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

MAR 30 2004

CERTIFIED MAIL– RETURN RECEIPT REQUESTED

Mr. James B. Hogle, III
Vice President, Facilities & Construction
Jersey City Medical Center
50 Baldwin Avenue- 5th Floor Surgical Bldg.
Jersey City, NJ 07304

Re: **In the Matter of Jersey City Medical Center**
Docket No. RCRA-02-2004-7107

Dear Mr. Hogle:

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

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866

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

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

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

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.)

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

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

Sincerely,

Dore La Posta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In The Matter of: Jersey City Medical Center 50 Baldwin Avenue Jersey City, New Jersey 07304 Respondent. Proceeding Under Sections 3008 of the Solid Waste Disposal Act, as amended	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No.: RCRA-02-2004-7107

I. COMPLAINT

This is a civil administrative proceeding instituted pursuant to Sections 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 the Jersey City Medical Center ("JCMC" or "Respondent") has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its Jersey City 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 (Aug. 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 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.) 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 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). 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. Consequently, EPA has retained its authority to enforce the New Jersey regulations comprising the authorized State Program. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

New Jersey's authorized hazardous waste program incorporates by reference, with some minor modifications, the federal program set forth in 40 C.F.R. Parts 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. All federal regulatory references are to the 1993 edition of the C.F.R. unless otherwise noted.)

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, 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. EPA has given notice of this action to the State of New Jersey.

RESPONDENT

3. Respondent is the Jersey City Medical Center (hereinafter "JCMC" or "Respondent").

4. JCMC is a regional teaching hospital in New Jersey and maintains in-patient services.

5. JCMC is located at or near 50 Baldwin Avenue in Jersey City, New Jersey and includes numerous buildings ("the facility").

GENERAL ALLEGATIONS

6. 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.

7. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), any person is subject to a civil penalty not to exceed $25,000 per day for each violation of any requirement of Subtitle C of RCRA occurring prior to January 31, 1997 and, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 and 40 C.F.R. Part 19, a civil penalty not to exceed $27,500 per day for each such violation occurring between January 31, 1997 and March 14, 2004.

8. JCMC 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 (1993), as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).

The City of Jersey City

9. Liberty Healthcare System Inc. is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).

10. JCMC is the "operator"of the facility as that term is defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).

11. In or about December 1995, JCMC notified EPA that it generates hazardous waste at its facility. In or about May 1996, JCMC submitted a subsequent notification to EPA stating that it generates listed and characteristic hazardous waste at its facility.

12. In or about January 1996, EPA issued JCMC EPA Identification Number NJR000008995 for its facility.

13. JCMC is a "hazardous waste" "generator" as those terms are defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).

14. JCMC 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.

15. JCMC is a "storage" facility as that term is defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).

16. JCMC never received a "permit" to manage hazardous waste at its facility as that term is defined in 40 C.F.R. § 270.2 (1993), as incorporated by reference by NJAC 7:26G-12.1(a). delete

EPA Investigative and Initial Enforcement Activities

17. On or about April 16, 17 and 23, 2003, duly designated representatives of EPA conducted an inspection of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine JCMC 's compliance with Subtitle C of RCRA and its implementing

regulations, including New Jersey's authorized hazardous waste regulations ("the inspection").

18. On or about June 11, 2003, EPA issued JCMC a combined Notice of Violation and Request for Information regarding its management of hazardous waste pursuant to Sections 3008 and 3007, respectively, of RCRA, 42 U.S.C. §§ 6928 and 6927.

19. On or about July 31, 2003, JCMC submitted its response to EPA's Information Request and Notice of Violation. This response was prepared by an employee or agent of JCMC in the course of carrying out his/her employment or duties.

COUNTS

Count 1
Failure to Make Hazardous Waste Determinations

20. Complainant realleges each applicable allegation contained in the paragraphs above as if fully set forth herein.

21. Pursuant to 40 C.F.R. § 262.11 (1993), as incorporated by reference by NJAC 7:26G-6.1(a), a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

22. Pursuant to 40 C.F.R. § 261.2 (1993), as incorporated by reference by NJAC 7:26G-5.1(a), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" which is "abandoned," as that term is further defined.

23. Pursuant to 40 C.F.R. § 261.2(b) (1993), as incorporated by reference by NJAC 7:26G-5.1(a), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

24. Prior to at least April 2003, JCMC generated at least the following waste materials in the facility's Histology Laboratory:

    a. used cleaning solvents;
    b. used solutions of ethyl and isopropyl alcohols; and
    c. used silver nitrate solution.

25. Prior to at least April 2003, JCMC generated at least the following waste material in the facility's Grossing Room:

    a. used alcohol.

26. Prior to at least April 2003, JCMC discarded or disposed of the waste materials identified in paragraphs 24 and 25 by pouring them down sink drains.

27. Prior to at least April 2003, JCMC generated at least the following waste material in the pharmacy at its facility:

a. residual chemotherapy agents.

28. Prior to at least April 2003, JCMC discarded residual chemotherapy agents identified in paragraph 27 by sending the agents off-site to be incinerated as a medical waste.

29. Each of the materials identified in paragraphs 24, 25 and 27 above constitute a "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2 (1993), as incorporated by reference by NJAC 7:26G-5.1(a).

30. As of at least April 2003, JCMC had not determined if any of the wastes identified in paragraphs 24, 25 and 27 constituted a hazardous waste.

31. JCMC's failure to determine if each solid waste generated at its facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11(1993), as incorporated by NJAC 7:26G-6.1(a).

32. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), Respondent is subject to injunctive relief and is liable for civil penalties for the violation described in paragraph 31.

Count 2
Failure to Prepare a Manifest for Each Shipment of Hazardous Waste Off-Site

33. Complainant realleges each applicable allegation contained in the paragraphs above as if fully set forth herein.

34. Pursuant to 40 C.F.R. § 262.20(a) (1993), as incorporated by reference by NJAC 7:26G-6.1(a), a generator must prepare a hazardous waste manifest for each shipment of hazardous waste sent off-site to a treatment, storage, or disposal facility.

35. From at least January 1, 2000 to April 1, 2003, Respondent sent residual chemotherapy agents, Cyclophosphamide and Mitomycin, to an off-site treatment or disposal facility to be incinerated as medical waste.

36. Each material identified in paragraph 35 was a "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2 (1993), as incorporated by reference by NJAC 7:26G-5.1(a).

37. Pursuant to 40 C.F.R. § 261.3(a)(2)(i) and (ii) (1993), as incorporated by reference by NJAC 7:26G-5.1(a), a solid waste as defined in 40 C.F.R.§ 261.2 is a hazardous waste if it meets any of a number of criteria including being listed in Subpart D of 40 C.F.R. Part 261.

38. Subpart D lists specific commercial chemical products including Cyclophosphamide and Mitomycin. Cyclophosphamide is assigned EPA hazardous waste code U058 and Mitomycin is assigned EPA hazardous waste code U010. 40 C.F.R. § 261.33(f) (1993), as incorporated by reference by NJAC 7:26G-5.1(a).

39. Each waste material identified in paragraph 35 was a "hazardous waste" (U058 and U010), as defined in 40 C.F.R. § 261.3(a) (1993), as incorporated by reference by NJAC 7:26G-5.1(a).

40. From at least January 1, 2000 to April 1, 2003, Respondent sent shipments of residual chemotherapy agents, Cyclophosphamide and Mitomycin, U010 and U058 respectively, to an off-site treatment or disposal facility to be incinerated as medical waste.

41. From at least January 1, 2000 to April 1, 2003, Respondent did not prepare hazardous waste manifests for any of the shipments of U010 and U058 sent off-site to the treatment or disposal facility.

42. Respondent's failure to prepare hazardous waste manifests for each shipment of U010 and U058 sent off-site is a violation of 40 C.F.R. § 262.20(a) (1993), as incorporated by reference by NJAC 7:26G-6.1(a).

43. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), Respondent is subject to injunctive relief and is liable for civil penalties for the violation described in paragraph 42.

Count 3
Failure to Send and Maintain on File Land Ban Notifications

44. Complainant realleges each applicable allegation contained in the paragraphs above as if fully set forth herein.

45. Pursuant to 40 C.F.R. § 268.7(a), a generator of hazardous waste must determine if the waste must be treated prior to land disposal. This includes determining if the hazardous waste meets appropriate treatment standards. Generators must send facilities receiving the waste a certified notice ("land ban notification") setting forth its determinations. A new notice is required with each waste or facility change. A copy of the notification(s) must be maintained at the generator's facility.

46. As of at least April 2003, Respondent had not sent any land ban notification(s) regarding its U010 and U058 chemotherapy agent waste to the receiving medical waste treatment or disposal facility. Additionally, Respondent had not maintained a copy of the requisite notification(s) at its facility.

47. Respondent's failure to send the requisite notification(s), and keep such notifications on file at its facility, constitutes violations of 40 C.F.R. § 268.7(a).

48. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), Respondent is subject to injunctive relief and is liable for civil penalties for the violations described in paragraph 47.

II. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1:	$ 24,200;
Counts 2 and 3:	$ 16,500
Total Proposed Penalty for Counts 1 through 3:	$ 40,700.

