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REGIONAL HEARING CLERK
EPA REGION VI

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:

**MEMORIAL HERMANN HEALTH
SYSTEM**

HOUSTON, TEXAS,

RESPONDENT

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**CONSENT AGREEMENT AND
FINAL ORDER**

DOCKET NO. RCRA-06-2017-0904

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Memorial Hermann Health System, headquartered at 929 Gessner, Houston, Texas 77024.

2. Notice of this action has been given to the State of Texas, under Resource Conservation and Recovery Act (“RCRA”) § 3008(a) (2), 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 and its right to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in this CAFO.

5. This CAFO resolves only those violations alleged in this document.

6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to RCRA § 3008(a), 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)-(3).

8. 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, 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 corporation formed under the laws of the State of Texas and owns and operates several hospitals, including the following:

- a. Memorial Hermann Southwest Hospital, located at 7600 Beechnut Street, Houston, TX 77074 (“Southwest Hospital”);
- b. Memorial Hermann Southeast Hospital located at 11800 Astoria Blvd, Houston, TX 77089 (“Southeast Hospital”);
- c. Memorial Hermann – Texas Medical Center, located at 6411 Fannin St, Houston, TX 77030 (“Texas Medical Center”);

- d. Memorial Hermann Memorial City Medical Center, located at 921 Gessner Rd, Houston, TX 77024 (“Memorial City Hospital”);
 - e. Memorial Hermann The Woodlands Hospital, located at 9250 Pincroft Dr, The Woodlands, TX 77380 (“The Woodlands Hospital”).
10. Respondent is a “person” within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 T.A.C § 3.2(25) [40 C.F.R. § 260.10].
11. The facility is a “facility” within the meaning of 30 T.A.C § 335.1(59) [40 C.F.R. § 260.10].
12. Respondent is a “generator” of “hazardous wastes” at its facilities, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 T.A.C § 335.1(65), (69) [40 C.F.R. § 260.10].
13. As a generator of hazardous waste, Respondent is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 T.A.C § 335(C), (F) [40 C.F.R. §§ 262 and/or 270].
14. The primary business at Respondent’s facilities is healthcare and hospital-related services.
15. From December 2015 through March 2016, EPA conducted an investigation and records review of Respondent’s performance as a generator of hazardous waste.
16. The investigation showed that Respondent, from 2011-2015, at minimum, generated and offered for transport hazardous waste with the hazardous characteristics for: D001 (Ignitability), D002 (Corrosivity), D008 (Lead Toxicity), D009 (Mercury Toxicity), U239 (Xylene I), F003 (spent non-halogenated solvent), U154 (Methanol),

U129 (Lindane), U010 (azirino, Mitomycin C), U058 (Cyclophosphamide), and U059 (Daunomycin).

17. EPA's investigation revealed evidence that Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. §§ 261, 262, and 270 by failing to comply with the RCRA notification requirements, managing waste without an EPA ID number, failing to operate within its stated generator status, and failing to perform adequate hazardous waste determination.

Claim 1: Failure to File an Initial Notification.

18. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

19. Pursuant to Section 3010(a) of RCRA, 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 that the location and general description of such activity and the identified or listed hazardous wastes handled by such person ("Section 3010 Notification").

20. From 2012 to 2013, Respondent generated hazardous waste in amounts exceeding conditionally exempt small quantity generator ("CESQG") or non-generator status at Southwest Hospital.

21. From 2014 to 2015, Respondent generated hazardous waste in amounts exceeding CESQG or non-generator status at Memorial City Hospital.

22. From 2015 to 2016, Respondent generated hazardous waste in amounts exceeding CESQG or non-generator status at Southeast Hospital, Texas Medical Center, and The Woodlands Hospital.

23. In 2012 and 2013 Respondent failed to file an adequate initial Section 3010 Notification for Southwest Hospital, Texas Medical Center, Memorial City Hospital, and The Woodlands Hospital.
24. In 2012 and 2013, Respondent failed to file an adequate initial Section 3010 Notification for Southwest Hospital.
25. From 2014 to 2015, Respondent failed to file an adequate initial Section 3010 Notification for Memorial City Hospital.
26. From 2015 to 2016, Respondent failed to file an adequate initial Section 3010 Notification for Southeast Hospital, Texas Medical Center, and The Woodlands Hospital.
27. Respondent's failure to file an initial Section 3010 Notification(s) in 2012 and 2013 constitutes a violation of 30 T.A.C. § 335.6(c) [42 U.S.C. § 6930(a)].

