

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of:)	U.S. EPA Docket No.:
)	RCRA 09-2007-0001
)	
Commonwealth Health Center,)	CONSENT AGREEMENT
Commonwealth of the)	AND FINAL ORDER
Northern Marianas Islands)	PURSUANT TO 40 CFR
)	§§ 22.13 and 22.18
EPA Identification No.)	
TTR 000 128 595)	
)	
Respondent.)	
_____)	

COMPLAINT AND CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA") as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation /Termination or Suspension of Permits, 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is the Commonwealth Health Center ("CHC" or "Respondent"). CHC is part of the government of the Commonwealth of the Northern Marianas Islands ("CNMI").
2. CHC owns and operates a hospital in Saipan, CNMI (the "facility"). In the course of operating the hospital, CHC generates and stores certain hazardous wastes at the facility, which constitute "universal waste," within the meaning of 40 CFR § 273.9.

3. This Consent Agreement and Final Order Pursuant to 40 CFR §§22.13 and 22.18 (“CAFO”), pursuant to 40 C.F.R. § 22.13(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that CHC failed to label universal waste, illegally disposed of universal waste and failed to respond to requests for information submitted to CHC by EPA pursuant to RCRA Section 3007, 42 U.S.C. § 6927. Each of these allegations constitute a violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*

B. JURISDICTION

4. CHC is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
5. CHC is the “operator” of a facility as defined in 40 C.F.R. § 260.10.
6. CHC is the “owner” of a facility as defined in 40 C.F.R. § 260.10.
7. CHC generates or has generated, and stores or has stored, materials that are “wastes” as defined in 40 CFR §§ 260.10 and 261.2. The wastes generated by CHC are “universal waste” within the meaning of 40 C.F.R. §§ 260.10, 261.9, and part 273.
8. CHC is a “universal waste handler” as defined in 40 C.F.R. § 273.9.
9. The universal wastes generated and stored at the facility include “batter(ies),” “lamp(s),” “mercury containing equipment” and “thermostat(s),” as those terms are each defined in 40 CFR § 273.9.
10. CHC claims to be a “small quantity handler” of universal waste within the meaning of 40 C.F.R. § 273.9.
11. On June 19, 2003, EPA conducted a RCRA Compliance Evaluation Inspection (“CEI”) at the facility. On May 6, 2004, EPA submitted an Information Request Letter to CHC pursuant to RCRA Section 3007, 42 U.S.C. § 6927. After CHC failed to respond to the request by the deadline stated, EPA resubmitted the request. Based upon the findings made during the CEI, additional information obtained subsequent to the CEI, and CHC’s failure to respond to the RCRA Section 3007 information request letter by the deadline requested,

EPA determined that CHC has violated RCRA and the regulations adopted pursuant thereto.

12. Any violation of regulations promulgated pursuant to RCRA Subtitle C, sections 3001 – 3019 of RCRA, 42 U.S.C. §§ 6921-6939, constitutes a violation of RCRA. Violations of RCRA Subtitle C are subject to the assessment of civil or criminal penalties and compliance orders in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928 and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*
13. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time and/or assessing a civil penalty for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921, *et seq.*
14. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegateed this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT 1

Failure to Properly Manage Universal Waste

15. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
16. 40 C.F.R. § 273.18 prohibits a small quantity handler of universal waste from sending or taking universal waste to a place other than another universal waste handler, a destination facility or foreign destination.
17. 40 C.F.R. § 273.11 prohibits a small quantity handler of universal waste from disposing of universal waste.

18. At the time of the CEI, CHC was disposing of some portion of its universal waste in the trash.
19. Therefore, EPA alleges that CHC has violated 40 C.F.R. §§ 273.11 and 273.18, and RCRA.

COUNT 2

Failure to Label Universal Waste

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 40 C.F.R. § 273.14 requires that small quantity handlers of universal waste label or mark the universal waste to identify the type of universal waste.
22. In accordance with 40 C.F.R. § 273.14(a), universal waste batteries, or containers where batteries are contained, must be labeled or clearly marked with any of the following phrases: "Universal Waste Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)."
23. In accordance with 40 C.F.R. § 273.14(e), each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)."
24. At the time of the CEI, CHC failed to label its waste batteries and waste lamps in accordance with 40 C.F.R. § 273.14.
25. Therefore, EPA alleges that CHC has violated 40 C.F.R. § 273.14 and RCRA.

