

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

FILED  
JUL 21 2015 2:28  
REG. OFFICE OF COMPLAINT  
DALLAS, TEXAS

IN THE MATTER OF:

BAYLOR COLLEGE OF MEDICINE

RESPONDENT  
EPA ID TXD988070082

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Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2015-0914

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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, Baylor College of Medicine (“Baylor” or “Respondent”) and concerns four (4) facilities, each with different levels of noncompliance and for different periods that will be specified in the claims for the respective facility. The facilities that are covered by this CAFO and specifically for the violations alleged herein are:

- A. The facility located at 3325 Yellowstone Boulevard, Houston, Texas 77021 (the “Yellowstone Facility”);
- B. The facility located at 1 Baylor Plaza, Houston, Texas, the Baylor Main Campus, (the “BMC Facility”);
- C. The facility located at 1102 Bates, Houston, Texas, the Feigin Center (the “Feigin Facility”); and

D. The facility located at 500 Medical Center Blvd, Suite 360A, Conroe,  
Texas (the "Conroe Facility").

2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO, and waives all defenses which 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 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 the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") 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 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 Texas corporation, authorized to do business in Texas, and is located at 3325 Yellowstone Boulevard, Houston, Texas 78297.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 3.2(25), [40 C.F.R. § 260.10].
11. Baylor owns or operates the facilities at the respective locations identified in Paragraph 1 above and collectively operates as a college, university, and a professional school.
12. In May 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities ("TSDs") and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained information on Baylor's hazardous wastes that it offered for transport and treatment ("Responses").
13. During the period of October 2014 through April 2015, EPA conducted a RCRA investigation and record review ("Investigation") of Baylor's performance as a generator of hazardous waste.
14. Baylor holds a RCRA permit as a storage facility that receives hazardous wastes identified in Paragraph 15 and generated at other Baylor locations.
15. During the Investigation and review of the Responses, EPA discovered that Baylor, at a minimum, generated and offered for transport and treatment the following hazardous waste, during 2010 through 2014 from the Yellowstone Facility:

- i. Ignitable, corrosive, and reactive characteristic wastes with the hazardous waste codes, respectively D001, D002, and D003;
  - ii. Toxicity wastes with the hazardous waste codes D005, D007, D008, D009, D011, D018, D019, D022, D035, D036, D038, respectively barium, chromium, lead, mercury, silver, benzene, carbon tetrachloride, chloroform, methyl ethyl ketone, nitrobenzene, and pyridine; and
  - iii. Listed hazardous waste with the hazardous waste codes F001, F002, F003, F004, F005, P022, P048, P075, P087, P097, P098, P105, P106, P108, P112, U003, U007, U010, U022, U031, U044, U058, U080, U122, U123, U124, U140, U154, U161, U188, U201, U204, U220, U226, U239.
16. With additional investigation during December 2014 and January 2015, EPA determined that Baylor owns and/or operates several facilities in Texas, including the facilities listed in Paragraph 1 above, and that all its facilities generate some or all of the waste streams listed in Paragraph 15 above.
17. EPA determined that one or more of the facilities listed in Paragraph 1.B through 1.D, at separate and various times during the relevant period of this CAFO shipped hazardous waste to the Yellowstone Facility for storage prior to shipment to one or more permitted disposal facilities.
18. The waste streams identified in Paragraph 15 are "hazardous waste" as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33].
19. From the Investigation and review of the Responses, EPA determined that during the period of 2010 through 2014, Respondent generated, at a minimum, the hazardous waste streams identified in Paragraph 15 in quantities that exceeded the threshold amount in some instances of 1kg of acute hazardous waste and 1000 kg of hazardous waste per month at the Yellowstone facility, which qualified Respondent for the large quantity generator status

under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

20. Respondent is a “generator” of “hazardous waste” at each facility listed in Paragraph 1 above, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
21. The facilities listed in Paragraph 1 above is each a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); and a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1 (59), [40 C.F.R. § 260.10].
22. As a generator of hazardous waste, at each facility listed in Paragraph 1 above, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, 40 C.F.R Part 262].

**Yellowstone Facility**  
**(During the Period of 2010 to 2014)**

**Claim i. Notification Requirements**

23. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
24. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a conditionally exempt small quantity generator (“CESQG”) in a calendar month if he generates no more than 100 kg of hazardous waste and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5 (f), (g), and (j)].
25. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(c), [40 C.F.R. § 261.5(c)], are not applicable to the Yellowstone Facility.

26. During the Investigation and review of the Responses, EPA determined that Yellowstone Facility does not operate as a CESQG.
27. During the Investigation and review of the Responses, EPA determined that Respondent operates as a large quantity generator ("LQG") at the Yellowstone Facility.
28. 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 the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. No identified 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).
29. Respondent did not file with the Administrator or the authorized State a notification of its hazardous waste activities as a LQG at the Yellowstone Facility for the period of 2011 through 2015 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Claim ii. Failure to File Annual/Biennial Reports**

30. The allegations in Paragraphs 1-29 are realleged and incorporated herein by reference.
31. Pursuant to 30 TEX.ADMIN.CODE § 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 the TCEQ, by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9.

32. At all times relevant to this CAFO, the EPA and/or the TCEQ did not receive the requisite number of Annual/Biennial Reports for the Yellowstone Facility that Respondent as a LQG was required to file.
33. Respondent violated 30 TEX.ADMIN.CODE §§ 335.9 and 335.71, [40 C.F.R. § 262.41] by not filing the requisite numbers of Annual/Biennial Reports.

**Claim iii. Failure to Comply with the Manifest Requirements**

34. The allegations in Paragraphs 1-33 are realleged and incorporated herein by reference.
35. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. 262.20(a)(1)] a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.
36. During the period of 2010 through 2014, Respondent generated and offered for shipment hazardous waste, on its manifests without complying fully with various requirements/instructions found in the Appendix to 40 C.F.R. Part 262.
37. Therefore, Respondent failed to accurately and adequately prepare its hazardous waste manifest for various shipments of hazardous waste from its Yellowstone facility in violation of 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)].

**The BMC Facility and the Feigin Facility  
(During the Period of 2010 to the Effective Date of the CAFO)**

**Claim iv. Failure to Comply with the Manifest Requirements**

38. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.

39. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)(1)] a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.
40. During the period of 2010 through 2014, Respondent generated and offered for shipment hazardous waste, on its manifests without complying fully with various requirements/instructions found in the Appendix to 40 C.F.R. Part 262.
41. Therefore, Respondent failed to accurately and adequately prepare its hazardous waste manifest for various shipments of hazardous waste from the BCM and the Feigin facilities in violation of 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)].

**Conroe Facility**  
**(During the Period of 2011 to 2012)**

**Claim v. Notification Requirements**

42. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
43. During the Investigation and review of the Responses, EPA determined that the Conroe declared itself as a small quantity generator (“SQG”).
44. During the Investigation and review of the Responses, EPA determined that Respondent operated as a LQG for periods in 2011 and 2012.
45. 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 the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. No identified 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).

46. Respondent did not file with the Administrator or the authorized State a notification of its hazardous waste activities as a LQG at the Conroe Facility for the periods in 2011 through 2012 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

IV.  
COMPLIANCE ORDER

47. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ten (10) calendar days of the effective date of this Order, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams at each Facility listed in Paragraph 1 above to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOP”) for each such Facility to ensure that Baylor is operating 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 Notifications, and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

48. 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 Baylor 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. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Hazardous Waste Enforcement Branch  
Compliance Enforcement Section (6EN-HC)  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Dale Thrush

V.

TERMS OF SETTLEMENT

**i. Penalty Provisions**

49. 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 Ninety-Five Thousand and Seventy-Eight Dollars (\$95,078).
50. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

Re: BAYLOR COLLEGE OF MEDICINE  
RCRA-06-2015-0914

51. 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, MO 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 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 Baylor College of Medicine, Docket No. RCRA-06-2015-0914) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

52. 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, Texas 75202-2733

Re: BAYLOR COLLEGE OF MEDICINE  
RCRA-06-2015-0914

Mark Potts, Associate Director  
Hazardous Waste Enforcement Branch (6EN-II)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
Attention: Dale Thrush

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

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling 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 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.

**ii. Cost**

54. 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.

**iii. Termination and Satisfaction**

55. 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 so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 48. 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.

**iv Effective Date of Settlement**

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

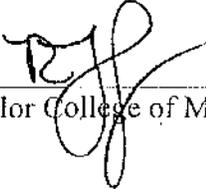
Re: BAYLOR COLLEGE OF MEDICINE  
RCRA-06-2015-0914

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT**

**AGREEMENT AND FINAL ORDER:**

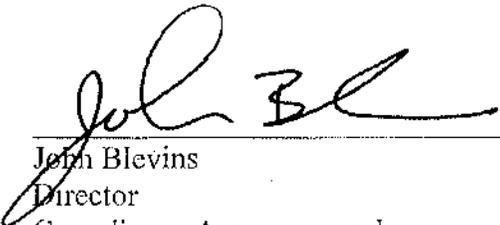
FOR THE RESPONDENT:

Date: 8/31/15

  
\_\_\_\_\_  
Baylor College of Medicine

FOR THE COMPLAINANT:

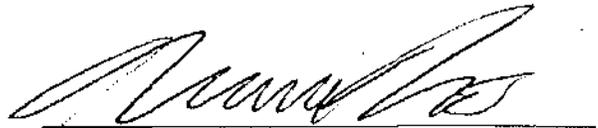
Date: 7.9.15

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 7-21-15



Thomas Rucki  
Regional Judicial Officer

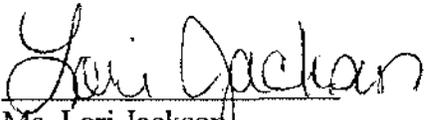
Re: BAYLOR COLLEGE OF MEDICINE  
RCRA-06-2015-0914

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21 day of July, 2015, 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 identified below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Muraca  
Director  
Baylor College of Medicine  
Office of Environmental Safety  
One Baylor Plaza; MS-BCM175  
Houston, TX 77030  
(713) 798-6617

  
Ms. Lori Jackson  
Paralegal