

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2014 DEC 17 PM 4:06
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

§
§
§
§ Consent Agreement and Final Order
BROWN & ASSOCIATES MEDICAL § USEPA Docket No. RCRA-06-2015-0906
LABORATORIES §
2525 W. Bellfort # 120 §
Houston, Texas 77054 §
§
RESPONDENT §
(No EPA ID NUMBER) §

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, Brown & Associates Medical Laboratories, ("BAM Laboratories" or "Respondent"), and concerns the facility located at 2525 W. Bellfort # 120, Houston, Texas 77054 (the "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.

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

4. The 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 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 an active business in the State of Texas with the right to transact business.
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].

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

11. BAM Laboratories owns and operates a Facility that is a clinical medical laboratory and performs surgical pathology services.
12. During the period of May 2014 through October 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of BAM Laboratories’ performance as a generator of hazardous waste.
13. 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 additional information on BAM Laboratories’ hazardous wastes that it offered for transport and treatment (“Responses”).
14. During the Investigation and review of the Responses, EPA discovered that BAM Laboratories, at a minimum, generated and offered for transport and treatment the following hazardous waste, during 2010 through 2014:
 - i. 2010- One shipment of 317 kg of hazardous wastes, having the hazardous waste characteristics of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources- non-halogenated solvents, with the waste code of F003;
 - ii. 2011- Six shipments (each shipment greater than 100 kg) of 1279 kg of hazardous wastes, having the hazardous waste characteristics of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources- non-halogenated solvents, with the waste code of F003;

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

- iii. 2012- Seven shipments (each shipment greater than 100 kg) of 1609 kg of hazardous wastes, having the hazardous waste characteristics of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources- non-halogenated solvents, with the waste code of F003;
- iv. 2013- Twelve shipments (each shipment greater than 100 kg) of 1986 kg of hazardous wastes, having the hazardous waste characteristics of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources- non-halogenated solvents, with the waste code of F003; and
- v. 2014- Shipments of hazardous wastes, having the hazardous waste characteristics of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources- non-halogenated solvents, with the waste codes of F003.

15. The waste streams identified in Paragraph 14 are hazardous waste as defined in

30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21 and 261.31].

16. From the Investigation and review of the Response, EPA determined that during the period of 2010 through 2014, BAM Laboratories generated, at a minimum, the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 100 kilograms of hazardous waste per month, which qualified BAM Laboratories, at minimum, for the small quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262], for the periods that such wastes remained onsite.

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

17. BAM Laboratories is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
18. As a generator of hazardous waste, BAM Laboratories 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 § 262].

Claim i. Notification Requirements

19. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.
20. 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 it 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)].
21. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(c), [40 C.F.R. § 261.5(c)], are not applicable to BAM Laboratories.
22. During the Investigation and review of the Responses, EPA determined that BAM Laboratories does not operate as a CESQG.
23. During the Investigation and review of the Responses, EPA determined that BAM Laboratories, at a minimum, has been and is a small quantity generator (“SQG”).
24. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, BAM Laboratories is a “generator”.
25. 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

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

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).

26. BAM Laboratories did not file with the Administrator or the authorized state a notification of hazardous its waste activities for, at a minimum, the period of 2010 through 2014 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Managing Hazardous Waste without a Generator Identification Number

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

28. Pursuant to 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)], a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

29. During the Investigation and review of the Responses, EPA determined that BAM Laboratories did not apply to the Administrator and received an EPA identification number.

30. At all relevant times to the CAFO, BAM Laboratories operated without an EPA identification number.

31. At all relevant times to the CAFO, BAM Laboratories treated, stored, disposed of, or offered for transportation hazardous waste without having receiving an EPA identification number from the Administrator in violation of 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)].

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

IV.
COMPLIANCE ORDER

32. By its signature to this CAFO, Respondent is hereby certifying in accordance with the certified language set forth in Paragraph 35 of this CAFO that Respondent is now in compliance with Paragraph 33 below.
33. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered, and upon the effective date of this Order, not to treat, store, dispose of, transport, or offer for transportation, hazardous waste without first receiving an EPA identification number from the State of Texas.
34. Pursuant to Section 3008(a) of RCRA, 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 Order, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures “SOPs” to ensure that BAM Laboratories 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 the manifests; and (e) meeting the requirements of the land disposal requirements;

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

B. Respondent shall certify that it has accurately and adequately complied with its

RCRA Section 3010 Notification and the requirements of Paragraphs 33 and 34 above
and within the prescribed time period; and

35. Respondent shall provide, with its certification, a copy of Respondent's standard "SOPs" as
described in subparagraph A above. 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 BAM Laboratories 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**

36. 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

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

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 and Ten Thousand Dollars (\$110,000.00).

37. 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.

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

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

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

The case name and docket number (In the Matter of Brown & Associates Medical Laboratories, Docket No. RCRA-06-2015-0906) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

39. 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

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
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.

40. 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 process 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).

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

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

41. 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

42. When Respondent believes that it has complied with all the requirements of this CAFO, specifically the total payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Paragraph 35. 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.

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

iv Effective Date of Settlement

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

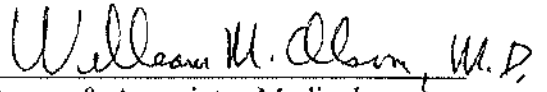
Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

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

FOR THE RESPONDENT:

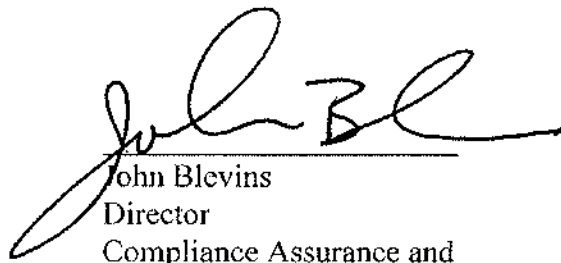
Date: 12/11/2014

Laboratories


Brown & Associates Medical
William M. Olson, M.D.
PARTNER

FOR THE COMPLAINANT:

Date: 12.15.14

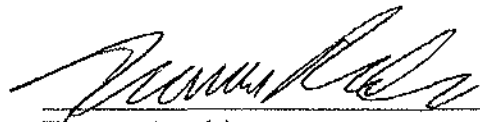

John Blevins
Director
Compliance Assurance and
Enforcement Division

Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

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: 12/17/14



Thomas Rucki
Regional Judicial Officer

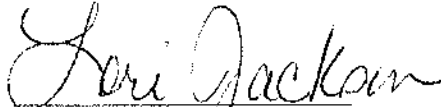
Re: Brown & Associates Medical Laboratories
RCRA-06-2015-0906

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of Dec, 2014, 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 7014 0150 0000 2453 3450

Joanne McDonald
Executive Director
Brown & Associates Medical Laboratories, LLP
2525 West Bellfort # 120
Houston, TX 77054


Ms. Lori Jackson
Paralegal