



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

28 AUG 2018

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

VIA EMAIL AND  
CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007302000015227796

Dallas Veterans Affairs Medical Center  
ATTN: Stephen Holt  
4500 S. Lancaster  
Dallas, TX 75216

Re: Dallas Veterans Affairs Medical Center: RCRA 3008 Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2018-0923

Dear Mr. Holt:

Enclosed is a fully executed Consent Agreement and Final Order ("CAFO") in the above referenced CAFO.

If you have any questions regarding this CAFO, please contact Dominique Freyre, Attorney, at (202) 564-0433 or by email: [freyre.dominique@epa.gov](mailto:freyre.dominique@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "C. Seager".

Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. Environmental Protection Agency

Enclosure



3. 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).
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
5. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2), on all issues of fact and law set forth in this CAFO. Respondent waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
6. The CAFO resolves only those violations which are alleged herein.
7. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.
8. Respondent, upon investigation, certifies to EPA by its signature herein that, to the best of its knowledge and belief, it is presently in compliance with the provisions of RCRA, as well as the regulations promulgated thereunder, including, but not limited to, the alleged violations referenced herein.

9. The provisions of this CAFO shall be binding upon Complainant and Respondent and their successor agencies, departments, or instrumentalities.
10. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA or any regulations promulgated thereunder.

## II. JURISDICTION

11. 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 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
12. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C or EPA’s regulations promulgated thereunder.
13. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the federal government in the same manner and under the same circumstances as against any other person.
14. The State of Texas initially received final authorization effective December 26, 1984, (49 FR 48300) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications. The Texas Hazardous Waste

Management program regulations set forth at Title 30 of the Texas Administrative Code (“TAC”) generally mirror the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260-66, 268, 270, 273, and 279.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3), Complainant makes the findings of fact and conclusions of law which follow.
16. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes “each department, agency, and instrumentality of the United States,” and within the meaning of and as defined by 30 TAC § 3.2 [40 C.F.R. § 260.10] which includes a “government agency.”
17. Respondent is, and has been at all times relevant to this CAFO, the “owner” and “operator” of a “facility,” as those terms are defined by 30 TAC § 335.1 [40 C.F.R. § 260.10].
18. Respondent is the owner and operator of the Facility located at 4500 S. Lancaster Rd., Dallas, TX 75216.
19. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); and a “facility” within the meaning of 30 TAC § 335.1.
20. Respondent is, and has been at all times relevant to this CAFO, a “generator” of materials that are “solid wastes” and “hazardous waste” and has engaged in the “storage” in “containers” of materials that are “solid wastes” and “hazardous waste” at the Facility, as

those terms are defined in 30 TAC § 335.1 [40 C.F.R. § 260.10], including the hazardous waste referred to herein.

21. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, the regulations set forth at 30 TAC § 335, and 40 C.F.R. Parts 262 and 270.
22. EPA conducted an inspection of the Facility on April 29 – May 1, 2015 (the “Inspection”).
23. At the time of the Inspection, the Facility was registered as a small quantity generator (“SQG”) of hazardous waste with the Texas Commission on Environmental Quality (“TCEQ”), which qualified the Facility for the small quantity generator status established under 30 TAC § 335.69(f) [40 C.F.R. § 262.34(d)].
24. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by EPA’s 2016 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov.2, 2015), provide for the assessment of civil penalties for violations of RCRA in amounts up to \$37,500 per day per violation for violations occurring after December 6, 2013 through November 2, 2015.