COUNT 3

Failure to Respond to a Request for Information

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. Pursuant to RCRA Section 3007, 42 U.S.C. § 6927, "[f]or [the] purposes of . . . enforcing the provisions [of RCRA Subtitle C], any

person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator . . . furnish information relating to such wastes. . .”

28. On or about May 6, 2004, EPA submitted a written request for information to CHC in accordance with RCRA Section 3007, 42 U.S.C. § 6927. This written information request required a response within 30 days of receipt. CHC received the information request on or about May 13, 2004. No response to the request was submitted to EPA by CHC by the deadline of June 12, 2004.
29. On or about October 13, 2004, EPA resubmitted the written request to CHC by facsimile. CHC failed to respond to the request until, on June 24, 2005, CHC answered EPA’s May 2, 2005 Notification of Intent to File a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (received by CHC on or about May 17, 2005).
30. CHC failed to respond to EPA’s information request letter in a timely fashion in violation of RCRA Section 3007, 42 U.S.C. § 6927.

D. TERMS OF SETTLEMENT

31. Respondent CHC consents to the assessment of a civil penalty of EIGHT THOUSAND DOLLARS (\$8,000.00) and the performance of a Supplemental Environment Project (“SEP”) in full satisfaction of all claims for civil penalties for the violations alleged in Section C of this CAFO. Such civil penalty amount shall become due and payable immediately upon Respondent CHC’s receipt of a true and correct copy of this CAFO. Respondent or the Government of CNMI must pay the civil penalty no later than THIRTY (30) CALENDAR DAYS after the effective date of this CAFO.
32. The aforesaid settlement amount was based upon the facts alleged herein and EPA’s consideration of the statutory factors of the seriousness of CHC’s violations and any good faith efforts by CHC to comply with all applicable requirements as provided in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), and in accordance with the

applicable provisions of the "June 2003 RCRA Civil Penalty Policy." Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring on or after January 31, 1997 but before March 16, 2004, and a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after March 15, 2004. The settlement amount was also based upon CHC's agreement to perform a SEP.

33. No later than THIRTY (30) CALENDAR DAYS after the date on which this CAFO is mailed or hand-delivered to Respondent, Respondent shall initiate a project for a mercury exchange project where CHC will exchange digital thermometers for mercury thermometers from clinics and households within the Commonwealth.
34. CHC shall complete the following SEP, which the parties agree is intended to secure significant environmental health protection and improvements.
 - (a) Respondent shall complete the SEP within one year following the effective date of this CAFO by completing the purchase of sufficient non-mercury thermometers to provide as replacements for a reasonably estimated number of mercury thermometers, providing information to clinics and households within the Commonwealth about the mercury exchange program and then making the mercury free thermometers available to the public.
 - (b) Within SIXTY (60) CALENDAR DAYS after the date on which this CAFO is mailed or hand-delivered to Respondent CHC, CHC shall submit a work plan ("Work Plan") for EPA review and approval. The Work Plan shall address work activities to be undertaken after the due date for the Work Plan and need not address work activities to be undertaken prior to that date. After receipt of the Work Plan, EPA will notify the Respondent, in writing, regarding: (1) any deficiencies in the

Work Plan which require modification by Respondent, including the appropriate time frame for resubmittal of a modified Work Plan; (2) the approval of the Work Plan by EPA with modification; or (3) the approval of the Work Plan by EPA.

35. The total expenditure for the SEP shall be not less than SEVENTEEN THOUSAND (\$17,000.00) in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
36. Respondent CHC hereby certifies that, as of the date of this Consent Agreement, CHC is not required to perform or develop the SEP by any federal, CNMI or local law or regulation; nor is CHC required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent CHC further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
37. Respondent CHC shall submit a SEP Completion Report to EPA within 365 days of the effective date of this CAFO. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented;
 - (ii) A description of any problems encountered during implementation of the SEP and the solutions thereto;
 - (iii) Itemized costs;
 - (iv) Certification of all measures carried out in furtherance of the SEP pursuant to the provisions of this CAFO; and
 - (v) A description of the environmental benefits resulting from implementation of the SEP (with a quantification of the benefits, if feasible).
38. Respondent CHC agrees that failure to submit the SEP Completion Report required by the foregoing Paragraph shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 58(e), below.

39. Respondent shall maintain legible copies of documentation of the mercury thermometer exchanges in the SEP Completion Report and shall provide the documentation to EPA not more than ten working days after CHC's receipt of a request for such information. Respondent shall include with the SEP Completion Report the following certification under penalty of law that the information contained in the SEP Completion Report is true, accurate and not misleading, by the signature of its Director on the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this SEP Completion Report and all its attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing 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."
40. Respondent CHC shall submit all notices and reports required by this CAFO by first class mail to:
- Daniel Fernandez
WST 3
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
41. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For the purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

42. Respondent CHC agrees that EPA or the CNMI DEQ may inspect the hospital facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
43. After receipt of the SEP Completion Report, EPA will notify CHC, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for CHC to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 58 herein.
44. If EPA elects to exercise option (a) under the foregoing Paragraph, *i.e.*, if the SEP Completion Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit CHC the opportunity to object in writing to the notification of deficiency given pursuant to the foregoing Paragraph within ten (10) days of receipt of such notification. EPA and CHC 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 Completion 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 any deficiencies in the SEP Completion Report to CHC, which decision shall be final and binding upon CHC. CHC agrees to correct the deficiencies in the SEP Completion Report which have been identified by EPA within thirty (30) days of receipt of the notice of deficiency pursuant to the foregoing Paragraph or, if the provisions of this Paragraph are invoked, within thirty days of receipt of EPA's written statement of its decision regarding deficiencies in the SEP Completion Report, or pay stipulated penalties in accordance with Paragraph 58 herein.
45. If EPA elects to exercise option (c) under Paragraph 43, above, EPA shall permit CHC the opportunity to object in writing to EPA's determination pursuant to this Paragraph within ten (10) days of receipt of such notification or rejection. EPA and CHC shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach an agreement regarding the determination whether the SEP has been satisfactorily completed. If

agreement between the Parties cannot be reached on this determination within this thirty (30) day period, then, within twenty (20) days of the end of the 30-day period above, EPA shall provide a written statement of its decision to CHC and to the Director, Waste Management Division ("Division Director"). EPA's written statement of decision shall be subject to review by the Division Director. Respondent shall have twenty (20) days after receipt of EPA's written statement of decision to provide the Division Director with its written response to EPA's statement of decision. The Division Director shall then 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 CHC. The Parties agree that the determination of the Division Director regarding the satisfactory or unsatisfactory completion of the SEP be deemed effective within ten (10) working days after its issuance. In the event the SEP is not completed satisfactorily as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by CHC to EPA in accordance with Paragraph 58 herein.

46. Any public statement, oral or written, in print, film or other media, made by CHC or the Government of CNMI making reference to the SEP shall include the following language:

"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."

E. ADMISSIONS AND WAIVERS OF RIGHTS

47. Respondent CHC admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CAFO and over CHC pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 CFR §§ 22.4 and 22.37. Further, for the purposes of this proceeding, CHC admits to the jurisdictional allegations of facts and law set forth in Section B of this CAFO. CHC consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CAFO and to enforce its terms. Further, CHC will not contest EPA's

jurisdiction and authority to compel compliance with this CAFO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CAFO.

48. Respondent CHC neither admits nor denies any allegations of fact or law set forth in Section C of this CAFO. CHC hereby waives any rights it may have to contest the allegations set forth in this CAFO, waives any rights it may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CAFO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b) and hereby consents to the issuance of this CAFO without adjudication. In addition, Respondent CHC hereby waives any rights it may have to appeal the Final Order attached to this Consent Agreement and made part of this CAFO.

