

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

REC'D
MAY 20 10 11 AM '08
REGIONAL OFFICE
DALLAS, TX

IN THE MATTER OF:

McAllen Hospitals, L.P.
301 W. Expressway 83
McAllen, Texas 78503

RESPONDENT
EPA ID TXR000081398

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2015-0921

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 Medical Center" or "Respondent"), and concerns the facility located at 301 W. Expressway 83, 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, 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(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).
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 corporation organized in the State of Delaware and is authorized to do business in the State of Texas.

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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.CODE¹ § 3.2(25), [40 C.F.R. § 260.10].
11. McAllen Medical Center owns and operates a Facility that is a general medical and surgical hospital.
12. 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 information on McAllen Medical Center’s hazardous wastes that it offered for transport and treatment (“Responses”).
13. During the period of January 2015 through April 2015, EPA conducted a RCRA investigation and record review (“Investigation”) of McAllen Medical Center’s performance as a generator of hazardous waste.
14. During the Investigation and review of the Responses, EPA discovered that McAllen Medical Center, at a minimum, generated and offered for transport and treatment the following hazardous waste, during 2013 through 2015, which includes the following waste streams:
 - i. D001, ignitable hazardous waste;
 - ii. Hazardous wastes that exhibit the toxicity characteristic for barium, chromium, mercury, selenium, silver, lindane, and m-cresol respectively with the hazardous waste codes, D005, D007, D009, D010, D011, D013, D024; and

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- iii. Several acutely listed hazardous waste streams, respectively with the hazardous waste codes, P001, P075, P081, P188, U010, U035, U058, U059, U122, U129, U132, U188, U200, U205, U206 and U248.
15. The waste streams identified in Paragraph 14 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21 and 261.31].
16. From the Investigation and review of the Response, EPA determined that during the period of 2013 through 2015, McAllen Medical Center generated, hazardous waste streams, including P listed hazardous waste streams identified in Paragraph 14 and in quantities that exceeded the threshold amount, of at a minimum, 1 kilogram of acutely hazardous waste per month.
17. McAllen Medical Center is a “generator” of “hazardous wastes” at the Facility, as these terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
18. 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].
19. At all times relevant to this CAFO, Respondent operated as a large quantity generator (“LQG”) and is subject to the requirements established under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that the wastes streams identified in Paragraph 14 above remained onsite.
20. As a generator of hazardous waste, McAllen Medical Center 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 Part 262].

Claim i. Notification Requirements

21. The allegations in Paragraphs 1-20 are realleged and incorporated herein by reference.
22. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a small quantity generator ("SQG") in a calendar month if it generates greater than 100 kg of hazardous waste but less than 1000 kg and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5 (f), (g), and (j)].
23. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(c), [40 C.F.R. § 261.5(c)], are not applicable to McAllen Medical Center.
24. During the Investigation and review of the Responses, EPA determined that McAllen Medical Center did not operate as a SQG.
25. 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. 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).
26. McAllen Medical Center did not file with the Administrator or the authorized state an adequate notification of hazardous its waste activities for, at a minimum, the period of 2013 through 2015 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

27. The allegations in Paragraphs 1-26 are realleged and incorporated herein by reference.
28. For all relevant period to this CAFO, EPA has determined that McAllen Medical Center declared its generator status as a small quantity generator ("SQG").
29. During the periods of 2013 through 2015, McAllen Medical Center on several occasions exceeded its declared SQG status and operated as a LQG in violation of the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C and/or F, [40 C.F.R. Parts 262 and/or 270].

Claim iii. Failure to file Biennial Reports

30. The allegations in Paragraphs 1-29 are realleged and incorporated herein by reference.
31. 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.
32. 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 Medical Center 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

33. 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 to EPA:

- A. Respondent shall certify that it has reviewed all environmental requirements (Federal and State) that are applicable to McAllen Medical Center as a 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) managing its hazardous wastes; and (c) 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.

34. 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 Medical Center 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

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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

35. 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 Seventy-Nine Thousand Three Hundred and Ten Dollars (\$79,310.00).
36. 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.
37. 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:

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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 Hospitals, L.P.; Docket No. RCRA-06-2015-0921) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

38. 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.

39. 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 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

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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

40. 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

41. 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 34. 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

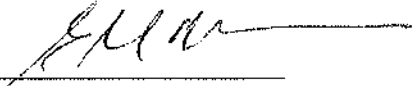
42. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
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FOR THE RESPONDENT:

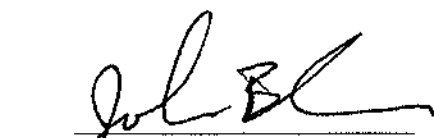
Date: 8/21/15



McAllen Hospitals, L.P.
ELA010 MONTANA, CO.

FOR THE COMPLAINANT:

Date: 8/27/15



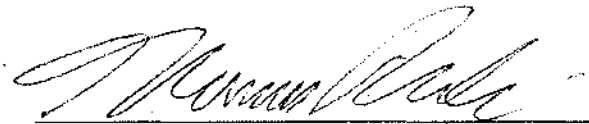
John Blevins
Director
Compliance Assurance and
Enforcement Division

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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: 9/3/15



Thomas Rucki
Regional Judicial Officer


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CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of Sept., 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 70140150000024544913

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.