

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 SEP 28 PM 3:26

IN THE MATTER OF:

TEXAS HEALTH RESOURCES

ARLINGTON, TEXAS

RESPONDENT

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REGIONAL HEARING CLERK
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-06-2016-0924

CONSENT AGREEMENT AND FINAL ORDER

The Director of Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency Region 6 (EPA or Complainant) and Texas Health Resources, (Respondent), hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO). The locations that are covered by this CAFO include:

- a. Texas Health Arlington Memorial Hospital located at 810 West Randal Mill Road, Arlington, Texas 76012 (Arlington Memorial);
- b. Texas Health Presbyterian Hospital Dallas located at 8200 Walnut Hill Lane, Dallas, Texas 75231 (Presbyterian Dallas); and
- c. Texas Health Harris Methodist Hospital Southwest Fort Worth located at 6100 Hospital Parkway, Fort Worth, Texas 76132 (Harris Methodist).

I. PRELIMINARY STATEMENT

1. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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); 22.18(b)(2), 22.18(b)(3); and 22.37.

2. 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.

3. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(2).

4. For the purposes 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 the CAFO.

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

7. Respondent consents to the following: issuance of the CAFO hereinafter recited; the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO; and to the specific stated compliance order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Respondent is a Texas Corporation, registered to do business in Texas on April 1, 1997.

9. Respondent is a "person" within the meaning of 42 U.S.C. § 6903(15) and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

10. Respondent is an “owner” or “operator” of the Texas Health Arlington Memorial Hospital located at 810 West Randol Mill Road, Arlington, Texas 76012, within the meaning of 30 TEX. ADMIN. CODE §§ 335.1(109) and (110) (40 § 260.10).

11. Respondent is an “owner” or “operator” of the Texas Health Presbyterian Dallas Hospital located at 8200 Walnut Hill Lane, Dallas, Texas 75231, within the meaning of 30 TEX. ADMIN. CODE §§ 335.1(109) and (110)(40 C.F.R. § 260.10).

12. Respondent is an “owner” or “operator” of the Texas Health Harris Methodist Hospital Southwest Fort Worth located at 6100 Hospital Parkway, Fort Worth, Texas 76132, within the meaning of 30 TEX. ADMIN. CODE §§ 335.1(109) and (110) (40 § 260.10).

13. Respondent is a “generator” of hazardous waste at the facilities, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

14. 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 30 TEX. ADMIN. CODE § 335, Subchapter (C) and/or (F) (40 C.F.R. Parts 262 and/or 270).

15. On May 18 and 19 of 2015, EPA conducted an inspection (Inspection) at Respondent’s Arlington Memorial facility to determine Respondent’s performance as a hazardous waste generator.

16. During the Inspection and subsequent Investigation of the Arlington Memorial hospital, EPA determined that Respondent in 2011, 2012, 2013, 2014, and 2015, at a minimum, generated and offered for transport hazardous waste with the hazardous waste characteristics for ignitability (D001) and spent non-halogenated solvents (F003).

17. The waste streams identified in Paragraph 16 are hazardous waste as defined in 30 TEX. ADMIN. CODE § 335.1(69) (40 C.F.R. § 261.3).

18. From the Inspection and subsequent Investigation, EPA determined that Respondent generated, at a minimum, the hazardous waste streams identified in Paragraph 16 in quantities that exceeded the threshold amount of 100 kilograms of hazardous waste per month, which qualified Respondent for the small quantity generator (SQG) status under 30 TEX. ADMIN. CODE § 335, Subchapter C (40 C.F.R. Part 262).

19. From the Inspection and subsequent Investigation, EPA determined that Respondent's facility mentioned above, was registered as inactive and a non-generator for its respective years in violation.

20. With an additional investigation in 2016, EPA determined that the activities at the Presbyterian Dallas and Harris Methodist hospitals closely resembled the activities at the Arlington Memorial hospital.

21. EPA determined that the same violations occurred at the Presbyterian Dallas and Harris Methodist hospitals as the violations discovered at the Arlington Memorial facility.

22. From the Inspection and subsequent Investigation, EPA determined that Respondent violated the requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), by failing to comply with the RCRA notification requirements at Respondent's three facilities.