Claim 2: Failure to File a Subsequent 3010 Notification.

28. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.
29. Pursuant to Section 3010(a) of RCRA, 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 that the location and general description of such activity and the identified or listed hazardous wastes handled by such person. A Section 3010 Notification must be updated if the person's generator status changes.
30. In 2015, Respondent's Southwest Hospital, Southeast Hospital, Texas Medical Center, and The Woodlands Hospital produced hazardous waste in excess of 1,000kg per month, making each facility a large quantity generator ("LQG").

31. In 2014, Respondent's Memorial City Hospital produced hazardous waste in excess of 1,000kg per month, making it a LQG.
32. Respondent failed to file a Subsequent Section 3010 Notification for each facility listed in Paragraph 30 indicating that its generator status had changed from SQG to LQG in 2015.
33. Respondent failed to file a Subsequent Section 3010 Notification for the facility listed in Paragraph 31 indicating that its generator status had changed from SQG to LQG in 2014.
34. Respondent's failure to a Subsequent 3010 notification for 2015 constitutes a violation of 30 T.A.C. § 335.6(c) [42 U.S.C. § 6930(a)].

Claim 3: Managing Hazardous Waste without an EPA ID Number

35. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.
36. 30 T.A.C. § 335.63(a) [40 C.F.R. § 262.12(a)] prohibits generators from treating, storing, disposing of, transporting, or offering for transport hazardous waste without having received an EPA identification number from the Administrator.
37. During the years 2012 and 2013, Respondent offered hazardous waste for transport and disposal at Southwest Hospital.
38. During the years 2014 and 2015, Respondent offered hazardous waste for transport and disposal at Memorial City Hospital.
39. During the years 2015 and 2016, Respondent offered hazardous waste for transport and disposal at Southeast Hospital, Texas Medical Center, and The Woodlands Hospital.

40. Respondent failed to obtain an EPA ID number during the years 2012 and 2013 at Southwest Hospital.

41. Respondent failed to obtain an EPA ID number during the years 2014 and 2015 at Memorial City Hospital.

42. Respondent failed to obtain an EPA ID number during the years 2015 and 2016 at Southeast Hospital, Texas Medical Center, and The Woodlands Hospital.

43. Respondent's failure to obtain an EPA ID number for facilities named in this CAFO before offering hazardous waste for transport and disposal constitutes a violation of 30 T.A.C. § 335.63(a) [40 C.F.R. § 262.12(a)].

Claim 4: Failure to Meet the Requirements of a Small or Large Quantity Generator

44. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

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

46. Pursuant to 30 T.A.C §§ 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 T.A.C § 335.78 [40 C.F.R. § 261.5].

47. Respondent's Southwest Hospital generated hazardous waste in excess of 100 kilograms per month from 2012 to 2014, thereby operating as a SQG during that period.

48. Respondent's Southwest Hospital generated hazardous waste in excess of 1,000 kilograms per month during 2015, thereby operating as a LQG during that period.

49. Respondent's Memorial City Hospital generated hazardous waste in excess of either 100 kilograms per month or 1,000 kilograms per month from 2012 to 2015, thereby operating as a SQG or LQG during that period.

50. Respondent's Southeast Hospital, Texas Medical Center, and The Woodlands Hospital generated hazardous waste in excess of either 100 kilograms per month or 1,000 kilograms per month from 2015 to 2016, thereby operating as a SQG or LQG during that period.

51. From 2012 to 2014, while operating as a SQG at Respondent's Southwest Hospital, and from 2012 to 2015 while operating as a SQG or LQG at Respondent's Memorial City Hospital, and from 2015 to 2016 while operating as a SQG or LQG at respondent's Southeast Hospital, Texas Medical Center, and The Woodlands Hospital, Respondent failed to comply with emergency preparedness and training requirements, including applicable parts of the SQG requirements under 30 T.A.C. § 335.69(f)(5) [40 C.F.R. § 262.34(d)(5)].

52. In 2015, while operating as a LQG at Respondent's Southwest Hospital, Respondent failed to provide adequate training to its employees, failed to document adequate emergency preparedness, and failed to provide an adequate contingency plan, as required in 30 T.A.C Chapter 335.69(b) [40 C. F. R. § 262.34(b), 40 C.F.R. Part 265].

