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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

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United States Department of Veterans Affairs
Southeast Louisiana Veterans Health Care System

Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2023-0923

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 ("EPA" or "Complainant") and Respondent, United States Department of Veterans Affairs, Southeast Louisiana Veterans Health Care System ("Respondent") and concerns the New Orleans VA Medical Center located at 2400 Canal St. New Orleans, LA 70112 ("The Canal St." Facility).
2. Notice of this action has been given to the State of Louisiana, 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. 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 claim set forth in the CAFO.

5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by 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 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 EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of 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 the United States Department of Veterans Affairs, a department, agency, or instrumentality of the United States Government doing business in the State of Louisiana. Respondent is the owner and operator of the New Orleans VA Medical Center.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code ("LAC") LAC 33: V.109 1¹,

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana

11. The Canal St. Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.10].
12. During the period from March 2021- April 2022, EPA conducted a RCRA record review of the Canal St. Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
13. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the:
 - A. Characteristic of Ignitability: D001 (Ignitability); D002 (Corrosivity)
 - B. Characteristic for multiple toxicity waste: D006 (Cadmium); D008 (Lead); D035 (Methyl ethyl ketone); D039 (Tetrachloroethylene)
 - C. F003
 - D. P001 (Warfarin, & salts, when > 0.3%); P075 (Nicotine, & salts)
14. The waste streams identified in Paragraph 14 are "hazardous waste" as defined in LAC 33: V.4901.B &F, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
15. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 100 kg per month in 2020 and 2022 under LAC 33: V.108, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C.F.R. § 272. 951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272. 951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.

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16. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33:V.109, [40 C.F.R. § 260.10].
17. 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 in Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R Part 262 and/or 270].
18. EPA submitted to Respondent on March 04, 2021, a Notice of Potential Violation and Opportunity to Confer ("Notice"). In a conference call on March 24, 2021, the EPA conferred with Respondent regarding the violations alleged therein and provided an opportunity for Respondent to submit additional information or materials. In response to EPA's request, Respondent submitted additional information and materials on or about April 24, 2021. After reviewing the additional information and materials received from Respondent, the EPA found the number of alleged violations contained in the Notice to the violations alleged in the following Section.

Claims i. Notification Requirements

19. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.
20. 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 EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic 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).

21. Respondent did not file with EPA or Louisiana an adequate and timely notification of its hazardous waste activities at the Canal St. Facility during the period from 2019, 2020 and 2022 dates in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
22. In 2019, 2020, and 2022, the Respondent failed to comply with its notification requirements in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claims ii. Failure to Update Manifest Discrepancy

23. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.
24. During the Investigation, EPA determined that the Canal St. Facility declared its generator status as a Conditionally Exempt Small Quantity Generator (“CESQG”) and/or considered itself to be a CESQG.
25. Pursuant to LAC 33:V.1107 and 40 C.F.R. § 262.20, a generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.
26. During portions of 2019 and 2020, EPA records indicate that the Respondent failed to properly identify the correct facility to handle the waste described on the manifest. Specifically, the Respondent did not include the correct EPA identification number for the facility included on the manifest in violation of one or more of the SQG and LQG requirements under 30 LAC 33:V.1107 [40 C.F.R. § 262.20].
27. Respondent failed to comply with the manifest requirements in 2019 and 2020, in violation of LAC 33:V.1107, [40 C.F.R. Parts 262].

IV. COMPLIANCE ORDER

28. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 30 calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Canal St. Facility and within the prescribed time period.
- B. Respondent shall certify that it is accurately monitoring and recording their hazardous waste generation pursuant to 40 C.F.R. §§ 262.11 and 262.13.
29. 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 the Respondent 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. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Ashley Pederson
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email or facsimile to Enforcement Officer Ashley Pederson, respectively at pederson.ashley@epa.gov or at 214-665-7561.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

30. 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 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

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regulations, it is ordered that Respondent be assessed a civil penalty of **twenty-four thousand and thirty one dollars (\$24,031)**.

31. The penalty shall be paid within 60 calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

32. The EPA web address, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, provides a list of options available for transmitting payment of penalties.

Options for payment include:

- A. Electronic payments via Pay.gov. <https://www.pay.gov/public/form/start/11751879>
- B. Remittance by 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, Missouri 63197-9000

Overnight Mail (non-U.S. Postal Service), the check 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, Missouri 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

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The case name and docket number (In the Matter of Southeast Louisiana Veterans Health Care System, Docket No. RCRA-06-2022-0923 shall be clearly documented on or within the chosen method of payment to ensure proper credit.

33. The Respondent shall send a simultaneous notice of such payment to the following via email:

Ashley Pederson, U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
pederson.ashley@epa.gov

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

34. 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).
35. 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 (6%) 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.

B. Costs

36. 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

37. The CAFO constitutes a settlement by EPA of all claims for civil penalties for the specific violations alleged CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in the CAFO. Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 30. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's in this certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Anti-Deficiency Act

38. Respondent shall seek all existing funds to meet the requirements of the CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

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E. Effective Date of Settlement


39. 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:

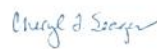
Date: 4-14-2023



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FOR THE COMPLAINANT:



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SEAGER
Date: 2023.04.19 16:20:41 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U. S. EPA Region 6, Dallas, Texas

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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.

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
email=THOMAS.RUCKI,
c=US, serial=1, 1.468001003655864
Date: 2023.04.20 09:43:36 -0400

Thomas Rucki
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

mcdonald.ashley@epa.gov

Copy via Email to Respondent:

michael.adams5@va.gov

michelle.degrandi@va.gov

Dated this _____ day of _____, _____.

ASHLEY MCDONALD Digitally signed by ASHLEY
MCDONALD
Date: 2023.04.20 11:05:53 -05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6