23. From the Inspection and subsequent Investigation, EPA determined that Respondent failed to operate within its designated status at Respondent's three facilities in violation of 30 TEX. ADMIN. CODE § 335, Subchapter (C) (40 C.F.R. Parts 262).

24. From the Inspection and subsequent Investigation, EPA determined that Respondent failed to properly characterize its hazardous waste at Respondent's three facilities in violation of 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)).

25. From the Inspection and subsequent Investigation, EPA determined that Respondent failed to properly fill out its manifests for hazardous waste at Respondent's three facilities in violation of 30 TEX. ADMIN. CODE §§ 335.10(a)(1) and 335.10(c) (40 C.F.R. § 262.20(a)(1)).

III. VIOLATIONS

Arlington Memorial

Claim 1: Notification Requirements

26. Complainant hereby restates and incorporates by reference Paragraphs 1 through 25.

27. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed 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. This includes requiring a subsequent notification for a change in the status of a generator. See also 30 TEX. ADMIN. CODE § 335.6(c).

28. From 2011 to 2015, the Respondent's facility was identified as an inactive non-generator of hazardous waste.

29. From the Inspection and subsequent Investigation, EPA determined that between 2011 and 2015, Respondent generated hazardous waste at quantities of a SQG.

30. At the time of the Inspection and subsequent Investigation, Respondent had not filed with the Administrator or with the authorized State, a subsequent notification of hazardous waste to change its generator status.

31. Respondent failed to file the required subsequent notification of hazardous waste activities for Respondent's facility in violation of 30 TEX. ADMIN. CODE § 335.6(c) (42 U.S.C. § 6930(a)).

Claim 2. Failure to Operate Within Proper Generator Status

32. Complainant hereby restates and incorporates by reference Paragraphs 1 through 31.

33. A generator of hazardous waste is subject to multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

34. Pursuant to 30 TEX. ADMIN. CODE §§ 335.78(a) and (b) (40 C.F.R. §§ 261.5(a), (b)), a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5).

35. From the Inspection and subsequent Investigation, EPA determined that Respondent, between 2011 and 2015, operated as a SQG at Respondent's facility.

36. While operating as a SQG, Respondent failed to comply with various sections of the applicable SQG requirements, including but not limited to: training requirements; preparedness and prevention requirements; and record-keeping requirements, under 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

37. Respondent failed to operate within its designated status at the Respondent's facility, for the stated years, in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C) and/or (F) (40 C.F.R. Parts 262 and/or 270).

Claim 3: Failure to make a Hazardous Waste Determination

38. Complainant hereby restates and incorporates by reference Paragraphs 1 through 37.

39. Pursuant to 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)), a person who generates a solid waste must determine if that waste is hazardous.

40. From the Inspection and subsequent Investigation, EPA determined that wastes that should have been characterized as hazardous waste were not identified as such.

41. Respondent failed to make an adequate hazardous waste determination on its solid waste streams in violation of 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)).

Claim 4: Manifest Violations

42. Complainant hereby restates and incorporates by reference Paragraphs 1 through 41.

43. Pursuant to 30 TEX. ADMIN. CODE §§ 335.10(a)(1) and 335.10(c) (40 C.F.R. § 262.20(a)(1)), a generator who offers for transports hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22 according to the instructions found within the Appendix to Part 262—Uniform Hazardous waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their Instructions).

44. From the Inspection and subsequent Investigation, EPA determined that Respondent sent three shipments of hazardous waste from Respondent's facility with deficiencies in the accompanying manifests.

45. Respondent failed to adequately complete three manifests, EPA Form 8700-22, according to the instructions found within the Appendix to Part 262, in violation of 30 TEX. ADMIN. CODE §§ 335.10(a)(1) and 335.10(c) (40 C.F.R. § 262.20(a)(1)).

Dallas Presbyterian and Harris Methodist

Claim 5: Notification Requirements

46. Complainant hereby restates and incorporates by reference Paragraphs 1 through 45.

47. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed 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. This includes requiring a subsequent notification for a change in the status of a generator. See also 30 TEX. ADMIN. CODE § 335.6(c).