**COUNT I - Operating Without a Permit or Interim Status**

25. The allegations in Paragraphs 1-24 are realleged and incorporated herein by reference.

26. Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 TAC §§ 335.69 and 335.2 provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment, or disposal facility unless such person has first obtained a permit for such facility or has qualified for interim status.
27. 30 TAC § 335.69(f) provides that an SQG must meet a number of specific conditions in order to accumulate hazardous waste on-site for 180 days or less without a permit or interim status.
28. 30 TAC § 335.69(f)(2), which incorporates by reference 40 C.F.R. § 265.174, requires SQGs to conduct weekly inspections of the areas where containers are stored to look for leaking and deteriorating containers.
29. The Inspection revealed that the Facility's containers, which stored waste formalin, ethanol, and xylene, among other hazardous wastes, were stored in a manner that did not allow for proper weekly inspection. Specifically, the containers were stored in a manner that did not allow Respondent or an inspector to inspect each container for leaks and/or corrosion, in violation of 30 TAC § 335.69(f)(2), which incorporates by reference 40 C.F.R. § 265.174.
30. 30 TAC § 335.69(f)(2), which incorporates by reference 40 C.F.R. § 265.177(c), requires that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
31. During the Inspection, EPA inspectors were provided with an inventory of the hazardous wastes generated at the Facility. One of the hazardous wastes was identified as trifluoroacetic anhydride, a corrosive and water-reactive waste. This waste was stored in the same vicinity

as an incompatible (flammable) waste without any separation or protection between the two wastes, in violation of 30 TAC § 335.69(f)(2), which incorporates by reference 40 C.F.R. § 265.177(c).

32. 30 TAC § 335.69(f)(5)(C), requires facility personnel to be familiar with hazardous waste management procedures and emergency response procedures.

33. Neither Mr. Burk, the Facility's environmental manager, nor medical staff at the Facility were adequately informed of hazardous waste generation and management issues, including emergency management, in violation of 30 TAC § 335.69(f)(5)(C). In addition, nurses did not understand that bulk chemotherapy waste was hazardous waste or that specific pharmaceutical wastes were to be disposed of in RCRA hazardous waste containers, which constitutes a violation of 30 TAC § 335.69(f)(5)(C).

34. Because of the activities alleged in Paragraphs 28 through 33 above, Respondent violated 30 TAC §§ 335.69 and 335.2.

**COUNT II – Failure to Provide Notification of Non-Receipt of Termination Manifests**

35. The allegations in Paragraphs 1-34 are realleged and incorporated herein by reference.

36. 30 TAC § 335.10(a) require generators of hazardous waste to comply with the manifest requirements of 40 CFR § 262.42(b), which requires SQGs to notify EPA if the SQG has not received a signed manifest from the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter.

37. On February 16, 2015, the Facility shipped containers of D001, D007, and F003 for disposal on Manifest Number 008253456FLE. On September 5, 2014, the Facility shipped containers of D001 and F005 for disposal on Manifest Number 006708961FLE. On October 23, 2017, the Facility shipped containers of D001 for disposal on Manifest Number 004778282JJK.
38. The Facility did not notify EPA when it did not receive the above-listed 3 signed manifests from the owner or operator of the designated facility within the required duration. This constitutes a violation of 30 TAC § 335.10(a), which incorporates by reference 40 CFR § 262.42(b).

**COUNT III – Failure to Complete Hazardous Waste Manifests and Failure to Ship Hazardous Waste with Manifests**

39. The allegations in Paragraphs 1- 38 are realleged and incorporated herein by reference.
40. A generator who transports or offers for transport a hazardous waste for off-site treatment, storage, or disposal must prepare a manifest in accordance with 30 TAC § 335.10, which incorporates by reference 40 C.F.R. § 262.20.
41. During the Inspection, the Facility stated that approximately 6 times per year, bulk chemotherapy cannot be administered to a patient due to a reaction or illness. This bulk chemotherapy is then disposed as medical waste. While the majority of the facility's bulk chemotherapy waste is medical waste, two bulk chemotherapy wastes (cyclophosphamide and mitomycin) are hazardous waste.
42. The Facility generated and disposed of unknown quantities of bulk chemotherapy hazardous waste.

43. The Facility incorrectly disposed of an unknown number of bulk chemotherapy hazardous waste containers as medical waste. These containers should have been disposed of as hazardous waste, with manifests.
44. The failure to prepare manifests for the above wastes, and the failure to ship the above wastes with hazardous waste manifests constitutes a violation of 30 TAC § 335.10, which incorporates by reference 40 C.F.R. § 262.20.

