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REGIONAL HEARING CLERK  
EPA REGION VI

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

**IN THE MATTER OF:**

**PATHOLOGY REFERENCE  
LABORATORY, L.L.C.**

**SAN ANTONIO, TEXAS,**

**RESPONDENT**

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**CONSENT AGREEMENT AND  
FINAL ORDER**

**DOCKET NO. RCRA-06-2017-0939**

**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 Pathology Reference Laboratory, L.L.C. (“PRL” or “Respondent”), headquartered at 9600 Datapoint Drive, San Antonio, Texas, 78229-2028.

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 limited liability company formed under the laws of the State of Texas and owns and operates a medical facility located at 9600 Datapoint Drive, San Antonio, Texas, 78229-2028 (“the Facility” or “Facility”).

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]. The Facility is a “facility” within the meaning of 30 T.A.C § 335.1(61) [40 C.F.R. § 260.10].

11. Respondent is a “generator” of “hazardous waste” at the Facility, as those terms are defined in RCRA §§ 1004(5), 42 U.S.C. §§ 6903(5), and 30 T.A.C § 335.1(67), (73) [40 C.F.R. § 260.10].

12. 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].

13. The primary business at Respondent's Facility is healthcare and medical-related services.

14. From February 2017 through June 2017, EPA conducted an investigation and records review of Respondent's performance as a generator of hazardous waste.

15. The investigation showed that Respondent, from 2013 to 2017, at minimum, generated and offered for transport hazardous waste with the hazardous characteristics for D001 (Ignitability).

16. 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 submit its biennial report.

**Claim 1: Failure to File Initial or Subsequent 3010 Notification and Failure to Obtain an EPA ID Number.**

17. Paragraphs 1-16 are realleged and incorporated herein by reference.

18. 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") unless it is a conditionally exempt small quantity generator ("CESQG").

A CESQG is any generator of hazardous waste that generates less than 100 kg of hazardous waste in a calendar month.

19. From 2013 to 2017, Respondent's Facility produced hazardous waste in excess of 1,000 kg per month, making the facility a large quantity generator ("LQG").

20. During those years or portions of those years, Respondent failed to file a Section 3010 Notification for the Facility.

21. Respondent's failure to file a Section 3010 Notification(s) constitutes a violation of 30 T.A.C. § 335.6(c) [42 U.S.C. § 6930(a)].

22. 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.

23. During the years 2013 to 2017, Respondent offered hazardous waste for transport and disposal at the Facility.

24. Respondent failed to obtain an EPA ID number for the Facility during those years or portions of those years.

25. Respondent's failure to obtain an EPA ID number 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 2: Failure to Meet the Requirements of a Large Quantity Generator**

26. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

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

28. 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].

29. From 2013 to 2017 (or portions of those years), the Facility generated hazardous waste in excess of 1,000 kilograms per month, making Respondent a LQG.

30. During these years or portions thereof, while operating as a LQG, 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(a)(4) [40 C. F. R. § 262.34(a), 40 C.F.R. Part 265].

31. Respondent's failure to meet the requirements of its generator status (LQG) from 2013 to 2017 (or portions of those years) at the Facility constitutes a violation of 30 T.A.C § 335.69(a)(4) [40 C.F.R. § 262.34(a)].

**Claim 3: Failure to Submit Biennial Report**

32. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

33. Pursuant to 30 T.A.C. § 335.71, [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's Regional Administrator and to TCEQ by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 T.A.C.

§ 335.9.

34. For 2014 and 2016, EPA and/or TCEQ did not receive the requisite number of Biennial Reports that Respondent was required to file in violation of 30 T.A.C. §§ 335.9(b) and 335.71, [40 C.F.R. § 262.41].

#### **IV. COMPLIANCE ORDER**

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

- a. Respondent shall certify that it has assessed all its solid waste streams at the Facility to determine the accurate waste codes and 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) managing hazardous wastes; and (ii) reporting, transporting, and disposing of hazardous waste;
- b. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification requirements for the Facility;
- c. Respondent shall obtain an EPA ID number for the Facility; and
- d. Respondent shall certify that it has adequate contingency plans, emergency procedures, and proper training for managing, reporting, transporting and disposing of hazardous waste for the Facility.

36. 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  
Waste Enforcement Branch  
Waste Compliance 1 Section (6EN-H1)  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attn: Tripti Thapa

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

37. 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 Eighty-Six Thousand Two Hundred Twenty-Five Dollars And Sixty Cents (\$186,225.60)**.

38. The penalty shall be paid in thirty-six (36) monthly installments of \$5,172.93, with the first installment due thirty (30) calendar days after the effective date of this CAFO and each subsequent installment due thirty (30) calendar days after the due date for the prior installment, with each installment made payable to 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 41, if paid within thirty (30) calendar days after the date on which that installment is due.

39. The following are Respondent's options for transmitting the penalty payments:

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 Pathology Reference Laboratory, LLC, Docket No. RCRA-06-2017-0939**) shall be documented on or within your chosen method of payment to ensure proper credit.

40. 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, Suite 1200  
Dallas, TX 75202-2733

Chief  
Waste Compliance I Section (6EN-H1)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attn: Tripti Thapa

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

41. 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 installment payment that is not paid by its 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 payments will be charged and assessed monthly throughout the period the payment is

overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalty installment payments for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the payment remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of a monthly installment payment that remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on an overdue installment payment 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 an installment payment may also apply.

**B. Costs**

42. 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**

43. 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 36. 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**

44. 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:**

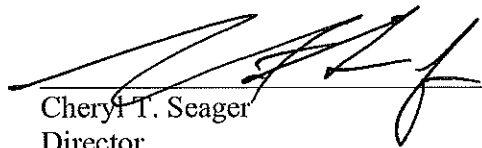
FOR THE RESPONDENT:

Date: 10/16/2017

  
\_\_\_\_\_  
Pathology Reference Laboratory, LLC  
**MAURO GUERRA**  
**CEO**

FOR EPA REGION 6:

Date: 31 OCT 2017

  
\_\_\_\_\_  
Cheryl T. Seager  
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: 11/1/17

  
\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

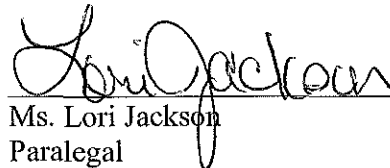
**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of November, 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** 7015 1520060339909231

Mauro Guerra  
Chief Executive Officer  
Pathology Reference Laboratory, L.L.C.  
9600 Datapoint Drive  
San Antonio, TX 78229-2028

  
\_\_\_\_\_  
Ms. Lori Jackson  
Paralegal