



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

9 AUG 2017

CERTIFIED MAIL RETURN RECEIPT REQUESTED: 7007 3020 0000 1522 8502

Timothy A. Wilkins  
Bracewell LLP  
111 Congress Ave., Ste. 2300  
Austin, TX 78701-4061

Re: G&H Diversified Mfg.: 3008 Consent Agreement and Final Order USEPA Docket No.  
RCRA-06-2017-0938

Dear Mr. Wilkins:

Enclosed is the fully executed RCRA Consent Agreement and Final Order ("CAFO"), agreed upon by the parties to the above referenced matter. The CAFO became final upon filing with the Regional Hearing Clerk, as indicated by the date stamp.

If you have questions, please do not hesitate to contact me at (214) 665-7302 or by email at [murdock.james@epa.gov](mailto:murdock.james@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to be "J Murdock".

James Murdock  
Assistant Regional Counsel

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2017 AUG -9 PM 1:51  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: §  
G & H Diversified Mfg., L.P. § Consent Agreement and Final Order  
Houston, Texas § Docket No. RCRA-06-2017-0938  
RESPONDENT §

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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 and Respondent, G & H Diversified Manufacturing, L.P., and concerns the facility located 11660 Brittmoore Park Dr., Houston, Texas.

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 or 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 the 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.

10. Respondent is a "person" within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

11. The facility's NAICS classification is 622110, referring to general medical and surgical hospitals.

12. From September 2016 to May 2017, EPA conducted an investigation and record review of Respondent's performance as a generator of hazardous waste.

13. EPA's investigation found 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 and failing to meet the requirements of a large quantity generator.

14. Respondent is a “generator” of “hazardous wastes” at the facility, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 TEX. ADMIN. CODE § 335.1(65), (69) (40 C.F.R. § 260.10).

15. 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 TEX. ADMIN. CODE § 335(C), (F) (40 C.F.R. §§ 262 and/or 270).

**Claim 1: Failure to File an Adequate or Accurate Initial or Subsequent Notification Section 3010 (a) of RCRA and 30 TEX. ADMIN. CODE § 335.6(c)**

16. The allegations in Paragraphs 1-15 are realleged and incorporated herein by reference.

17. Pursuant to 30 TEX. ADMIN. CODE § 335.6(c), 30 TEX. ADMIN. CODE § 335.78, and Section 3010 (a) of RCRA any person generating in excess of one thousand kilograms of hazardous waste in any given calendar month shall notify the State of Texas of such activity.

18. At various times from 2014 through 2016, Respondent generated hazardous waste in an amount exceeding one thousand kilograms a month.

19. At the time of EPA’s investigation, Respondent had not filed with the state an adequate notification of hazardous waste activities in violation of 30 TEX. ADMIN. CODE § 335.6(c).

**Claim 2: Failure to Meet the Requirements of a Large Quantity Generator**

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.

21. A large quantity generator of hazardous waste is subject to the requirements of 30 TEX. ADMIN. CODE § 335(C)-(H), (O) (40 C.F.R. §§ 124, 262-68, 270).

22. Under 30 TEX. ADMIN. CODE §335.78 (40 C.F.R. § 261.5), any person who generates in excess of one thousand kilograms of hazardous waste in any given calendar month is a large quantity generator and is subject to the requirements of TEX. ADMIN. CODE § 335.

23. At various times from 2014 through 2016, Respondent generated hazardous waste in an amount exceeding one thousand kilograms a month.

24. While operating as a large quantity generator Respondent failed to comply with one or more of the requirements for large quantity generators under 30 Tex. Admin. Code § 335(C) and/or (F) (40 C.F.R. §§ 262 and/or 270).

#### IV. COMPLIANCE ORDER

25. 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 developed and implemented Standard Operating Procedures (SOP) to ensure that G &H Diversified is operating in compliance with RCRA and the regulations promulgated thereunder, including procedures for: (i) managing hazardous wastes and (ii) reporting, transporting, and disposing of hazardous waste.

B. Respondent shall certify that it has updated its contingency plan to be in compliance with RCRA and related regulations found in 40 CFR §265, Subpart D.

C. Respondent shall certify that it has attempted to make arrangements with local authorities in compliance with 40 CFR § 265.37.

D. Respondent shall certify that it has adequately notified the State of Texas of its generator status and activities.

E. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

26. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an officer of G & H Diversified 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  
Compliance Enforcement Section (6EN-HC)  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Fred Deppe

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

27. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each

violation. 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, Respondent's cooperation with EPA's investigation, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of Sixty-Five Thousand Dollars (\$65,000.00).

28. The penalty shall be paid out over three years in four payments of \$16,250 dollars. The first payment will be due thirty days from the effective date of this CAFO, the second payment will be due one year from the effective date, the third payment will be due two years from the effective date and the final payment will be due three years from the effective date.

29. All payments must be made payable to Treasurer, United States of America.

30. 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 G & H Diversified, Docket No. RCRA-06-2017-0938**) shall be documented on or within your chosen method of payment to ensure proper credit.

31. 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

Mark Potts, Chief  
Hazardous Waste Enforcement Branch (6EN-H2)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Fred Deppe

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

32. 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 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**

33. 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**

34. 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 34. 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**

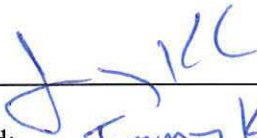
35. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS  
CONSENT AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 7/18/17

G & H Diversified Mfg., L.P.

By: 

Printed: Jimmy Kash

Title: PRESIDENT

FOR THE COMPLAINANT:

Date: 8/1/17



Cheryl T. Seager  
Director  
Compliance Assurance and Enforcement  
Division

**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: 8/9/17



Thomas Rueki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of August, 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** 70073020000015228502

Timothy A. Wilkins  
Bracewell LLP  
111 Congress Ave., Ste. 2300  
Austin, TX 78701-4061  
Attorney for Respondent

*for* Sandra Hardy  
Ms. Lori Jackson  
Paralegal