

3. For the purpose of this ACOC, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this ACOC. This ACOC states a claim upon which relief may be granted.
4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this ACOC and waives all defenses which have been raised or could have been raised to the claim set forth in the ACOC.
5. Respondent consents to the issuance of the ACOC hereinafter recited and consents to the specific stated Compliance Order of this ACOC.

JURISDICTION

6. This ACOC is issued by the EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("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 ACOC under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
7. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by the EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms or conditions.

STATEMENT OF PURPOSE

8. This ACOC provides for the resolution of EPA Region 6's investigation of Respondent's Facility.
9. In entering into this ACOC, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to ensure that the injunctive relief that Respondent will complete as described below in the Compliance Order, is protective of human health and/or the environment.

STATUTORY AND REGULATORY BACKGROUND

10. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and the Hazardous and Solid Waste Amendments ("HSWA") enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a "cradle-to-grave" program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 et seq.
11. RCRA's Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA's RCRA hazardous waste program.

12. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.
13. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded under 40 C.F.R. § 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munition. Materials are solid waste, as defined in 40 C.F.R. § 261.2, if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.
14. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or it is listed in 40 C.F.R. Part 261, Subpart D.
15. Characteristic hazardous wastes are assigned "D" codes in 40 C.F.R. Part 261, Subpart C, depending on the specific hazardous characteristic that the waste exhibits.
16. An ignitable hazardous waste has a flash point of less than 60 degrees centigrade (140 degrees Fahrenheit) and is assigned the D001 hazardous waste code pursuant to 40 C.F.R. § 261.21.

17. A corrosive hazardous waste has a pH of less than or equal to 2.0 or greater than or equal to 12.5 and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22, and a reactive hazardous waste is assigned the D003 hazardous waste code pursuant to 40 C.F.R. § 261.23.
18. Listed wastes are assigned with "F", "K", "P", and "U" codes in 40 C.F.R. Part 261. Subpart D, depending on the specific waste generated from a non-specific source, a specific source, or discarded commercial chemical products, off-specification species, container residues and spill residues therefrom.
19. 40 C.F.R. Parts 264 and/or 265 applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.
20. The relevant RCRA statutory and regulatory requirements to this ACOC require that generators of solid waste and hazardous waste must, among other things:
 - A. Determine whether their generated solid wastes are hazardous, pursuant to 40 C.F.R. § 262.11;
 - B. Comply with the statutory notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930;
 - C. Comply with the manifest requirements, pursuant to 40 C.F.R. § 262.20; and
 - D. Determine its generator status by meeting the exemption conditions set forth at 40 C.F.R. § 262.34 or comply with the specific requirements set forth at 40 C.F.R. § 270.10.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

21. 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 Texas.
Respondent is the owner and operator of the Audie L. Murphy Memorial Veterans' Hospital located at 7400 Merton Minter Blvd, San Antonio, TX 78284.
22. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Texas Administrative Code ("TEX.ADMIN.CODE") § 3.2(25), [40 C.F.R. § 260.10].
23. The Facility identified in Paragraph 1 of this ACOC is a "facility" within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10].
24. Audie L. Murphy Memorial Veterans' Hospital is a healthcare facility.
25. During the period of February through August, 2022, EPA conducted a RCRA investigation and record review ("Investigation") of Audie L. Murphy Memorial Veterans' Hospital's performance as a generator of hazardous waste.
26. During the Investigation, EPA discovered that Audie L. Murphy Memorial Veterans' Hospital, at a minimum, generated the following waste:
 - A. Characteristic of Ignitability: D001 (Ignitability); D002 (Corrosivity); D003 (Reactivity)
 - B. Characteristic for multiple toxicity waste: D004 (Arsenic); D007 (Chromium); D011 (Silver); D022 (Chloroform); D039 (Tetrachloroethylene).
 - C. F004 (Spent non-halogenated solvents: all spent solvent mixtures/blends containing, before use, a total of ten percent or more of cresols and cresylic acid, and nitrobenzene;

or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures)

- D. P001 (Warfarin, & salts, when > 0.3%); P012 (Arsenic trioxide); P075 (Nicotine, & salts); P105 (Sodium azide).
- E. U002 (Acetone (I)); U010 (Mitomycin C); U044 (Chloroform); U058 (Cyclophosphamide); U059 (Daunomycin); U115 (Ethylene oxide (I,T)); U122 (Formaldehyde); U132 (Hexachlorophene); U150 (Melphalan); U154 (Methanol (I)); U158 (4,4'-Methylenebis(2-chloroaniline)); U159 (Methyl ethyl ketone (MEK) (I,T)); U188 (Phenol).
27. The waste streams identified in Paragraph 26 are "solid waste" and "hazardous waste" as defined in 30 TEX.ADMIN.CODE §§ 335.1 (138) and (69), [40 C.F.R. §§ 261.2 and 261.24].
28. From the Investigation, EPA determined that during 2018, 2019, 2020 and 2021, Audie L. Murphy Memorial Veterans' Hospital generated at a minimum the hazardous waste streams identified in Paragraph 26 in quantities of 100 Kilograms to 1000 kilograms of hazardous waste per month, which qualified Audie L. Murphy Memorial Veterans' Hospital for the small quantity generator ("SQG") status established under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite. Audie L. Murphy Memorial Veterans' Hospital notified as a small quantity generator("SQG") of hazardous waste.
29. As a small quantity generator ("SQG") of hazardous waste Audie L. Murphy Veterans' Hospital is subject to manifest requirement under 40 C.F.R. Part 262 a(1) A generator that

transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, or disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

30. Audie L. Murphy Memorial Veterans' Hospital is a "generator" of "hazardous wastes" at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), 30 TEX.ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. Parts 260 and 261].
31. As a generator of hazardous waste, Audie L. Murphy Memorial Veterans' Hospital 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].
32. On November 8, 2022, the EPA conferred with Respondent regarding the violations alleged herein and provided the opportunity for Respondent to submit additional information.

Claims i. Failure to Comply with the Manifest Requirements

33. The allegations in Paragraphs 1-32 are realleged and incorporated herein by reference.
34. Pursuant to 30 Texas Admin. Code §§ 335.10(a)(1) and 335.10(2), [40 C.F.R. § 262.20] A generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, or disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

35. EPA reviewed several manifests prepared by Respondent from 2018 through 2021 and determined that manifests were not prepared as required by the regulations. Therefore, Respondent violated 30 Texas Admin. Code §§ 335.10(a) [40 C.F.R. § 262.20].

COMPLIANCE ORDER

36. 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 the settlement agreement. Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all of its solid waste streams to determine the accurate waste codes to ensure that Audie L. Murphy Memorial Veterans' Hospital 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 restrictions; and
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification.

37. In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Audie L. Murphy Memorial Veterans' Hospital and shall include the following certification:

"I certify under the penalty of law that this document and all of 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 ACOC shall be sent to the following:

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: Sandesh Thapa

Where possible, notice shall be sent electronically by email to Sandesh Thapa, at thapa.sandesh@epa.gov.

TERMS OF SETTLEMENT

i. Modification

38. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

ii. Anti-Deficiency Act

39. Respondent shall seek all existing funds to meet the requirements of the ACOC. 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 ACOC. Nothing in this ACOC shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

iii. Record Preservation

40. Respondent shall preserve, during the pendency of this ACOC, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors, which in any way relate to this ACOC regardless of any document retention policy to the contrary.

iv. Cost

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

v. Reservation of Rights

42. Notwithstanding any other provisions of this ACOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
43. EPA reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this ACOC.
44. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claim, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States. Further, this ACOC does not resolve Respondent's liability for Federal civil penalties for the violations and facts set forth herein.

vi. Termination and Satisfaction

45. When Respondent believes that it has complied with all the requirements of this ACOC, including compliance with the Compliance Order. Respondent shall so certify in writing and in accordance with the certification language set forth herein. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.

46. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Administrative Compliance Order on Consent, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

Complainant:

Sandesh Thapa
thapa.sandesh@epa.gov

Respondent:

Matthew Duncan
matthew.duncan@va.gov

vii. Effective Date of Settlement

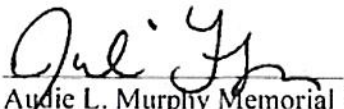
47. This ACOC shall become effective upon filing with the Regional Hearing Clerk.

RCRA-06-2022-0959
Audie L. Murphy Memorial Veterans' Hospital

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:**

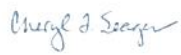
FOR THE RESPONDENT:

Date: 18 Oct 2023


Audie L. Murphy Memorial Veterans'
Hospital

FOR THE COMPLAINANT:

Date: October 19, 2023


Digitally signed by CHERYL
SEAGER
Date: 2023.10.19 15:53:42 -05'00'

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

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing ACOC is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate civil penalties, injunctive or other equitable relief or criminal sanctions for any violations of law, including those violations alleged herein. 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 Compliance Order, the Terms of Settlement as set forth in this ACOC. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

THOMAS RUCKI Digitally signed by THOMAS
RUCKI
Date: 2023.10.24 10:54:21 -04'00'

Thomas Rucki
Regional Judicial Officer

RCRA-06-2022-0959

Audie L. Murphy Memorial Veterans' Hospital

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the email addresses:

Copy via Email to Complainant:
thapa.sandesh@epa.gov

Copy via Email to Respondent:
agapito.lambert@va.gov

**LORI
JACKSON**

Digitally signed by
LORI JACKSON
Date: 2023.10.24
13:08:45 -05'00'

**Ms. Lori Jackson
Paralegal**