**COUNT IV – Failure to Offer Hazardous Waste to a Transporter with an EPA Identification Number**

45. The allegations in Paragraphs 1-44 are realleged and incorporated herein by reference.
46. 30 TAC § 335.63(b) states that a generator must not offer hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.
47. The Facility offered hazardous waste (bulk chemotherapy waste) on April 24, 2014, to Stericycle, a transporter that did not have an EPA identification number, in violation of 30 TAC § 335.63(b).

IV. TERMS OF SETTLEMENT 3934

**i. Penalty Provisions**

48. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and upon consideration of the *RCRA Civil Penalty Policy* (2003) and the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations and

Respondent's good faith efforts to comply with the applicable regulations, Respondent consents to the assessment of a civil penalty of thirty-seven thousand five hundred and forty-five dollars (\$37,545).

49. The penalty shall be paid within thirty (30) days of the effective date of this CAFO, made payable to the Treasurer of the United States, and in the manner and prescribed time period set forth below.

50. Respondent's Treasury Account Symbol is 36. Inquiries concerning this payment can be made to Alton R. McKinley. Alton R. McKinley may be contacted at [alton.mckinley@va.gov](mailto:alton.mckinley@va.gov) or 214-857-1220.

51. The following are Respondent's options for transmitting the penalties:

a. Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express, 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

b. 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

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Dallas Veterans Affairs Medical Center, Dallas, TX

c. Wire Transfer:

Federal Reserve Bank of New York

ABA: 021030004

Account No. 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

d. IPAC

Payment may also be made using the Intra Governmental Payment and Collection (IPAC) application, ALC 68-01-0727, and Treasury Symbol 681099. Please include the Docket Number of this action (Docket No. RCRA-06-2018-0923) in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.

The case name and docket number (In the Matter of U.S. Department of Veterans Affairs, Dallas Veterans Affairs Medical Center, 4500 S. Lancaster Rd., Dallas, TX, Docket No. RCRA-06-2018-0923) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

52. 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, Suite 1200  
Dallas, Texas 75202-2733; and

RCRA-06-2018-0923

Dallas Veterans Affairs Medical Center, Dallas, TX

Mark Potts, Chief  
Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Attention: Joyce Johnson

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

**ii. Costs**

53. Each party shall bear its own costs and attorney's fees.

**iii. Effect of Settlement**

54. Payment of the penalty specified in Paragraph 48, above, in the manner set forth in Paragraph 51, above, shall constitute full and final satisfaction of all civil claims for penalties that Complainant may have under RCRA for the specific violations alleged in Counts I through IV, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.

**iv. Reservation of Rights**

55. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated

Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

**v. Full and Final Satisfaction**

56. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a)(1) and (g) and 6001(b) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g) and 6961(b), for the specific violations alleged in this 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 this CAFO.

**vi. Anti-Deficiency Act**

57. 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.

**vii. Authority to Bind the Parties**

58. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to it.

59. The undersigned Complainant certifies that he has the delegated authority to enter into the terms and conditions of this Consent Agreement and to bind EPA to it.

**viii. Effective Date**

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

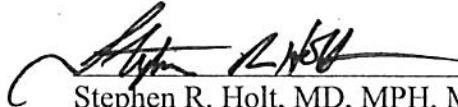
RCRA-06-2018-0923

Dallas Veterans Affairs Medical Center, Dallas, TX

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

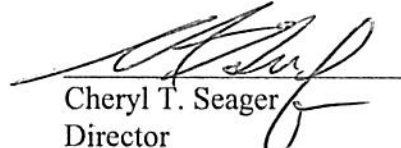
FOR THE RESPONDENT:

Date: August 20, 2018

  
Stephen R. Holt, MD, MPH, MNSRS  
Director  
U.S. Department of Veterans Affairs

FOR THE COMPLAINANT:

Date: 8/23/18

  
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 CFR Part 22, the foregoing CAFO is hereby ratified. Pursuant to 40 C.F.R. § 22.31(a), this Final Order shall not in any case affect the right of EPA 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, or successors) 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. The undersigned Regional Judicial Officer has the delegated authority to issue this Final Order. Pursuant to 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 27 Aug 2018

  
\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer