

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In The Matter of:

Lourdes Health System,

Respondent.

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

CONSENT AGREEMENT

AND

FINAL ORDER

Docket Number: RCRA-02-2017-7103

PRELIMINARY STATEMENT

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, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as "RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("DECA"), the United States Environmental Protection Agency ("EPA") Region 2, issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" ("Complaint") on March 31, 2017 to Respondent Lourdes Health System, which owns and operates hospitals at 1600 Haddon Avenue, Camden, New Jersey and 218A Sunset Road, Willingboro, New Jersey ("the facilities"). The Complaint alleged that Respondent violated certain requirements of RCRA and regulations concerning the management of hazardous waste at its facilities.

EPA and Respondent have subsequently engaged in settlement discussions with respect to the violations alleged in the aforementioned Complaint. Both EPA and Respondent have agreed that entering into this Consent Agreement/Final Order ("CA/FO") is an appropriate means of resolving the alleged noncompliance with the RCRA requirements that EPA believes existed at the facilities without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth below.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Lourdes Health System ("Lourdes").
2. Lourdes is a corporation organized pursuant to the laws of the State of New Jersey.
3. 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(1993) (N.J.A.C. 7:26G-4.1(a)).
4. Lourdes is, and has been, the owner and operator of a medical hospitals/institutions 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.
5. The facilities where Respondent conducts its business activities each constitute 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").
6. Lourdes is and has been both the "owner" and "operator" of the facilities as that term is defined in 40 C.F.R. § 260.10 as incorporated by N.J.A.C. 7:26G-4.1(a).
7. Lourdes generates "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 facilities.
8. Lourdes qualified as a "large quantity generator", as defined in 40 C.F.R. § 260.10 as incorporated by reference in N.J.A.C. 7:26G-4.1(a), for at least one month as of or prior to April 2015 at its Camden facility, and for at least one month as of or prior to July 2015 at its Willingboro facility.
9. More recently, Lourdes has operated at its facilities as 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).
10. On or about April 17, 2015 and July 9, 2015, a duly designated representative of EPA conducted inspections of the Camden and Willingboro facilities, respectively, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Lourdes's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the Inspections").
11. On or about June 8, 2015, Lourdes submitted documentation to EPA in response to EPA's Camden inspection.
12. On or about January 16, 2016, EPA, pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, issued to Lourdes an Information Request Letter and Notice of Violation ("the IRL"). The IRL sought information and required Lourdes to submit specific types of documentation relating to its generation and management of hazardous waste at its facilities.

13. On or about February 16, 2016, Lourdes submitted its response to the IRL.
14. As a result of the Inspections and documentation and information Lourdes submitted in response to EPA's Inspections and IRL, EPA issued the Complaint alleging that Respondent, at the time of the Inspections, or at times prior thereto had failed to: (1) make hazardous wastes determinations for certain waste found at its Camden facility and (2) have hazardous waste permits or to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status at both its Camden and Willingboro facilities, and that these failures were violations of RCRA rules.
15. EPA and Lourdes have agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the factual allegations contained in the Complaint and EPA's Findings of Fact and/or Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter, at its facilities, maintain compliance with all applicable statutory requirements of RCRA, 42 U.S.C. § 6901 *et seq.*, and the implementing regulations relating to its generation, management, and storage of hazardous waste cited in the Complaint.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions of RCRA cited in the Complaint.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Lourdes's obligation to comply with all applicable federal, state and local laws and regulations relating to its generation, management, treatment, storage, transport or offering for transport, and disposal of hazardous waste.
4. Respondent shall pay a civil penalty to EPA in the total amount of **THIRTY THOUSAND (\$30,000) DOLLARS**. Such payment shall be made by cashier's or

certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *In the Matter of Lourdes Health System*, and shall bear thereon the **Docket No. RCRA-02-2017-7103**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
 - 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
 - 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
 - 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
 - 5) Field Tag 4200 of the Fedwire message should read **D 68010727** Environmental Protection Agency.
 - 6) Name of Respondent: **Lourdes Health System.**
 - 7) Case Number: **RCRA 02-2017-7103.**
5. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the “due date”).
- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
 - d. The civil penalty provided for herein constitutes “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

6. Complainant shall mail to Respondent (to the representative designated in Paragraph 7, *infra*) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
7. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Emily McCleary, Enforcement Officer
RCRA Compliance Branch
US Environmental Protection Agency 2
290 Broadway, 21st Floor
New York, New York 10007-1866

and

Stuart N. Keith, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, Room 1621
New York, New York 10007


Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Jennifer L. Schwartz
Vice President Legal Affairs & General Counsel/
Executive Director, LHS Health Network
Lourdes Health System
1600 Haddon Ave.
Camden, NJ 08103

8. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of the federal civil liabilities that attach or might have attached under the Act to Respondent as a result of the violations alleged in the Complaint bearing Docket Number RCRA-02-2017-7103. Full payment of the penalty described in paragraph 4 of the Consent Agreement, *supra*, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the Complaint issued in this matter. Full payment of this penalty 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.
9. The provisions of this Consent Agreement shall be binding upon both Complainant and Respondent along with their authorized representatives and successors or assigns.

10. Lourdes waives its right to request or to seek any Hearing on the allegations in the Complaint, the Findings of Fact and Conclusions of Law above, and the terms and conditions set forth in the Consent Agreement and its accompanying Final Order.
11. The undersigned signatory for Respondent certifies that he/she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
12. Each party hereto agrees to bear its own costs and fees in this matter.
13. By entering into this CA/FO, the Respondent does not admit any liability for the claims alleged in the Complaint. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except in an action to enforce this CA/FO.

RESPONDENT: **Lourdes Health System**

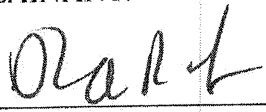
BY: 
Authorized Signature

NAME: Mark P. Nessel
(PLEASE PRINT)

TITLE: Executive Vice President/COO

DATE: June 27, 2017

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

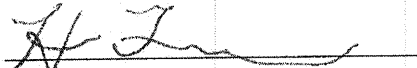
DATE: 6/28/17

In the Matter of Lourdes Health System, Docket No. RCRA-02-2017-7103

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Lourdes Health System*, bearing Docket No. RCRA-02-2017-7103. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: 6/30/17
New York, New York


Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

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

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:


Original and One Copy
By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Ronald M. Varnum, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599

Dated: July 6, 2017



Yolanda Majette
Branch Secretary
Waste and Toxic Substances Branch