

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2016 SEP 28 PM 2: 21

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: §
§
Hendrick Medical Center § Consent Agreement and Final Order
§ Docket No. RCRA-06-2016-0943
Abilene, Texas §
§
RESPONDENT §

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, Hendrick Medical Center, and concerns the facility located 1900 Pine Street, Abilene, 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 and owns and operates its primary hospital and health care facility at 1900 Pine Street, Abilene, 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. Respondent's Registered Agent for service in this matter is Ivan Lancaster, at 1900 Pine Street, Abilene, Texas.

13. From January through June 2016, EPA conducted an investigation and record review of Respondent's performance as a generator of hazardous waste.

14. 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, failing to meet the requirements of a large quantity generator, failing to submit a biennial report, and failing to fully comply with manifest requirements.

15. 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).

16. 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)

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

18. 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 kilogram of acutely hazardous waste in any given calendar month shall notify the State of Texas of such activity.

19. From July 1, 2011 through June 30, 2016, Respondent episodically generated acutely hazardous waste in an amount exceeding one kilogram in a given calendar month.

20. 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

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

22. 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).

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

24. From July 1, 2011 through June 30, 2016, Respondent episodically generated acutely hazardous waste in an amount exceeding one kilogram in a given calendar month.

25. While episodically 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).

Claim 3: Failure to File a Biennial Report

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

27. A large quantity generator of hazardous waste who ships waste offsite is subject to the requirement of 40 C.F.R. § 262.41 to submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year.

28. From 2011 to 2015 Respondent acted as a large quantity generator.

29. Respondent failed to submit a biennial report to the regional administrator by March 1 of 2012, 2014, and 2016, in violation of 40 C.F.R. § 262.41.

Claim 4: Failure to Fully Comply With the Manifest Requirements of 40 C.F.R. § 262.20

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

31. Pursuant to 40 C.F.R. § 262.20, all generators of hazardous waste who ship waste offsite must prepare a manifest according to the directions in that section and its appendix.

32. In 2011, Respondent sent a shipment of hazardous waste offsite but failed to properly prepare a manifest, in violation of 40 C.F.R. § 262.20.

IV. COMPLIANCE ORDER

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

A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures (SOP) to ensure that Hendrick Medical Center is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (i) making hazardous waste determinations; (ii) managing hazardous wastes; and (iii) reporting, transporting, and disposing of hazardous waste.

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

34. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an officer of Hendrick Medical Center and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by the CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance III Section (6EN-H3)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Ashley Pederson

V. TERMS OF SETTLEMENT

A. Penalty Provisions

35. 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 One Hundred Fifteen Thousand Dollars (**\$115,000.00**).

36. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

37. 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 Hendrick Medical Center, Docket No. RCRA-06-2016-0943**) shall be documented on or within your chosen method of payment to ensure proper credit.

38. 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
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Ashley Pederson

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

39. 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

40. 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

41. 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

42. 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: 8/16/16

HENDRICK MEDICAL CENTER


By: 

Printed: ~~Tim~~ Tim Lancaster

Title: President & CEO

FOR THE COMPLAINANT:

Date: 9.26.16


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 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: 9/28/16



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

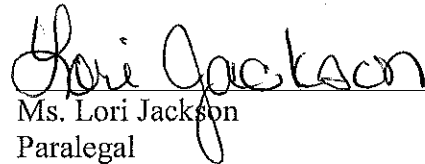
I hereby certify that on the 28th day of September, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method below:

CERTIFIED MAIL – RETURN RECEIPT

REQUESTED 7014 0150 0000 2454 8454

Ivan T. Lancaster
Hendrick Medical Center
1900 Pine
Abilene, TX 79601

Andrew Dick
Hall, Render, Killian, Heath & Lyman, P.C.
500 N. Meridian Street
Suite 400
Indianapolis, IN 46204-1293


Ms. Lori Jackson
Paralegal