

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

United States Department of Veterans Affairs

Respondent

**Memphis Veterans Affairs Medical Center**  
**1030 Jefferson Avenue**  
**Memphis, Tennessee 38104**  
EPA ID No.: TN0360016166

Facility

Docket No. RCRA-04-2020-2120(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.

5. Respondent is the United States Department of Veterans Affairs, a department, agency, or instrumentality of the United States Government doing business in the State of Tennessee. Respondent is the owner and operator of the Memphis Veterans Affairs Medical Center located at 1030 Jefferson Avenue, Memphis, Tennessee 38104 (Facility).

### III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Tennessee (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Tennessee Hazardous Waste Management Act (THWMA) Tenn. Code Ann. § 68-212-101 et seq. and Tenn. Comp. R. & Regs. 0400-12-01.01 through 0400-12-01.12.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 68-212-107(d)(6) of the THWMA, Tenn. Code Ann. § 68-212-107(d) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at Tenn. Comp. R. & Regs. 0400-12-01-.03 [40 C.F.R. Part 262].
12. Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Tenn. Comp. R. & Regs. 0400-12-01-.06 (permitted) and Tenn. Comp. R. & Regs. 0400-12-01-.05 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.

14. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(d)2 [40 C.F.R. § 261.4(b)].
15. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(I) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(b)-(e) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (b) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (e) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(e) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for arsenic is identified with the EPA Hazardous Waste Number D004.
18. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (e) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(e) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for barium is identified with the EPA Hazardous Waste Number D005.
19. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (e) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(e) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for cadmium is identified with the EPA Hazardous Waste Number D006.
20. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(II) and Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(a) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in Tenn. Comp. R. & Regs. 0400-12-01-.02(4) [40 C.F.R. Part 261, Subpart D].
21. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31].
22. Listed hazardous wastes include the P- and U- Listed wastes identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(d) [40 C.F.R. § 261.33].
23. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed

in Tenn. Comp. R. & Regs. 0400-12-01-.02 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.

24. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
25. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “person” includes any agency of the Federal government.
26. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
27. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “storage” means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste.
28. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2. [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)-(iv) [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).
29. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(ii) [40 C.F.R. § 262.34(a)(2) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
30. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)3. [40 C.F.R. § 265.52(c)], and is a condition of the LQG Permit Exemption, a generator is required to maintain a contingency plan that describes arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.
31. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)4. [40 C.F.R. § 265.52(d)], and is a condition of the LQG Permit Exemption, a generator is required to maintain a contingency plan that lists names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date.
32. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)5. [40 C.F.R. § 265.52(e)], and is a condition of the LQG Permit Exemption, a generator is required to maintain a contingency plan that includes a list of all emergency equipment at the facility (such

as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

33. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)6. [40 C.F.R. § 265.52(f)], and is a condition of the LQG Permit Exemption, a generator is required to maintain a contingency plan that includes an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).
34. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(d)1. [40 C.F.R. § 265.53(a)], and is a condition of the LQG Permit Exemption, a generator is required to maintain a copy of the contingency plan at the facility.
35. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(d)2. [40 C.F.R. § 265.53(b)], and is a condition of the LQG Permit Exemption, a generator is required to submit a copy of the contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
36. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i) [40 C.F.R. § 262.34(c)(1) (2016)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2. [40 C.F.R. § 262.34(a) (2016)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I)-(II) [40 C.F.R. § 262.34(c)(1)(i)-(ii) (2016)] (hereinafter referred to as the “SAA Permit Exemption”).
37. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I) [40 C.F.R. § 262.34(c)(1)(i) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)1. [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed during storage when waste is not being added or removed.
38. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(II) [40 C.F.R. § 262.34(c)(1)(ii) (2016)], which is a condition of the SAA Permit Exemption, a generator is required to mark containers in the SAA either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
39. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.12(1)(b) [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a universal waste handler who does not

accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

40. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(d)4.(i) [40 C.F.R. § 273.13(d)], a SQHUW must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
41. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(e)1. [40 C.F.R. § 273.14(a)], a SQHUW must label or mark each universal waste battery or container in which the batteries are contained clearly with one of the following phrases: “Universal Waste - Battery(ies)” or “Waste Battery(ies)” or “Used Battery(ies).”
42. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(e)5. [40 C.F.R. § 273.14(e)], a SQHUW must label or mark each lamp or container in which lamps are contained clearly with one of the following phrases: “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamps” or “Universal Waste – Bulb(s)” or “Waste Bulb(s)” or “Used Bulb(s).”

