

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2015 DEC 12 09:15:01
AT DALLAS, TEXAS
EPA REGION 6 OFFICE

IN THE MATTER OF:	§	
	§	
	§	Consent Agreement and Final Order
	§	USEPA Docket No. RCRA-06-2015-0939
McAllen Hospitals, L.P	§	
1900 S. D. Street	§	
McAllen, Texas 78503	§	
	§	
RESPONDENT	§	
EPA ID TXR000081393	§	

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, McAllen Hospitals, L.P. (“McAllen Heart” or “Respondent”) and concerns the facility located at 1900 S.D. Street, McAllen, Texas 78503 (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, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.
4. This CAFO states a claim upon which relief may be granted.
5. 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.

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6. The CAFO resolves only those violations which are alleged herein.
7. 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

8. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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).
9. 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.
FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

10. Respondent is corporation organized in the State of Delaware and is authorized to do business in the State of Texas.
11. Respondent is a regional hospital in McAllen, Texas and generates hazardous waste through various processes.
12. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. 6903(15) and 30 TEX.ADMIN.CODE¹ § 3.2(25), [40 C.F.R. § 260.10].

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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 McAllen Heart hazardous wastes that it offered for transport and treatment (“Responses”).
14. During the period of January 2015 through May 2015, EPA conducted a RCRA investigation and record reviews (“Investigation”) of McAllen Heart performance as a generator of hazardous waste.
15. During the Investigation and review of Responses, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment the following waste, during 2013 through 2015:
 - i. D001 and D002, respectively ignitable and corrosive hazardous waste;
 - ii. Hazardous wastes that exhibit the toxicity characteristic for arsenic, mercury, and selenium, respectively, D004, D009 and D010; and
 - iii. Several acutely listed hazardous waste streams, respectively with the hazardous waste codes, P001, P012, P042, P075, P081, P188, and P204.
16. The waste streams identified in Paragraph 15 are “hazardous waste” as defined in TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
17. From the Investigation and review of the Responses, EPA determined that during the period of 2013 through 2015, Respondent generated, at a minimum, the hazardous waste streams identified in Paragraph 15 in quantities that exceeded the threshold amount of 1000 kg of hazardous waste per month and/or in some instances exceeded the threshold amount, of at a minimum, 1 kilogram

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of acutely hazardous waste per month, which qualified Respondent for the large quantity generator (“LQG”) status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

18. Respondent is a “generator” of “hazardous waste” at the Facility as these terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

19. The Facility identified in Paragraph 1 is a “facility” within the meaning of 30 TEX. ADMIN.CODE § 335.1 (59), [40 C.F.R. § 260.10].

20. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R Parts 262 and/or 270].

Claim i. Notification Requirements

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

22. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

23. At all relevant times to this CAFO, Respondent did not file a timely and adequate RCRA 3010 Notification of hazardous waste activities with the Administrator or with the authorized State, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

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Claim ii. Failure to Operate within Its Stated Generator Status

24. The allegations in Paragraphs 1-23 are realleged and incorporated herein by reference.
25. During the Investigation, EPA determined that McAllen Heart declared its generator status as a small quantity generator ("SQG") on March 11, 2013.
26. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d) and 40 C.F.R. § 262.34(d), as long as the SQG complies with the requirements set forth therein, the SQG can operate without a permit or interim status.
27. During the period of 2013 through 2015, McAllen Hospital operated as a LQG without meeting one or more of the requirements for a LQG in violation of 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)].

Claim iii. Failure to file Biennial Reports

28. The allegations in Paragraphs 1-27 are realleged and incorporated herein by reference.
29. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41], a generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA's Regional Administrator, and to the TCEQ, by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9.
30. At all times relevant to this CAFO, the EPA and/or the TCEQ did not receive the requisite number of Annual and Biennial Reports that McAllen Heart was required to file in violation of 30 TEX.ADMIN.CODE §§ 335.9 and 335.71, [40 C.F.R. § 262.41].

IV.
COMPLIANCE ORDER

31. 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 the settlement agreement, Respondent shall provide in writing the following to the EPA:

- A. Respondent shall certify that it has reviewed all environmental requirements (Federal and State) that are applicable to McAllen Hospital as generator of hazardous waste and has developed and implemented a RCRA compliance plan designed to ensure that Respondent is meeting the regulations applicable to a generator, including but not limited to: (a) making hazardous waste determinations; (b) creating and keeping the requisite records; (c) managing its hazardous wastes; and (d) reporting and offering for transportation and treatment its hazardous waste;
- B. Respondent shall certify that it has accurately complied with its RCRA Section 3010 Notification; and
- C. Respondent shall provide, with its certification, a copy of Respondent's RCRA compliance plan as described in subparagraph A above.

32. 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 McAllen Hospital 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

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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

33. 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 Factual Allegations and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent’s good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of Seventy-Nine Thousand Three Hundred and Ten Dollars (\$79,310.00).
34. 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.
35. The following are Respondent’s options for transmitting the penalties:
- Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

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U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of McAllen Hospital, L.P. Docket No. RCRA-06-2015-0939) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

36. 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

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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.

37. 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

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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

38. 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

39. When the Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and the payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV, (Compliance Order), Paragraph 32. Unless the EPA, Region 6 objects in writing with specific reasons within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

iv. Effective Date of Settlement

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

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

FOR THE RESPONDENT:

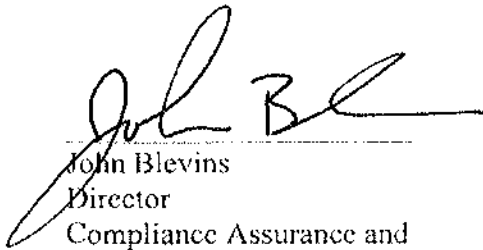
Date: 7/29/2015



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FOR THE COMPLAINANT:

Date: 8/12/15



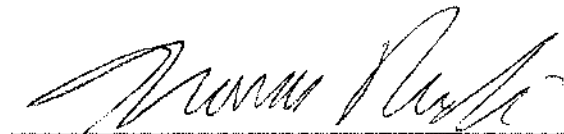
John Blevins
Director
Compliance Assurance and
Enforcement Division

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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: 8/12/15



Thomas Rucki
Regional Judicial Officer

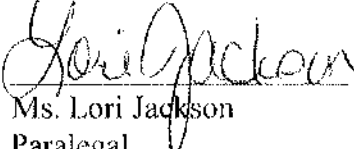
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150000024544760

Adam G. Sowatzka
Partner
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, GA 30309
404-572-3508


Ms. Lori Jackson
Paralegal

† All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009. 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.