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

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. EPA has issued the Civil Monetary Penalty Inflation Adjustment Rule under which violations which occur on January 31, 1997 or later are subject to a new statutory maximum civil penalty. The maximum civil penalty under § 3008(a)(3) of RCRA for violations occurring between January 31, 1997 and March 14, 2004 is $27,500 per day of violation. 40 C.F.R. Part 19 (2003).

To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: ***http: //www. epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf***. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

A penalty calculation worksheet and narrative explanation to support the penalty figure for each RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

III. COMPLIANCE ORDER

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

1. Within twenty days of the effective date of this Compliance Order, JCMC shall:

a. make hazardous waste determinations regarding all solid waste generated at the facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a);

b. prepare a hazardous waste manifest for each shipment of hazardous waste sent off-site to a treatment, storage, or disposal facility pursuant to 40 C.F.R. § 262.20(a), as incorporated by reference by NJAC 7:26G-6.1(a)-(c);

c. prepare and send requisite land ban notification(s) for each hazardous waste sent off-site to a treatment, storage or disposal facility pursuant to 40 C.F.R. § 268.7; and

d. otherwise comply with all applicable provisions for generators set forth in 40 C.F.R. Part 262, as incorporated by reference by NJAC 7:26G-6.1(a).

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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release JCMC from liability for any violations at the facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding the facility.

V. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to $32,500 for each day of continued noncompliance which occurs after March 15, 2004. Such continued noncompliance may also result in suspension or revocation of permits, if any, issued to the violator by EPA or the State of New Jersey.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 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." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

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 II, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region II, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th floor
New York, New York 10007-1866

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

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

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

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

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

C. Failure To Answer

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

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

INFORMAL SETTLEMENT CONFERENCE

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

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

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

Amy R. Chester
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3213

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

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

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

Respondent 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 its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

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.

Date:

3/30/04

Complainant:

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

To: Mr. James Bernhardt Hogle III
Vice President, Facilities & Construction
Jersey City Medical Center
50 Baldwin Avenue
Surgical Building-5th Floor
Jersey City, New Jersey 07304

cc: Mike Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office, New Jersey Department of Environmental Protection
300 Horizon Center- PO Box 407
Trenton, NJ 08625-0407

cc: Mike Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office, New Jersey Department of Environmental Protection
300 Horizon Center- PO Box 407
Trenton, NJ 08625-0407

bcc: Richard Cahill (2CD-PAT)
Hanna Maciejko (2 DEPP-RPB)
Joel Golumbek (2DECA-RCB)
Marianna Dominguez (2DECA-RCB)
William K. Sawyer (2ORC-WTS)
Amy Chester (2ORC-WTS)

CERTIFICATE OF SERVICE

This is to certify that on the day of APR - 5, 2004, I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number **RCRA-02-2004-7107,** together with Attachments I and II (collectively referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to Mr. James Bernhardt Hogle III, Vice President, Facilities & Construction, Jersey City Medical Center, 50 Baldwin Avenue, Surgical Building-5th Floor, Jersey City, New Jersey 07304.

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 17th floor, New York, New York 10007-1866.

Dated: APR - 5 2004, 2004
New York, New York

Mildred Baez

ATTACHMENT I

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

Respondent: Jersey City Medical Center

Facility Address: 50 Baldwin Avenue, Jersey City, New Jersey 07304

Requirement Violated:
40 C.F.R. § 262.11(1993), as incorporated by NJAC 7:26G-6.1(a).

JCMC failed to determine if three distinct types of solid waste streams generated at its facility constitute hazardous waste.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	$22,000
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	$ 1,100
3. Multiply line 2 by number of violations minus 1 (3-1=2).	$ 2,200
4. Add line 1 and line 3	$24,200
5. Percent increase/decrease for good faith.	EPA is not presently aware of good faith efforts on the part of Respondent at this time.
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$24,200

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

1. Gravity Based Penalty

a. Potential for Harm - The potential for harm for a failure to conduct a hazardous waste determination is deemed MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme: and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility generating solid waste streams fails to determine whether each of the generated waste streams is a hazardous waste. Failure to make hazardous waste determinations will almost invariably result in hazardous waste being managed as a non-hazardous waste, outside of the RCRA regulatory universe. This single violation can result in multiple sequential violations regarding each unidentified hazardous waste stream. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to make hazardous waste determinations for three distinct waste streams (spent alcohols and solvents, spent silver nitrate solution, and chemotherapy waste), each of which was regularly generated by Respondent in the course of carrying out its medical operations and activities. This failure appeared to extend over a period of time (as opposed to being a one-time oversight). These considerations call for the selection of the MAJOR classification.

The applicable cell ranges from $22,000 to $27,500. The low point for the cell matrix was selected owing to the relatively low volumes of hazardous waste generated and the fact that the chemotherapy waste was incinerated in a medical waste incinerator.

c. Multiple/Multi-day - A multi-day penalty was applied for each of the three distinct types of wastestreams (spent alcohols and solvents, spent silver nitrate solution, and chemotherapy waste) for which Respondent did not make a hazardous waste determination. The low end of the major/major matrix cell was selected consistent with the above.

2. Adjustment Factors

a.	Good Faith -	EPA is not presently aware of good faith efforts made on the part of the Respondent prior to EPA's inspection and identification of the violations. Accordingly, no adjustment has been made at this time.
b.	Willfulness/Negligence	N/A
c.	History of Compliance	N/A
d.	Ability to Pay	N/A
e.	Environmental Project	N/A
f.	Other Unique Factors	N/A

3. Economic Benefit - Preliminarily determined to be de minimis.

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

Respondent: Jersey City Medical Center

Facility Address: 50 Baldwin Avenue, Jersey City, New Jersey 07304

Requirements Violated:

i) 40 C.F.R. § 262.12(c) (1993), as incorporated by reference by NJAC 7:26G-6.1(a). JCMC failed to prepare manifests for chemotherapy hazardous waste sent to an off-site treatment or disposal facility.

ii) 40 C.F.R. § 268.7(a). JCMC failed to send a land ban notification to the treatment or disposal facility receiving the chemotherapy waste and keep a copy of such notification on file at its facility.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	$16,500
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of violations minus 1 (1 day).	N/A
4. Add line 1 and line 3	$ 16,500
5. Percent increase/decrease for good faith.	EPA is not presently aware of good faith efforts on the part of Respondent at this time.
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$ 16,500

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

1. Gravity Based Penalty

a. Potential for Harm - The potential for harm was determined to be MAJOR. Respondent failed to prepare manifests and land ban notification(s) for the chemotherapy hazardous waste sent off-site, having an adverse impact upon the statutory and regulatory RCRA program. The manifest system is the basis for the cradle-to-grave tracking of hazardous waste which is one of the fundamental tenets underlying the RCRA program. Similarly, land ban notifications are necessary to ensure that the waste is properly treated if it is placed on the land. By failing to prepare manifests and send a land ban notification, the receiving facility was not put on notice that it was managing a hazardous waste subject to certain treatment standards. The transporter was similarly not notified that it was transporting hazardous waste subject to regulatory requirements. These regulatory requirements are intended to ensure the protection of human health and the environment. The transporter and receiving facility were notified, however, that they were managing medical waste.

b. Extent of Deviation - The extent of deviation present in these violations was determined to be MODERATE. Respondent did not prepare manifests or a land ban notification for any of the shipments of chemotherapy hazardous waste, however the receiving facility knew that it was receiving and treating chemotherapy waste.

The low-end of the cell was chosen because of the small amount of chemotherapy hazardous waste that was mismanaged.

c. Multiple/Multi-day -N/A

2. Adjustment Factors

1.	Good Faith -	EPA is not presently aware of good faith efforts made on the part of the Respondent prior to EPA's inspection and identification of the violations. Accordingly, no adjustment has been made at this time.
2.	Willfulness/Negligence	N/A
3.	History of Compliance	N/A
4.	Ability to Pay	N/A
5.	Environmental Project	N/A
6.	Other Unique Factors	N/A

3. Economic Benefit - Preliminarily determined to de minimis.

ATTACHMENT II

GRAVITY MATRIX

	EXTENT OF DEVIATION FROM REQUIREMENT			
POTENTIAL for HARM		MAJOR	MODERATE	MINOR
	MAJOR	$27,500 to 22,000 mid = 24,750	$21,999 to 16,500 mid = 19,250	$16,499 to 12,100 mid = 14,300
	MODERATE	$12,099 to 8,800 mid = 10,450	$8,799 to 5,500 mid = 7,150	$5,499 to 3,300 mid = 4,400
	MINOR	$3,299 to 1,650 mid = 2,475	$1,649 TO 550 mid = 1,100	$549 TO 110 mid = 330

MULTI-DAY MATRIX

	EXTENT OF DEVIATION FROM REQUIREMENT			
POTENTIAL for HARM		MAJOR	MODERATE	MINOR
	MAJOR	$5,500 to 1,100 mid = 3,300	$4,400 to 825 mid = 2,612	$3,300 to 605 mid = 1,952
	MODERATE	$2,420 to 440 mid = 1,430	$1,760 to 275 mid = 1,017	$1,100 to 165 mid = 632
	MINOR	$660 to 110 mid = 385	$330 to 110 mid = 220	$110 mid = 110