#### **IV. FINDINGS OF FACTS**

43. Respondent’s Facility is the Memphis Veterans Affairs Medical Center, located at 1030 Jefferson Avenue, Memphis, Tennessee 38104.
44. Respondent is a tertiary care and research facility with 245 hospital beds, providing services to veterans living in the 53-county area of western Tennessee, northern Mississippi, and northwest Arkansas.
45. On February 28, 2006, Respondent notified the Tennessee Department of Environment and Conservation (TDEC) as a LQG of hazardous waste and a large quantity handler of universal waste. Since 2006, Respondent has maintained its LQG status.
46. Respondent’s most recent Hazardous Waste Generator Notification (EPA Form 8700-12) dated February 22, 2019, characterized the Facility as an LQG of hazardous waste and a SQHUW.
47. Respondent, through its operations, generates hazardous waste such as D001, D004, D005, D006, F-listed, U-listed, and P-listed.
48. Respondent, through its operations, generates universal wastes (such as spent batteries, certain types of lamps and mercury containing devices or equipment).
49. On March 26-28, 2019, the EPA and TDEC conducted a compliance evaluation inspection (CEI) at the Respondent’s Facility. The EPA’s findings of the CEI were documented in a report mailed to the Respondent, dated June 4, 2019.
50. At the time of the inspection, the EPA inspector observed that the Respondent failed to clearly mark five trays containing hazardous waste in the Central Accumulation Area - 90-Day Hazardous Waste Container Storage Shed with accumulation start dates.
51. At the time of the inspection, the EPA inspector observed that the Respondent failed to include in its contingency plan a description of arrangements agreed to by local police departments, fire

departments, hospitals contractors, and State and local emergency response teams to coordinate emergency services.

52. At the time of the inspection, the EPA inspector observed that the Respondent's contingency plan failed to list the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.
53. At the time of the inspection, the EPA inspector observed that the Respondent's contingency plan failed to include a list of all emergency equipment at the Facility.
54. At the time of the inspection, the EPA inspector observed that the Respondent's contingency plan failed to include an evacuation plan for Facility personnel.
55. At the time of the inspection, the Respondent was unable to provide the EPA inspector a copy of the contingency plan as the contingency plan was stored online and was not accessible online when requested.
56. At the time of the inspection, the Respondent was unable to demonstrate to the EPA inspector that a copy of the contingency plan was submitted to the local police department, fire department or the State or local emergency response team that may be called upon to provide emergency services.
57. At the time of the inspection, the EPA inspector observed that the Respondent failed to ensure stored containers of hazardous waste in the SAAs were kept closed in the following rooms:
  - SCI Pharm – Room 2A122 – Second Floor Building 7;
  - Inpatient Pharm – Room DB1102 – First Floor Building 1A;
  - 1C/1D – Room AE134 – First Floor Building 1;
  - Oncology Pharm – Room D416 – Fourth Floor Building 1A (2 containers);
  - 1E - Room 1B130 – First Floor Building 7;
  - 5E – Room E525 – Fifth Floor Building 1A;
  - ICU-2 – Room F213;
  - Women's Clinic – Room 5110F – Ground Floor Building 5; and
  - 2C/2D – Room AE237A – Second Floor Building 1
58. At the time of the inspection, the EPA inspector observed that the Respondent failed to mark containers in three SAAs either with the words "Hazardous Waste" or with other words that identify the contents of the containers in the following rooms:
  - BB109;
  - BB120; and
  - 4E Telemetry Room E425 – Fourth Floor Building 1A
59. At the time of the inspection, the EPA inspector observed that the Respondent failed to ensure three spent universal waste lamps in Room AEG13 – Ground Floor Building 1 were managed in a way that prevents releases of any universal waste or component of a universal waste to the environment.

60. At the time of the inspection, the EPA inspector observed that the Respondent failed to ensure that universal waste batteries in a 2-gallon container in the Electrical Shop were labeled or marked clearly with one of the following phrases: “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
61. At the time of the inspection, the EPA inspector observed that the Respondent failed to ensure three spent universal waste lamps in Room AEG13 – Ground Floor Building 1 were labeled or marked with the one of the following phrases: “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamps” or “Universal Waste – Bulb(s)” or “Waste Bulb(s)” or “Used Bulb(s).”

## V. ALLEGED VIOLATIONS

62. Respondent is a “person” as defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
63. Respondent is a “generator” of “hazardous waste” as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10] and Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3].
64. Respondent is the “owner” and “operator” of a “facility” located at 1030 Jefferson Avenue, Memphis, Tennessee 38104, as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
65. Respondent failed to ensure that the date upon which each period of accumulation begins was clearly marked and visible on each tray containing hazardous waste in the Central Accumulation Area - 90-Day Hazardous Waste Container Storage Shed. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(ii) [40 C.F.R. § 262.34(a)(2) (2016)].
66. Respondent failed to describe in its contingency plan the arrangements agreed to by local emergency response agencies to coordinate emergency services. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)3. [40 C.F.R. § 265.52(c)].
67. Respondent failed to list the addresses of all persons qualified to act as emergency coordinator in the contingency plan. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)4. [40 C.F.R. § 265.52(d)].

