

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

IN THE MATTER OF:

Ochsner Health Center

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0944

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, Ochsner Health Center ("Respondent" or OHC Covington) and concerns the facility located at 1000 Ochsner Boulevard Covington, LA 70433 ("the OHC Covington" Facility).
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the 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.
4. Respondent explicitly waives any right to contest the allegations or 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.
5. The CAFO resolves only those violations which are alleged herein.

6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. 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 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a domestic corporation authorized to do business in the State of Louisiana.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code("LAC") LAC 33: V.109 1¹, [40 C.F.R. § 260.10].

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348) Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C F R § 272 951(c)(1)(i) effective on December 26, 2018 83 Fed Reg. 66143 (December 26, 2018), 40 C F R 272 951 Louisiana State-Administered Program Final Authorization References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version The corresponding C F R citations are also provided

11. Respondent owns or operates the OHC Covington Facility.
12. The OHC Covington Facility offer services in the healthcare system.
13. During the period from July 2019 to January 2020, EPA conducted a RCRA record review of the OHC Covington Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
14. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the:
 - A. Characteristic of Ignitability: D001 (Ignitability)
 - B. Characteristic for multiple toxicity waste: D004 (Arsenic); D005 (Barium); D007 (Chromium); D008 (Lead); D009 (Mercury); D010 (Selenium)
 - C. P001 (Warfarin, & salts, when > 0.3%); P075 (Nicotine, & salts); P188 (Physostigmine salicylate.)
 - D. U150 (Melphalan); U154 (Methanol (I)); U188 (Phenol)
15. The OHC Covington Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.1 0].
16. The waste streams identified in Paragraph 14 are "hazardous waste" as defined in LAC 33: V.4901.B & F, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
17. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 1 KG of acute hazardous waste in a month and qualified as a large quantity generator of hazardous waste under LAC 33:V.108, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

18. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33: V.109, [40 C.F.R. § 260.10].
19. 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 in Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R Part 262 and/or 270].

Claims i. Notification Requirements

20. The allegations in Paragraphs 1-19 are re-alleged and incorporated herein by reference.
21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
22. Respondent did not file with EPA or Louisiana an adequate and timely notification of its hazardous waste activities at the OHC Covington facility during the years of 2015, 2016, 2017, 2018 and 2019 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claims ii. Failure to File Biennial Reports

23. The allegations in Paragraphs 1-19 are realleged and incorporated by reference.
24. Pursuant to 40 C.F.R. § 262.41 a generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA and to the Louisiana Department of Environmental Quality ("LDEQ"), by March 1 of each even-numbered year for the prior year.

25. For the years 2015, 2017 and 2019, neither the EPA nor the LDEQ received Biennial Reports that Respondent was required to file in violation of 40 C.F.R. § 262.41.

Claims iii. Failure to Operate within Its Stated Generator Status

26. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
27. During the Investigation, EPA determined that the OHC Covington Facility declared its generator status as a conditionally exempt small quantity generator of hazardous waste.
28. Pursuant to 40 C.F.R. § 261.5(b), as long as a CESQG complies with the applicable requirement under 40 C.F.R. §§ 261.5(e), (f), (g) and (j), the generator's hazardous waste is not subject to regulation under 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.
29. During portions of 2015, 2016, 2017, 2018 and 2019, the OHC Covington Facility exceeded their declared CESQG status and operated in some instances as a large quantity generator of hazardous waste, thereby not meeting the requirements of their correct generator status in violation of one or more of the requirements for small and large quantity generators under 40 C.F.R. § 262.34.

IV. COMPLIANCE ORDER

30. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within one hundred and eighty (180) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams at the OHC Covington Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the OHC Covington Facility in compliance with RCRA and the regulations promulgated thereunder, including,

- but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the OHC Covington Facility and within the prescribed time period;
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above;
- D. Respondent shall certify the cost of implementation of injunctive relief; and
- E. Respondent shall certify the environmental benefit (reduction of waste or reduction in the toxicity of waste).
31. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

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

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

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Tripti Thapa
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email to Enforcement Officer Tripti Thapa, respectively at thapa.tripti@epa.gov or at 214-665-7563.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

32. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of **One Hundred Four Thousand Three Hundred Eighty Four Dollars (\$104,384)**.
33. The penalty shall be paid in twenty-four (24) monthly installment of \$4349 33. beginning within thirty calendar days of the effective date of this CAFO and made payable to the Treasurer, United States of America. For purposes of this CAFO, an installment will not be considered overdue, subject to interest and late payments found at paragraph 36, if paid by the last day of the month in which that installment is due.
34. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:
- U S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000
- Overnight Mail (non-U.S. Postal Service), the check 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, Missouri 63101
314-418-1028

Wire Transfer.

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

The case name and docket number (In the Matter of Ochsner Health Center, Docket No. RCRA-06-2020-0944) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Tripti Thapa
Dallas, Texas 75270-2102

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

36. 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).
37. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty

charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent.³¹ C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

39. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order). 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

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

Ochsner health Center
RCRA-06-2020-0944

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

FOR THE RESPONDENT:

Date: _



Ochsner Health Center

FOR THE COMPLAINANT:

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U. S. EPA, Region 6

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.

Thomas Rucki
Regional Judicial Officer

Ochsner health Center
RCRA-06-2020-0944

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Trawick.Matthew@epa.gov

Copy via Email to Respondent:

aprochaska@joneswalker.com

Mr. Matthew Trawick
Attorney