forth below set forth herein.

Legal Requirements for Permit and Exemptions

46. Respondent stores hazardous waste at its facility 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 Hazardous Waste Storage Area and numerous satellite accumulation areas located throughout MHMC’s facility.

47. 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.
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 April 2015 Inspection, MHMC was storing hazardous waste in containers in the Hazardous Waste Storage Area.

Container Storage Area Requirements

Failure to label containers with the words "Hazardous Waste" and "Accumulation Start Dates"

50. Pursuant to 40 C.F.R. §§ 262.34(d)(4) and 262.34(a)(2), as incorporated by reference in NJAC 7:26G-6.1(a), a generator may store hazardous waste on-site in containers for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
51. Pursuant to 40 C.F.R. §§ 262.34(d)(4) and 262.34(a)(3), as incorporated by reference in NJAC 7:26G-6.1(a), a generator may store hazardous waste on-site for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that while the hazardous waste is being accumulated on site in containers, each container is labeled or marked clearly with the words "Hazardous Waste."
52. At, and for some time prior to the 2015 Inspection, containers of hazardous waste stored in the Hazardous Waste Storage Area were not clearly marked with the date when period of accumulation of hazardous waste began in each container.

53. At, and for some time prior to the 2015 Inspection, containers of hazardous waste stored in the Hazardous Waste Storage Area were not labeled or marked clearly with the words "Hazardous Waste."
54. In its December Response, MHMC stated "All bins and/or containers have been labeled with proper hazardous waste stickers that reflect the start date waste was accumulated as well as the Hazardous Substance Identity."

Preparedness and Prevention Requirements

Failure to have the following required equipment

55. Pursuant to 40 C.F.R. § 262.34(d)(4) as incorporated by reference in N.J.A.C. 7:26G-6.1(a) (which cross references the requirements of Subpart C (40 C.F.R. § 265.32(a)), a generator may store hazardous waste on-site for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that the facility is equipped with an internal communication or alarm system.
56. Pursuant to 40 C.F.R. § 262.34(d)(4) as incorporated by reference in N.J.A.C. 7:26G-6.1(a) (which cross references the requirements of Subpart C (40 C.F.R. § 265.32(b)), a generator may store hazardous waste on-site for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that the facility is equipped with a device such as a telephone or hand-held two-way radio (immediately available at the scene of operations).
57. Pursuant to 40 C.F.R. § 262.34(d)(4) as incorporated by reference in N.J.A.C. 7:26G-6.1(a) (which cross references the requirements of Subpart C (40 C.F.R. § 265.32(c)), a generator may store hazardous waste on-site for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that the facility is equipped with portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.
58. At the time of the 2015 Inspection, EPA did not observe any spill control equipment, at or near the Hazardous Waste Storage area.
59. At the time of the 2015 Inspection, EPA did not observe any fire extinguishers at or near the Hazardous Waste Storage area.
60. At the time of the 2015 Inspection, EPA did not observe any communication device at or near the Hazardous Waste Storage area.
61. In its December Response, MHMC stated "[t]he facility is installing a panic button to the

exterior of the building in close proximity to the hazardous waste storage containers... Additional radios have been ordered... In the interim, the environmental services staff member assigned to hazardous waste disposal carries a communication radio.”

62. In its December Response, MHMC admitted “A fire extinguisher and two emergency spill kits have been installed within 10 feet from the hazardous waste storage containers.”

Failure to Inspect

63. Pursuant to 40 C.F.R. § 262.34(d)(2), as incorporated by reference in NJAC 7:26G-6.1(a) (which cross references the requirements of Subpart I (40 C.F.R. § 265.174)), a generator may store hazardous waste on-site for a period of one hundred eighty (180) days or less without being subject to the permitting provisions of 40 C.F.R. Part 265 provided that the generator inspects, at least weekly, areas where containers are stored, looking for leaks and for deterioration caused by corrosion and other factors.
64. At the time of the 2015 Inspection, MHMC admitted “[it] routinely does not inspect the storage area weekly.”
65. In its December Response, MHMC stated the “Environmental Services Director implemented weekly hazardous waste container inspections in February 2015 to identify potential leaks, deterioration of containers and the containment system caused by corrosion and other factors.”

Respondent’s failure to have required permit

66. At the time of the April 2015 Inspection, 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.
67. MHMC 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).
68. MHMC had not applied for a permit to store hazardous waste at its facility 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).
69. Respondent had been operating an existing hazardous waste management facility at its facility.
70. On April 30, 2015, and for times prior thereto, Respondent had been operating an existing hazardous waste management facility without having obtained a RCRA permit for its facility.

71. On April 30, 2015, and for times prior thereto, Respondent had been operating an existing hazardous waste management facility without having qualified for interim status at its facility.
72. Respondent's aforementioned operation of its waste management facility 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).
73. 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 29, 2008 document entitled “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)”; the November 16, 2009 document entitled “Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule;” 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);” and 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 \$93,750 per day for each violation occurring after November 2, 2015. *See* 40 C.F.R. Part 19 and 81 Fed. Reg. 43,091 (July 1, 2016).

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: \$9,700; 40 C.F.R. § 262.11 as incorporated by reference in N.J.A.C. 7:26G-6.1(a).

Count 2: \$34,500; RCRA § 3005 and 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a).

Total Proposed Penalty is **\$44,200**

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 Facility 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 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, 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 \$56,467 for each day of continued noncompliance (81 Fed. Reg. 43091, July 1, 2016). 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, and which are codified at 40 C.F.R. § 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(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:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, N.Y. 10007-1866
Telephone (212) 637-3195

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.

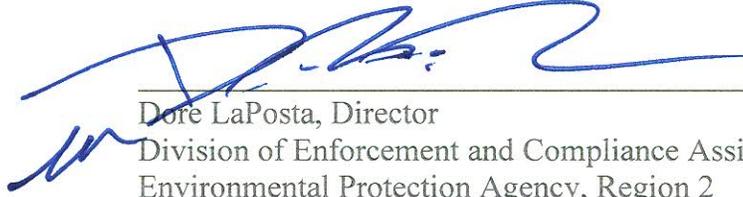
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to appeal the 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: September 26, 2016 COMPLAINANT:
New York, New York



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

To: Ms. Felicia Karsos
Chief Executive Officer
Meadowlands Hospital Medical Center
55 Meadowlands Parkway
Secaucus, NJ 07094

cc: Mike Hastry, 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

ATTACHMENT I

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

Respondent: Meadowlands Hospital Medical Center
Facility Address: 55 Meadowlands Parkway, Secaucus, NJ 07094

Requirement Violated: 40 C.F.R. § 262.11 as incorporated by reference in N.J.A.C. 7:26G-6.1
(a). Respondent failed to make a proper waste determination for non-chemotherapy pharmaceutical wastes.

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.	Not applicable
3. Multiply line 2 by number of days of violation minus 1.	Not applicable
4. Add line 1 and line 3.	\$9,658
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.	Less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$9,700 *

* Total penalty has been rounded to the nearest hundred.

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

12. Gravity Based Penalty

- a. Potential for Harm-. The potential for harm was MODERATE because Respondent incorrectly classified some of its non-chemotherapy (i.e., Warfarin, nicotine and insulin) acute hazardous waste-streams. The RCRA Civil Penalty Policy provides the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the noncompliance on the regulatory scheme. If an owner/operator is unaware that its facility is generating hazardous waste, there is a much greater likelihood that it will not be complying with other applicable provisions of RCRA relating to the management of hazardous waste and people (patients, doctors, hospital employees and visitors), as a result, might be exposed to such waste. In this case, the Potential for Harm was determined to be MODERATE due to the relatively small amount of wastes involved.
- b. Extent of Deviation.- The extent of deviation was MODERATE. Respondent, prior to January 2015, failed to make a proper hazardous waste determination for non-chemotherapy waste-streams (i.e., Warfarin, nicotine, insulin) that included acutely hazardous waste. However, only a relatively small amount of non-chemotherapy drugs were improperly identified.
- c. Gravity-based- The applicable cell ranges from \$7,435 to \$11,881. The mid-point of the penalty cell matrix was selected.

Multiple/Multi-day- Multi day penalties were not assessed.

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 *de minimis*.

In the Matter of Meadowlands Hospital Medical Center, Docket Number RCRA-02-2016-7105
ATTACHMENT II

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

Respondent: Meadowlands Hospital Medical Center
Facility Address: 55 Meadowlands Parkway, Secaucus, NJ 07094

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. Respondent stored hazardous waste without having obtained either a permit or interim status.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$34,518
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1 (30 days minus 1).	\$0
4. Add line 1 and line 3.	\$34,518
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.	Less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$34,500*

* Total penalty has been rounded to the nearest hundred.

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

12. Gravity Based Penalty

a. Potential for Harm- The Potential for Harm was Major. Respondent's failure to obtain either a hazardous waste permit or interim status, or, in the alternative, to comply with conditions for the safe short-term accumulation of hazardous waste posed a substantial adverse effect on the purposes and procedures for implementing the RCRA regulatory program. Respondent failed to comply with numerous management standards governing the labeling of storage containers and emergency preparedness and prevention.

b. Extent of Deviation- The extent of deviation present in this violation was determined to be MAJOR. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with many regulations that must be met by SQGs to be exempt from RCRA permitting.

c. Gravity-based- The applicable cell ranges from \$29,710 to \$39,326. The mid-point of the penalty cell matrix was selected.

d. Multiple/Multi-day -Multi-day penalties were not assessed

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 *de minimis*.

ATTACHMENT III

Gravity-Based Penalty Matrix
To Supplement the RCRA Civil Penalty Policy
For Violations that Occurred from December 7, 2013 through November 2, 2015

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$39,326 to \$29,710	\$29,709 to \$22,285	\$22,284 to \$16,339
	MODERATE	\$16,339 to \$11,882	\$11,881 to \$7,435	\$7,434 to \$4,457
	MINOR	\$4,457 to \$2,234	\$2,233 to \$745	\$744 to \$157

ATTACHMENT IV

Multi-Day Matrix of Minimum Daily Penalties
 To Supplement the RCRA Civil Penalty Policy
 For Violations that Occurred from December 7, 2013 through November 2, 2015

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		Major	Moderate	Minor
	Major	\$7,435 to \$1,489	\$5,946 to \$1,122	\$4,457 to \$818
	Moderate	\$3,272 to \$598	\$2,339 to \$378	\$1,489 to \$231
	Minor	\$891 to \$157	\$451 to \$157	\$157

CERTIFICATE OF SERVICE

This is to certify that on September 28, 2016, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2016-7105 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. § 22, by certified mail, return receipt requested, to Felicia Karsos, Chief Executive Officer, Meadowlands Hospital Medical Center, 55 Meadowlands Parkway, Secaucus, NJ 07094. 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: Yolanda Moya