68. Respondent failed to include a list of all the emergency equipment at the Facility in the contingency plan. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)5. [40 C.F.R. § 265.52(e)].
69. Respondent failed to include an evacuation plan in the contingency plan. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(c)6. [40 C.F.R. § 265.52(f)].
70. Respondent failed to maintain a copy of the contingency plan at the Facility. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(d)1. [40 C.F.R. § 265.53(a)].
71. Respondent failed to submit copies of the contingency plan to local emergency response agencies. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(4)(d)2. [40 C.F.R. § 265.53(b)].
72. Respondent failed to keep stored containers of hazardous waste closed when waste is not being added or removed in the SAA. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I) [40 C.F.R. § 262.34(c)(1)(i) (2016)], by not complying with the container management requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)1. [40 C.F.R. § 265.173(a)].
73. Respondent failed to mark containers with the words “Hazardous Waste” or with other words that identify the contents of the containers that were stored in satellite accumulation areas. The EPA therefore alleges Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(II) [40 C.F.R. § 262.34(c)(1)(ii) (2016)].

74. Respondent failed to manage three universal waste lamps in Room AEG 13-Ground Floor Building 1 in a way that prevents releases. The EPA therefore alleges that Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(d)4.(i) [40 C.F.R § 273.13(d)], by failing to manage spent universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
75. Respondent failed to mark or label universal waste batteries in a 2-gallon container in the Electrical Show. The EPA therefore alleges that the Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(e)1. [40 C.F.R. § 273.14(a)], by failing to label or mark each universal waste battery or container or tank in which the batteries are contained clearly with the words “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
76. Respondent failed to mark or label universal waste lamps in Room AEG 13 – Ground Floor Building 1. The EPA therefore alleges that Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.12(2)(e)5. [40 C.F.R. § 273.14(e)], by failing to label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamps” or “Universal Waste – Bulb(s)” or “Waste Bulb(s)” or “Used Bulb(s).”

## VI. STIPULATIONS

77. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
78. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO, including any right to confer with the EPA Administrator under 40 C.F.R. §22.31(e) with regard to this case.
79. For the purpose of this proceeding, Respondent:
  - a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;

- c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
  - d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
  - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO;
  - f. waives any right to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this CAFO; and
  - g. agrees to comply with the terms of this CAFO.
80. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.
81. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

82. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FORTY-TWO THOUSAND SEVEN HUNDRED AND TWENTY DOLLARS (\$42,720.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
83. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
84. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.
- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

85. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Alan Newman  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
newman.alan@epa.gov

86. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and “Docket No. RCRA-04-2020-2120(b).”

### **VIII. EFFECT OF CAFO**

87. In accordance with 40 C.F.R. § 22.18(c), Respondent’s full compliance with this CAFO shall only resolve Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.
88. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law 40 C.F.R. § 22.18(c),
89. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
90. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA’s authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
91. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
92. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
93. The provisions of this CAFO shall apply to and be binding upon Respondent and its successor agencies, departments and instrumentalities.
94. Any change in the legal status of the Respondent or change in ownership or legal status relating to the Facility, will not in any way alter Respondent’s obligations and responsibilities under this CAFO.

95. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
96. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
97. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
98. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
99. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
100. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
101. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

#### **IX. EFFECTIVE DATE**

102. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**[Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages.]**

The foregoing Consent Agreement In the Matter of **Memphis Veterans Affairs Medical Center**,  
**Docket No. RCRA-04-2020-2120(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

  
Signature

1/21/2021  
Date

Printed Name: DAVID K. DUNNING

Title: Medical Center Director

Address: 1030 Jefferson Avenue  
Memphis, Tennessee 38104

The foregoing Consent Agreement In the Matter of **Memphis Veterans Affairs Medical Center, Docket No. RCRA-04-2020-2120(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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Kimberly L. Bingham  
Chief  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Memphis Veterans Affairs Medical Center**  
**1030 Jefferson Avenue**  
**Memphis, Tennessee 38104**  
EPA ID No.: TN0360016166

Respondent.

Docket No. RCRA-04-2020-2120(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Memphis Veterans Affairs Medical Center**, Docket No. **RCRA-04-2020-2120(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

**To Respondent:** Michelle DeGrandi, Environmental Attorney  
Department of Veterans Affairs  
Michelle.DeGrandi@va.gov  
14312 Hayes Street  
Overland Park, Kansas 66221  
(913) 400-2106

**To EPA:** Alan Newman, Environmental Engineer  
(404) 562-8589  
newman.alan@epa.gov

Ximena Vasquez, Assistant Regional Counsel  
(404) 562-9548  
vasquez.maria-ximena@epa.gov

U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

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Saundi Wilson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960