53. Respondent's failure to meet the requirements of their generator status (SQG or LQG) for 2012 to 2014 at the Southwest Hospital, for 2012 to 2015 at the Memorial City Hospital, and for 2015 to 2016 at Texas Medical Center, Southeast Hospital, and The Woodlands Hospital constitutes a violation of 30 T.A.C § 335.69(f)(5) [40 C.F.R. § 262.34(d)(5)].

54. Respondent failed to meet the requirements of their generator status (LQG) for 2015 at the Southwest Hospital under 30 T.A.C § 335.69(b) [40 C. F. R. Part § 262.34(b)].

Claim 5: Failure to Fully Comply with the Manifest Requirements

55. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

56. 30 T.A.C. § 335.10(a) requires generators of hazardous waste to comply with, among other regulations, 40 C.F.R. § 262.20.

57. Pursuant to 40 C.F.R. § 262.20(a)(1), a generator who offers hazardous waste for transport for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22 according to the instructions in the appendix to Part 262. Item 1 in the appendix to Part 262 instructs generators to include their EPA Identification Number on Form 8700-22.

58. In 2014, Respondent shipped hazardous waste on 32 manifests from its Memorial Hermann Southwest facility without including an EPA Identification Number.

59. In 2014, Respondent failed to adequately complete the manifest at Memorial City Hospital.

60. In 2015, Respondent failed to adequately complete the manifest at Memorial Hermann Southeast Hospital, Texas Medical Center, and The Woodlands Hospital.

61. Respondent's failure to adequately complete the manifests, EPA Form 8700-22, constitutes a violation of 30 T.A.C. § 335.10(a) [40 C. F. R § 262.20(a)(1)].

Claim 6: Failure to Perform an Adequate Hazardous Waste Determination

62. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

63. Pursuant to 30 T.A.C § 335.62 [40 C.F.R. § 262.11], Respondent, as a generator of solid waste, must determine whether such waste is a hazardous waste, either by applying the required test method or by applying its knowledge of the process generating the waste, taking into account the materials or the process.

64. From 2011 to 2015, at Respondent's Southwest Hospital and Memorial City Hospital, Respondent routinely generated hazardous wastes for which there was no adequate and complete hazardous waste determination.

65. From 2015 to 2016, at the Southeast Hospital, Texas Medical Center, and The Woodlands Hospital Respondent routinely generated hazardous wastes for which there was no adequate and complete hazardous waste determination.

66. Respondent's failure to make adequate and complete hazardous waste determinations on all its solid waste streams constitutes a violation of 30 T.A.C. § 335.62, [40 C.F.R. § 262.11].

IV. COMPLIANCE ORDER

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

- a. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures (SOP) to ensure that Respondent is

operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for:

- i. (i) making hazardous waste determinations;
 - ii. (ii) managing hazardous wastes;
 - iii. (iii) reporting, transporting, and disposing of hazardous waste;
 - iv. (iv) preparing its manifests; and
 - v. (v) meeting the requirements of the land disposal restrictions;
- b. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification requirements.
- c. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A, above.
- d. Respondent shall certify that it has adequate contingency plans, Emergency Procedures and proper training for managing, reporting, transporting and disposing of hazardous waste.

68. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Respondent and shall include the following certification:

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

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

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Waste Compliance 1 Section (6EN-H1)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Tripti Thapa

V. TERMS OF SETTLEMENT

A. Penalty Provisions

69. 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 **Two hundred forty eight thousand four hundred ninety seven dollars (\$248,497)**

70. The penalty shall be paid within ninety (90) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

71. 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 Memorial Hermann Health System, Inc., Docket No. RCRA-06-2017-0904**) shall be documented on or within your chosen method of payment to ensure proper credit.

72. 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 I (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.

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

74. 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

75. 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 23. 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.

76. In its certification for termination and satisfaction, Respondent shall provide a report that includes estimates of the costs of compliance and the number of kilograms of hazardous waste reduced as a result of the actions required by this CAFO.

D. 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:

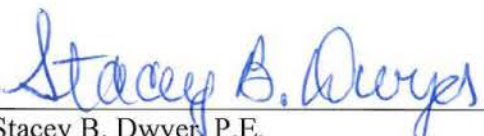
Date: 2/9/2017



Memorial Hermann Health System

FOR EPA REGION 6:

Date: 02/20/2017



Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and Enforcement
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.

Date: 2-22-17



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of February, 2017, 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 70073020000251028058

Eddie Lewis
Norton Rose Fulbright
1301 McKinney, Suite 5100
Houston, Texas 77010-3095



Ms. Lori Jackson
Paralegal