48. Respondent failed to file the required subsequent notification of hazardous waste activities for Respondent's Dallas Presbyterian and Harris Methodist facilities in violation of 30 TEX. ADMIN. CODE § 335.6(c) (42 U.S.C. § 6930(a)).

Claim 6. Failure to Operate Within Proper Generator Status

49. Complainant hereby restates and incorporates by reference Paragraphs 1 through 48.

50. A generator of hazardous waste is subject to multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

51. Pursuant to 30 TEX. ADMIN. CODE §§ 335.78(a) and (b) (40 C.F.R. §§ 261.5(a), (b)), a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5).

52. Respondent failed to operate within its designated status at the Respondent's Dallas Presbyterian and Harris Methodist facilities, for the stated years, in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C) and/or (F) (40 C.F.R. Parts 262 and/or 270).

Claim 7: Failure to make a Hazardous Waste Determination

53. Complainant hereby restates and incorporates by reference Paragraphs 1 through 52.

54. Pursuant to 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)), a person who generates a solid waste must determine if that waste is hazardous.

55. Respondent failed to make an adequate hazardous waste determination on its solid waste streams at Respondent's Dallas Presbyterian and Harris Methodist facilities in violation of 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)).

Claim 8: Manifest Violations

56. Complainant hereby restates and incorporates by reference Paragraphs 1 through 55.

57. Pursuant to 30 TEX. ADMIN. CODE §§ 335.10(a)(1) and 335.10(c) (40 C.F.R. § 262.20(a)(1)), a generator who offers for transports hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22 according to the instructions found within the Appendix to Part 262—Uniform Hazardous waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their Instructions).

58. Respondent failed to adequately prepare manifests, EPA Form 8700-22, according to the instructions found within the Appendix to Part 262, in violation of 30 TEX. ADMIN. CODE §§ 335.10(a)(1) and 335.10(c) (40 C.F.R. § 262.20(a)(1)).

IV. COMPLIANCE ORDER

59. 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 filed a subsequent “Notification of Regulated Waste Activity: EPA Form 8700-12” to reflect actual waste generation for the facilities covered by this CAFO.
- b) Respondent shall certify that it has assessed and made a determination on its solid waste streams to determine that accurate waste codes have been applied.
- c) Respondent shall certify that it has complied with all the requirements of its generator status, and developed and implemented standard operating procedures to ensure that Respondent’s facility is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
 - i) making hazardous waste determinations;

- ii) training personnel involved in managing, reporting, transporting, and disposing of hazardous waste;
- iii) preparing hazardous waste manifests; and
- iv) meeting the requirements of the land disposal requirements.

60. 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 Texas Health Resources, 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:

Tripti Thapa
U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance I Section (6EN-H1)
1445 Ross Avenue
Dallas, Texas 75202-2733

V. TERMS OF SETTLEMENT

A. Penalty Provisions

61. 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, Respondent's good faith efforts to comply with the applicable regulations

and Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, it is ordered that Respondent be assessed a civil penalty of **\$151,500.00**.

62. 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.

63. 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 (**In the Matter of Texas Health Resources, Docket No. RCRA-06-2016-0924**) shall be documented on or within your chosen method of payment to ensure proper credit.

64. 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, TX 75202-2733

Chief
Waste Compliance 1 Section (6EN-H1)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Tripti Thapa

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

65. 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 in accordance with 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 that remains delinquent more than ninety (90) days

pursuant to 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 pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

66. 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. 04-121), and any regulations promulgated pursuant to those Acts.

C. Supplemental Environmental Project (SEP)

67. Description of the SEP:

- a) Respondent shall complete the following SEP which the parties agree is intended to secure significant environmental or public health protection and improvements. Not more than sixty (60) days from the effective date of this CAFO, Respondent will implement a waste pharmaceuticals education, collection and disposal program designed to: (1) decrease the sewerage, landfilling and other inappropriate disposal of household pharmaceutical wastes; (2) educate Respondent's patient community, including low-income and elderly communities in Arlington, Texas regarding the environmental risks and harms from improper disposal of household pharmaceutical wastes; (3) collect and properly dispose of household pharmaceutical wastes through funding and facilitation of a series of household visits and other outreach by the Arlington Fire and Rescue within the Arlington, Texas community; and (4) if appropriate, by hosting and promoting one or more fixed-date household

pharmaceutical waste collection events at the Respondent's hospital facility, all as described in the attached SEP proposal.

- b) Respondent's actions will result in approximately 300 educational visits and household pharmaceutical waste collection events by Arlington Fire Dept. and Emergency Medical Transport personnel, with resulting reduction of sewerage, landfilling and other inappropriate disposal of household pharmaceutical wastes directly diverted from sewerage, landfills and other disposal, plus future diversion resulting from community education.
- c) Respondent shall perform the SEP activities in accordance with the terms and schedule of the SEP Proposal (Attachment I), which is incorporated herein by reference.

68. Cost of the SEP:

- a) The total expenditure for the SEP shall be no less than **\$90,929.25** as described in the attached SEP Proposal. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

69. SEP Reports:

- a) Respondent shall submit a final SEP Completion Report to EPA within two (2) weeks of the completion of this project. The SEP Completion Report shall contain the following information:
 - i) A detailed description of the SEP as implemented;
 - ii) A description of any operating or logistical problems encountered and the solutions thereto;
 - iii) Itemized final costs with copies of receipts for all expenditures;

- iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - v) A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.
- b) Respondent agrees that failure to submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for the stipulated penalties pursuant to Paragraph 73.
- c) Respondent shall submit all notices and reports required by this CAFO to Tripti Thapa (6HW-H1), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733, by first class mail.

70. EPA's acceptance of SEP Report:

- a) After receipt of the SEP Completion Report described in Paragraph 69, EPA will notify the Respondent, in writing, regarding:
 - i) Any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies;
 - ii) Whether EPA concludes that the project has been completed satisfactorily; or
 - iii) Whether EPA determines that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 73.
- b) If EPA elects to exercise option found in Paragraph 70(a)i, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP

Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA that are necessary to comply with the terms of this CAFO or applicable law, including actions necessary to complete the SEP, to obtain the intended benefits of the SEP or which otherwise result from any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 73.

71. Respondent shall certify the truth and accuracy of each of the following:

- a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is **\$90,929.25**;
- b) That, as of the date of executing this Consent Agreement, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c) That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
- d) That Defendant has not received and will not receive credit for the SEP in any other enforcement action;

- e) That Defendant will not receive reimbursement for any portion of the SEP from another person or entity; notwithstanding the foregoing sentence, Respondent may seek and receive reimbursements, offsets, or other recovery pursuant to contract, tort or equitable claims against third persons which assert that professional errors and/or omissions or other breach of duty by such persons caused Respondent to incur the costs imposed under this Agreement or otherwise incurred by Respondent;
- f) That for federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g) Respondent has performed a reasonable inquiry to ensure that this SEP does not inadvertently augment federal appropriations by certifying the following:
 - i) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 67, and
 - ii) Respondent has inquired of the SEP implementer (City of Arlington Fire Department) as to whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by implementer that it is not a party to such a transaction.

72. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement,

Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Blake Kretz
President
Texas Health Arlington
Memorial Hospital
Arlington, Texas

73. Stipulated Penalties for Failure to Complete SEP/Failure to spend agreed-on amount:

- a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 67 and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 68, Respondent shall be liable for stipulated penalties according to the provisions set forth below: Except as provided in subparagraphs (i) – (iv) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of **\$90,929.00**.
- i) If the SEP is not completed in accordance with Paragraphs 67-72, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- ii) If the SEP is completed in accordance with Paragraphs 67-72, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of **\$18,185.00**.
 - iii) If the SEP is completed in accordance with paragraphs 67-72, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - iv) For failure to submit the SEP Completion Report required by Paragraph 69, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.
- b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
 - i) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 63. Interest and late charges shall be paid as stated in Paragraph 65.
 - d) Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

74. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language prominently displayed: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act."

75. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

D. Termination and Satisfaction

76. 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 60. Unless 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.

E. Effective Date of Settlement

77. 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: Sept 29, 2016



Texas Health Resources

FOR THE COMPLAINANT:

Date: 9.27.16



John Blevins
Director
Compliance Assurance and
Enforcement 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: 9/28/16



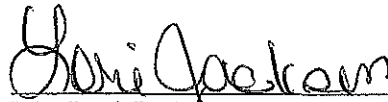
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of September, 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 below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 10072 5600002 77365768

Patrick Larkin, Partner
Strasburger & Price, L.L.P. on behalf of Texas Health Resources
901 Main Street, Suite 4400
Dallas, Texas 75202



Ms. Lori Jackson
Paralegal

Supplemental Environmental Project (SEP)

Texas Health Arlington Memorial Hospital – In-Home Pharma Waste Collection Project

Purpose:

- Reduce improper sewerage and landfill disposal of household pharmaceutical wastes.
- Improve community awareness of the process for proper disposal of household medications.
- Provide a mechanism for community members to turn in unused medication for appropriate disposal by the hospital.

Rationale:

- In 2015, Texas Health Arlington Memorial Hospital (THAM) conceived and initiated a home-visit pilot project in partnership with the City of Arlington Fire Department (CAFD), designed to reduce emergency ambulance calls.
- In the course of the 1-year pilot program, THAM and CAFD observed that many community members keep medications in their home that they no longer utilize. We learned that community members often do not understand how to appropriately dispose of pharmaceutical waste; often leading to flushing these wastes or disposal in municipal waste landfills.
- Providing a mechanism for members of the community to safely collect and dispose of unused household medications will reduce the risk of this pharmaceutical waste entering community drinking water supplies or area streams and rivers.

Process:

1. The THAM-funded contract for the CAFD pilot program expires on August, 31, 2016. The pilot project was funded from hospital revenues.
2. THAM will create a new, expanded partnership program with the CAFD paramedics. Paramedics will conduct home visits during non-emergent calls throughout Arlington and will:
 - a. educate community members on appropriate disposal of pharmaceutical waste;
 - b. provide information regarding the importance of appropriate disposal of unused medications in order to maintain healthy drinking water in our community;
 - c. offer to identify and gather expired and unused medications;
 - d. segregate and manage (render unusable) all controlled-substance wastes per DEA requirements and guidance;
 - e. collect and transport waste medications for appropriate disposal at THAM's cost.
3. Medications collected by the paramedics would be transported to an appropriate hospital storage area for disposal through hospital waste management procedures.
4. SEP Project costs to the hospital. THAM will pay \$90,929.00 of SEP-creditable costs as follows:
 - a. The monthly cost to fund the CAFD Community Paramedic Pilot Program is \$9,100.

- b. THAM will renew the CAFD Community Paramedic Program and make \$9100 monthly payments to CAFD to fund paramedics' community education and outreach visits directed towards pharmaceutical waste disposal.
 - i. Because the SEP expands (not replaces) the wellness-check benefits of the pre-existing pilot program, THAM proposes to allocate \$4550 of monthly costs to the SEP project. If no other costs were incurred, THAM would fund at least 20 months of the CAFD Pharmaceutical-focused Community Paramedic Program. As noted below, additional SEP-creditable costs are expected to be incurred, which will reduce the term of mandatory participation by THAM in the CAFD program.
 - ii. At least half of the time Paramedic's time onsite with residents will be dedicated to pharmaceutical waste education, waste identification and collection.
 - iii. Additional Paramedic project time will be dedicated to pharmaceutical segregation, transport and waste management.
- c. The following, additional SEP-creditable costs are expected to be incurred:
 - i. Estimated \$500-1000/month cost of disposal of household hazardous medication waste.
 - ii. Estimated \$500-1000/month cost of storage containers for the paramedics to transport household hazardous medication waste.
 - iii. Estimated \$1000 cost of educational materials and advertising to promote the program and to encourage safe disposal of household medications.

THAM May Sponsor a Fixed Site Pharma Collection Event to Meet SEP Expenditure Goals

If SEP expenditures do not track a monthly average cost of \$3,600 (80% of total SEP costs, divided by 20 month expected term), Texas Health Arlington Memorial Hospital may choose to supplement the Paramedics pharma-collection efforts by scheduling and promoting a fixed-location education and waste collection event for community members to turn in unused medication for appropriate disposal by the hospital. THAM will notify EPA representatives 30 days prior to scheduling such event(s).

Duration:

- Texas Health Arlington Memorial Hospital anticipates that the SEP would be performed over a twenty to 24-month period beginning September 1, 2016.