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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

RECEIVED
EPA REGION VI

IN THE MATTER OF:

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2015-0902

NUEPATH 2, LLC
8340 Sterling Street
Irving, Texas 75063

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, Nuepath 2 LLC., ("Nuepath" or "Respondent"), and concerns the facility located at 8340 Sterling Street, Irving, Texas 75063 (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.

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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 a Delaware corporation, authorized to do business in the State of Texas on July 13, 2011, and is located at 8340 Sterling Street, Irving, Texas 75063.

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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].
11. Respondent’s Registered Agent for service in the State of Texas is CT Corporation System, located at 1999 Bryan St., Suite 900, Dallas, Texas 75201.
12. Nuepath owns and operates a Facility that is a clinical medical laboratory and is engaged in the business of histology.
13. During the period of January 2014 through August 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of Nuepath’s performance as a generator of hazardous waste.
14. 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 Nuepath’s hazardous wastes that it offered for transport and treatment (“Responses”).
15. During the Investigation and review of the Responses, EPA discovered that Nuepath, at a minimum, generated and offered for transport and treatment the following hazardous waste, during 2011 through 2013:
 - i. 2011- Six shipments (each shipment greater than 100 kg) of 1,232 kg of hazardous wastes, having the hazardous waste characteristic of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources, with the waste codes of F003.

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- ii. 2012- Twelve shipments (each shipment greater than 100 kg) of 2,502 kg of hazardous wastes, having the hazardous waste characteristic of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources, with the waste codes of F003; and
- iii. 2013- Twelve shipments (each shipment greater than 100 kg) of 2,484 kg of hazardous wastes, having the hazardous waste characteristic of ignitability (D001). This waste stream is described also as a listed hazardous waste from non-specific sources, with the waste codes of F003.

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

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

17. From the Investigation and review of the Response, EPA determined that during the period of 2011 through 2013, Nuepath generated, at a minimum, the hazardous waste streams identified in Paragraph 15 in quantities that exceeded the threshold amount of 100 kilograms of hazardous waste per month, which qualified Nuepath, 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.

18. Nuepath 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].

19. As a generator of hazardous waste, Nuepath 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

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
21. 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)].
22. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(c), [40 C.F.R. § 261.5(c)], are not applicable to Nuepath.
23. During the Investigation and review of the Responses, EPA determined that Nuepath does not operate as a CESQG.
24. During the Investigation and review of the Responses, EPA determined that Nuepath, at a minimum, has been and is a small quantity generator (“SQG”).
25. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Nuepath is a “generator”.
26. 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 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).

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27. Nuepath did not file with the Administrator or the authorized state a notification of its hazardous waste activities for, at a minimum, the period of 2011 through 2013 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Managing Hazardous Waste without a Generator Identification Number

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

29. 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.

30. During the Investigation and review of the Responses, EPA determined that Nuepath did not apply to the Administrator and receive an EPA identification number.

31. At all relevant times to the CAFO, Nuepath operated without an EPA identification number.

32. At all relevant times to the CAFO, Nuepath 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)].

IV.
COMPLIANCE ORDER

33. By its signature to this CAFO, Respondent is hereby certifying in accordance with the certified language set forth in Paragraph 36 of this CAFO that Respondent is now in compliance with Paragraphs 34 and 35 below.

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34. 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.
35. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) 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 Nuepath 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;
 - 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
 - C. Respondent shall provide, with its certification, a copy of Respondent’s standard “SOPs” as described in subparagraph A above.

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36. 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 Nuepath 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-HIC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.
TERMS OF SETTLEMENT

i. Penalty Provisions

37. 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 regulations, it is ordered that Respondent be assessed a civil penalty of Ninety Thousand Two Hundred and Eighty Dollars (\$90,280).

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38. The total penalty shall be paid within one hundred and eighty (180) calendar days of the effective date of this CAFO, made payable to the Treasurer United States, in the manner, and within the prescribed time period set forth in Paragraphs 39 through 41 below.
39. The first payment of \$15,280 shall be paid within thirty (30) calendar days of the effective date of this CAFO. There shall be five (5) subsequent payments, each of \$15,000.00 that shall be paid on or before the last business day of each successive month until the total payment of \$90,280.00 is paid in full.
40. 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-G1
St. Louis, MO 63101
314-418-1028

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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 Nuepath, Inc., Docket No. RCRA-06-2015-0902) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

41. 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.

42. 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

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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 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Cost

43. 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.

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iii. Termination and Satisfaction

44. 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 36. 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.

iv. Effective Date of Settlement


45. 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:**

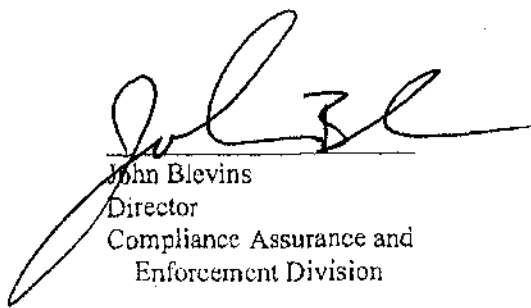
FOR THE RESPONDENT:

Date: 12/22/14


Nuepath 2, LLC, by Tim O'Brien,
Authorized Agent

FOR THE COMPLAINANT:

Date: 11.6.14

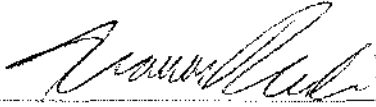

John Blevins
Director
Compliance Assurance and
Enforcement Division

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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: 11/10/14



Thomas Rueki
Regional Judicial Officer

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CERTIFICATE OF SERVICE

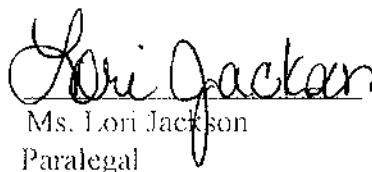
I hereby certify that on the 10th day of November, 2014, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150 0000 2453 8769

Scott C. Palecki
Attorney for Nuepath LLC
Foulston Siefkin LLP
32 Corporate Woods, Suite 600
9225 Indian Creek Parkway
Overland Park, Kansas 66210
Direct Dial: (913) 253-2128

Copy To:

Sherric Graham, MHSA, MT (ASCP)
Executive Director Operations/Business Development
Pathology
Nueterra
11221 Roe Avenue
Leawood, KS 66211
(913) 387-0682 (w)


Ms. Lori Jackson
Paralegal