

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

4. For the purpose of this proceeding, 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. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order contained in this CAFO and waives all defenses that have been raised or could have been raised to the claims set forth in this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for those violations that are set forth herein.

7. Respondent consents to the issuance of the CAFO hereinafter recited, to the assessment and payment of the civil penalty in the amount and by the method specified herein, to the compliance order specified herein, and to the conditions specified herein.

8. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

9. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a corporation formed under the laws of and registered to do business in the State of Texas.
11. Respondent is a “person” within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 T.A.C. § 3.2(25)¹ [40 C.F.R. § 260.10].
12. Respondent is an “owner” or “operator” of the medical facility located at 500 West Main Street, Lewisville, Texas 75057 within the meaning of 30 T.A.C. §§ 335.1(109) and (110) [40 C.F.R. § 260.10].
13. The medical facility located at 500 West Main Street, Lewisville, Texas 75057 (the “Facility” or “Facility”) is a “Facility” within the meaning of 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].
14. At the Facility, Respondent provides medical and pharmaceutical services.
15. Respondent is a “generator” of “hazardous waste” at the Facility, as those terms are defined in RCRA § 1004(5), 42 U.S.C. § 6903(5), and 30 T.A.C. § 335.1(65) and (69) [40 C.F.R. § 260.10].
16. As a generator of hazardous waste, Respondent is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 T.A.C. Chapter 335, Subchapters C and/or F [40 C.F.R. Parts 262 and/or 270].
17. Respondent submitted notification of registration to the Texas Commission on Environmental Quality updating its generator status to large quantity generator (“LQG”) on December 6, 2018.

¹ All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009. 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.

18. From December 10, 2018 through December 11, 2018, EPA conducted an inspection and records review of Respondent's performance as a generator of hazardous waste at the Facility ("the Investigation").

19. From the Investigation, EPA determined that for all periods relevant to this CAFO:

- a. Respondent generated acutely hazardous "P-Listed" waste (40 C.F.R. § 261.33) at a rate greater than 1 kilogram per month.
- b. Prior to updating its notification of registration on December 6, 2018, Respondent was registered as a Conditionally Exempt Small Quantity Generator ("CESQG") and thereby authorized to only generate acutely hazardous waste at a rate less than or equal to 1 kilogram per month. 30 T.A.C. §§ 335.78(a) and (b) (40 C.F.R. §§ 261.5(a) and (b)).
- c. Respondent, by generating greater than 1 kilogram of acutely hazardous waste per month, was in fact a Large Quantity Generator ("LQG") under 30 T.A.C. § 335, Subchapter C [40 C.F.R. Part 262].

Claim 1: Notification Requirements

20. The allegations in Paragraphs 1 to 19 are re-alleged and incorporated by reference herein.

21. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State, a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Any person who notifies of hazardous waste generation activities pursuant to 30 T.A.C. § 335.6(c) has a continuing

obligation to immediately provide written notice of any changes or additional information, to that reported previously.

22. During the Investigation, EPA determined that from calendar year 2015 through calendar year 2018, Respondent generated hazardous waste in quantities that exceeded its registered CESQG status and that Respondent was in fact a LQG.

23. For the periods relevant to this CAFO, Respondent was registered as CESQG and had not updated its notification to identify its true LQG status until December 6, 2018.

24. Therefore, Respondent failed to timely file the required subsequent notification of changes in hazardous waste activities for the Facility in violation of 30 T.A.C. § 335.6(c) [42 U.S.C. § 6930(a)].

Claim 2: Failure to Meet the Requirements of a Large Quantity Generator

25. The allegations in Paragraphs 1 to 19 are re-alleged and incorporated by reference herein.

26. A generator of hazardous waste is subject to multiple requirements, including the applicable parts of 30 T.A.C. Chapter 335, Subchapters (C), (E), (F), (H), and (O) [40 C.F.R. Parts 262, 264-68, 270].

27. Pursuant to 30 T.A.C. §§ 335.78(a) and (b) [40 C.F.R. §§ 261.5(a) and (b)], a generator is a CESQG in a calendar month if it generates no more than 1 kilograms of acute hazardous waste and complies with 30 T.A.C. § 335.78 [40 C.F.R. § 261.5].

28. At a minimum, the Facility generated acutely hazardous waste in excess of 1 kilogram per month since 2015 and is therefore a LQG.

29. During the Investigation, EPA determined that Respondent was not complying with many of the requirements for LQGs, including a failure to provide adequate training

to its employees, and a failure to provide an adequate contingency plan, as required [40 C.F.R. Part 265].

30. Therefore, Respondent's failure to meet the requirements of its generator status is a violation of 30 T.A.C. § 335.69(a)(4) [40 C.F.R. § 262.34(a)].

Claim 3: Failure to Document Weekly Inspections

31. The allegations in Paragraphs 1 to 19 are re-alleged and incorporated by reference herein.

32. Pursuant to 30 T.A.C. § 335.112(a)(8) [40 C.F.R. § 265.174] generators of hazardous waste in containers must conduct inspections at least weekly.

33. The Investigation revealed that Respondent conducted weekly inspections of the hazardous waste storage area but did not maintain an adequate log documenting the completion of those inspections.

34. Therefore, Respondent failed to meet the inspection requirements of 30 T.A.C. § 335.112(a)(8) [40 C.F.R. § 265.174].

Claim 4: Failure to Label Universal Waste Containers

35. The allegations in Paragraphs 1 to 19 are re-alleged and incorporated by reference herein.

36. During EPA's inspection, the inspector observed containers storing used waste lamps were not labeled with the words "Universal Waste – Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)".

37. Therefore, Respondent violated 30 T.A.C. § 335.261 [40 C.F.R. § 273.14] by failing to label or mark containers of universal waste lamps.

III. COMPLIANCE ORDER

38. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- a. Respondent shall certify that it has assessed all its solid waste streams at the Facility to determine the accurate waste codes and that it has developed and implemented Standard Operating Procedures (“SOP”) intended to ensure that Respondent is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for:
 - (i) managing hazardous wastes; and (ii) reporting, transporting, and disposing of hazardous waste; and
- b. Respondent shall certify that it has developed contingency plans, emergency procedures, and proper training for managing, reporting, transporting and disposing of hazardous waste for the Facility intended to comply with applicable provisions of RCRA and the regulations promulgated thereunder.

39. 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 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 the CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Enforcement Compliance and Assurance Division
Waste Enforcement Branch
Section RCRA (ECDSR)
1201 Elm Street, Suite 500
Dallas, TX 75270
Attn.: Debra Pandak

IV. TERMS OF SETTLEMENT

A. Penalty Provisions

40. Pursuant to the authority granted in RCRA § 3008, 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 **Seventy-seven thousand four hundred fifty-nine dollars (\$77,459)**.

41. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

42. The following are Respondent’s options for transmitting the penalties: Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

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

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

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

Wire Transfers should be remitted to:

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 (**Medical Center of Lewisville Subsidiary, L.P.,
d/b/a Medical City Lewisville Docket No. RCRA-06-2020-0910**) shall be documented
on or within your chosen method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional Hearing Clerk ORCD
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Enforcement and Compliance Assurance Division
Waste Enforcement Branch
Section RCRA (ECDSR)
1201 Elm Street, Suite 500
Dallas, TX 75270
Attn.: Debra Pandak

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

44. 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 of 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 (6%) per year will be assessed monthly on any portion of the debt that 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

45. Each party shall bear its own costs and attorneys' 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. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

46. 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 also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 26. Unless the EPA, Region 6 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.

D. Effective Date of Settlement

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

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
CONSENT AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 2/12/20



Barbarin Lashandra, CEO
Columbia Medical Center of
Lewisville Subsidiary, L.P.
d/b/a/ Medical City Lewisville

FOR EPA REGION 6:

Date: 2-21-2020

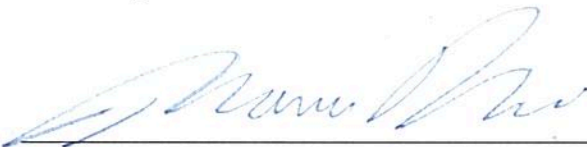


Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. 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. 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 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 2.24.2020



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2020, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, and that a true and correct copy of the CAFO was sent to the following by the method below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

70140150000024042183

Edward M. Callaway
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
(615) 850-8470


Ms. Lori Jackson
Paralegal