F. PARTIES BOUND

49. This CAFO shall apply to and be binding upon Respondent CHC and its agents, successors and assigns and upon all persons acting under or for Respondent CHC, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CAFO shall terminate and constitute full settlement of the violations alleged herein.
50. No change in ownership or any other legal status relating to the facility will in any way alter CHC's obligations and responsibilities under this CAFO.
51. Respondent CHC shall give prior notice of this CAFO to any successor in interest prior to transfer of ownership or operation of the facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CAFO.
52. The undersigned representative of the Government of CNMI hereby certifies he or she is fully authorized to enter into this CAFO, to execute and to legally bind Respondent CHC to it.

G. PAYMENT OF CIVIL PENALTY

53. In addition to performance of the SEP, Respondent CHC consents to the assessment of and agrees to pay a civil penalty of EIGHT THOUSAND DOLLARS (\$8000.00) in full settlement of the federal civil penalty claims set forth in this CAFO.
54. Respondent shall submit payment of the EIGHT THOUSAND DOLLAR (\$8000.00) civil penalty within thirty (30) calendar days of the Effective Date of this CAFO. The Effective Date of this CAFO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" transmitted to the appropriate address as indicated below:

For a check drawn on a U.S. bank sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

For a check drawn on a U.S. bank sent by express mail:

Mellon Client Service Center
ATTN: Shift Supervisor Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

For a check drawn on a foreign bank with no U.S. branches:

Citibank Delaware
Global Cheque Collections
P.O. Box 15962
Wilmington, DE 19850-5962

At the time payment is so made, a copy of the check shall be sent to each of the following Region IX addresses:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

55. All payments shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action.
56. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent thirty (30) day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

57. In the event Respondent CHC fails to submit a payment to EPA by the time required in this CAFO, Respondent shall pay stipulated penalties up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of

delay, and up to FIFTEEN HUNDRED DOLLARS (\$1,500.00) per day for each day of delay thereafter.

58. In the event Respondent CHC fails to comply with any terms or provisions of this CAFO relating to the performance of the SEP described in Paragraphs 33 through 46 above 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 35 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- (a) Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent CHC shall pay a stipulated penalty to the United States in the amount of up to EIGHT THOUSAND THREE HUNDRED DOLLARS (\$8300.00).
 - (b) If the SEP is not completed in accordance with Paragraphs 33 through 46, but EPA determines that the Respondent CHC: (i) made good faith and timely efforts to complete the project; and (ii) 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, CHC shall not be liable for any stipulated penalty.
 - (c) If the SEP is completed in accordance with Paragraphs 33 through 46, but the Respondent CHC spent less than 90 percent of the amount of money required to be spent for the project in accordance with Paragraph 35, CHC shall pay a stipulated penalty to the United States in the amount of ONE THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$1150.00).
 - (d) If the SEP is completed in accordance with Paragraphs 33 through 46, and the Respondent CHC spent at least 90 percent of the amount of required to be spent for the project in accordance with Paragraph 35, Respondent CHC shall not be liable for any stipulated penalty.
 - (e) For failure to submit the SEP Completion Report required by the time(s) specified in Paragraph 37 above, Respondent CHC

shall pay a stipulated penalty in the following amounts, as applicable, for each day after the date that SEP Completion Report was due, as set forth in Paragraph 37, until the SEP Completion Report is submitted: up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of delay, and up to FIFTEEN HUNDRED DOLLARS (\$1,500.00) per day for each day of delay thereafter.

59. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
60. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a written demand by EPA for such penalties. Such demand shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. ' 13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" transmitted to the appropriate address as indicated below:

For a check drawn on a U.S. bank sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

For a check drawn on a U.S. bank sent by express mail:

Mellon Client Service Center
ATTN: Shift Supervisor Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

For a check drawn on a foreign bank with no U.S. branches:

Citibank Delaware
Global Cheque Collections
P.O. Box 15962
Wilmington, DE 19850-5962

At the time payment is so made, a copy of the check shall be sent to each of the following Region IX addresses:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

61. All payments shall indicate the name of the Facility, Respondent CHC's name and address, and the EPA docket number of this action.
62. The payment of stipulated penalties shall not alter in any way Respondent CHC's obligation to complete the performance required hereunder.
63. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent CHC's failure to comply with any of the requirements of this CAFO.
64. Respondent CHC shall perform the requirements set forth in this CAFO within the time limits established in the CAFO, unless performance is prevented or delayed solely by events which constitute

a force majeure. A force majeure is defined as an event arising from causes which are not foreseeable, which are totally beyond the control of Respondent, including its consultants and contractors, which could not be overcome by the exercise of due diligence, and which delay or prevent the performance of any requirement of this CAFO by the date required in the CAFO. Such events do not include unanticipated or increased costs of performance. A force majeure shall include insufficient availability of funds only if timely requests for such funds were made as part of the CNMI budgetary process.

65. If any event, including a force majeure event, occurs which causes or may cause delays in the completion of a requirement under this CAFO, Respondent CHC shall notify EPA in writing within 10 days of the delay or CHC's knowledge of the anticipated delay, whichever is earlier. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent CHC shall notify EPA in writing within 10 days of the delay or CHC's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by CHC to prevent or minimize the delay, and the timetable by which those measures will be implemented. CHC shall adopt all reasonable measures to avoid or minimize any such delay. Failure by CHC to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent CHC's right to request an extension of its obligation under this CAFO based on such incident.
66. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent CHC, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
67. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent CHC, EPA will notify Respondent CHC in writing of its decision and any

delays in the completion of the CAFO shall not be excused. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent CHC shall rest with CHC.

Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under the foregoing Paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

I. RESERVATION OF RIGHTS

68. EPA expressly reserves all rights and defenses that it may have.
69. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent CHC perform tasks in addition to those required by this CAFO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent CHC's failure to comply with any of the requirements of this CAFO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
70. Compliance by Respondent CHC with the terms of this CAFO shall not relieve CHC of its obligations to comply with RCRA or any other applicable local, CNMI, or federal laws and regulations.
71. The entry of this CAFO and Respondent CHC's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Respondent CHC's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CAFO.

72. This CAFO is not intended to be nor shall it be construed as a permit. This CAFO does not relieve Respondent CHC of any obligation to obtain and comply with any local, CNMI or federal permits.
73. This CAFO shall not be construed to constitute EPA approval of any equipment or technology utilized by Respondent CHC in connection with the SEP undertaken pursuant to this CAFO.

J. OTHER CLAIMS

74. Nothing in this CAFO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

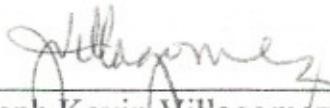
K. MISCELLANEOUS

75. By signing this CAFO, Respondent CHC, without admitting or denying them, certifies that all of the alleged violations set forth in Section C of this CAFO, which are or were capable of correction, have been corrected.
76. Notwithstanding any other provision of this CAFO, no action or decision by EPA pursuant to this CAFO shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this CAFO.
77. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
78. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

79. The Effective Date of this CAFO is the date the CAFO is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

1-29-07
Date



Joseph Kevin Villagomez, Secretary
CNMI Department of Public Health
For Respondent Commonwealth Health
Center, Commonwealth of the Northern
Marianas Islands

3 21 07
Date



Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 CFR §§22.13 and 22.18 (U.S. EPA Docket No. RCRA 09-2007-0001) ("CAFO") be entered and that Respondent Commonwealth Health Center, Commonwealth of the Northern Marianas Islands, ("Respondent") pay a civil penalty of EIGHT THOUSAND DOLLARS (\$8000.00) by certified or cashier's check payable to "Treasurer of the United States," and sent in accordance with Section G of this CAFO within thirty (30) days after the Effective Date of this CAFO. A copy of the check shall be sent to the EPA Region IX addresses specified in Section G of this CAFO within such thirty (30) day period. Respondent shall also perform all tasks required by the CAFO, including the performance of the Supplemental Environmental Project in accordance with Section D.

This Final Order, once signed, shall be effective immediately upon it being filed with the Regional Hearing Clerk.

03/21/07
Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Mr. Jack Taitano
Hospital Deputy Administrator
Commonwealth Health Center
P.O. Box 500409
Saipan, MP 96950-0267

3/22/07
Date


Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX