

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

FILED  
2016 SEP 29 AM 11:46  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

OMNICARE, INC.

RESPONDENT

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Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2016-0933

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CONSENT AGREEMENT AND FINAL ORDER

I.

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Respondent, Omnicare, Inc., (“Respondent”) and concerns two (2) facilities in Arkansas, each with different levels of alleged noncompliance and for different periods. The facilities that are covered by this CAFO are listed below and collectively referred to as (the “Facilities”):
  - A. The facility located at 2929 Caraway Road, Suite 9, Jonesboro, Arkansas 72401 (the “Jonesboro Facility”); and
  - B. The facility located at 7301 Industrial Dr., North Little Rock, Arkansas, 72117 (the “North Little Rock Facility”).
2. Notice of this action has been given to the state of Arkansas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).

3. For the purpose of this CAFO, where applicable, citations are made only to the Code of Federal Regulations ("C.F.R.") since the relevant Arkansas Pollution Control Ecology Commission ("APCEC") Regulations No. 23, 260-266, and 270, mirror, to the greatest extent possible, 40 C.F.R. §§ 260, 261, 262, and 270 and use the same section numbers. Therefore, for ease of reference and when no differences exist, this CAFO citations to the C.F.R. are citations to the corresponding APCEC Regulations No. 23.
4. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
5. The Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims in the CAFO.
6. The CAFO resolves only those violations which are alleged herein.
7. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II.  
JURISDICTIONS

8. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a Delaware corporation, authorized to do business in the state of Arkansas.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
12. Respondent owns or operates the facilities at the respective locations identified in Paragraph I.
13. The Facilities are pharmacies that dispense prescription medications, including controlled medicines, to patients who reside in long-term care facilities.
14. During the period from November 2014 through August 2015, EPA conducted a RCRA record review of Respondent's activities as a generator of hazardous waste in Arkansas, including a review of information voluntarily provided to EPA by Respondent (the "Investigation").
15. In 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained additional information on Respondent's hazardous wastes that it offered for transport and treatment (the "Responses").
16. During the Investigation and review of the Responses, EPA discovered that Respondent generated and offered for transport and treatment, hazardous waste having the:

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- A. Characteristic of ignitability (D001);
  - B. Characteristic for multiple toxicity waste D005, D007, D009, D010, D011, D013, D024, D026; and
  - C. Listing for several P and U listed hazardous waste.
17. The Facilities are each a “facility” within the meaning of 40 C.F.R. § 260.10.
18. EPA determined that the Facilities are similar in that the Facilities generate hazardous waste.
19. The waste streams identified in Paragraph 16 are “hazardous waste” as defined in 40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33.
20. From the Investigation and review of the Responses, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 16 in quantities that exceeded the threshold amount, of at a minimum, 1 kilogram (“kg”) of acutely hazardous waste per month, which qualified Respondent for large quantity generator (“LQG”) status under 40 C.F.R. Part 262, for the periods that such wastes remained onsite.
21. Respondent is a “generator” of “hazardous waste” as those terms are defined in Sections 40 C.F.R. § 260.10.
22. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 40 C.F.R Part 262.

### North Little Rock

#### **Claim i. Notification Requirements**

23. The allegations in Paragraphs 1-22 are realleged and incorporated by reference.
24. During the Investigation and review of the Responses, EPA determined that Respondent operated from 2010 through 2015 at the North Little Rock Facility as a LQG.

25. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with EPA or the authorized state a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
26. Respondent did not file with EPA or Arkansas an adequate and timely notification of its hazardous waste activities at the North Little Rock Facilities during the period from 2010 through 2014 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Jonesboro and North Little Rock**

**Claim ii. Failure to make Adequate Hazardous Waste Determinations**

27. The allegations in Paragraphs 1-26 are realleged and incorporated by reference.
28. Pursuant to 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
29. EPA reviewed Respondent's records for the period from 2010 through 2015, and determined that Respondent failed to make adequate hazardous waste determinations on all of Respondent's solid waste streams at the Facilities.
30. Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 262.11(c) by failing to make the requisite hazardous waste determination on

all of the solid waste streams generated by Respondent at the Facilities during the period from 2011 through 2014.

IV.  
COMPLIANCE ORDER

31. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within one hundred and eighty (180) calendar days of the effective date of this Order, Respondent shall provide the following to EPA in writing:

- A. Respondent shall certify that it has assessed its solid waste streams at the Facilities to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOPs”) to ensure that Respondent is operating at the Facilities in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facilities and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

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32. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Compliance Enforcement Section (6EN-HC)  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Dale Thrush

V.

TERMS OF SETTLEMENT

**i. Penalty Provisions**

33. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of Sixty-Seven Thousand, Nine Hundred and Ninety Dollars (\$67,990.00 ).
34. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

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35. The following are Respondent's options for transmitting the penalties:

Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express

Mail, the check should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

The case name and docket number (In the Matter of Omnicare Inc., Docket No. RCRA-06-2016-0933) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

36. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733



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Mark Potts, Chief  
Waste Enforcement Branch (GEN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
Attention: Dale Thrush

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**ii. Cost**

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

**iii. Termination and Satisfaction**

39. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 32. Unless the EPA objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

**iv. Effective Date of Settlement**

40. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
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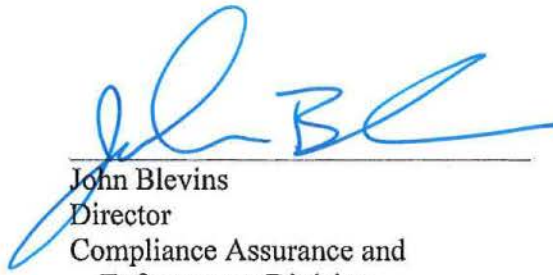
FOR THE RESPONDENT:

Date: 9/20/16

  
\_\_\_\_\_  
Omnicare Inc.

FOR THE COMPLAINANT:

Date: 9.26.16

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 09-29-2016

  
\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

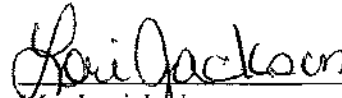
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CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of Sept, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0158 0000 2454 8461**

Omnicare, Inc.  
c/o Frances E. Phillips  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, TX 75201-4761

  
Ms. Lori Jackson  
Paralegal