

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2017 JUN -7 PM 2:05
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

TEXAS ONCOLOGY, P.A.

DALLAS, TEXAS

RESPONDENT

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CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-06-2017-0931

CONSENT AGREEMENT

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 Texas Oncology, P.A. (Respondent), and concerns the following locations:

- a) 1001 12th Avenue, Fort Worth, Texas (Ft. Worth);
- b) 4021 Garth Road, Baytown, Texas (Baytown);
- c) 1901 South 2nd Street, McAllen, Texas (McAllen);
- d) 3410 Worth Street, Dallas, Texas (Dallas-Worth Street);
- e) 2150 North Expressway 83, Brownsville, Texas (Brownsville);
- f) 7848 Gateway East, El Paso, Texas (El Paso-Gateway);
- g) 3270 Joe Battle Boulevard, El Paso, Texas (El Paso-Joe Battle); and
- h) 7777 Forest Lane, Dallas, Texas (Dallas-Forest Lane).

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 purposes of this proceeding, Respondent admits the jurisdictional allegations herein. However, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.

4. 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 that have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only the Respondent's liability for federal civil penalties for those violations which are alleged herein.

6. Respondent consents to the following: issuance of the CAFO hereinafter recited; the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO; and to the specific stated compliance order.

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 C.F.R. §§ 22.13(b); 22.18(b)(2) and (b)(3); and 22.37.

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. Furthermore, Respondent 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 Professional Association, registered to transact business in the State of Texas on September 30, 1986.

10. Respondent is a "person" within the meaning of 42 U.S.C. § 6903(15) and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

11. Pursuant to 30 TEX. ADMIN. CODE §§ 335.1(109) and (110) (40 C.F.R. § 260.10), Respondent, at all times relevant to this CAFO, was an "owner" or "operator" of the following locations:

- a) Ft. Worth,
- b) Baytown,
- c) McAllen,
- d) Dallas-Worth Street,
- e) Brownsville,
- f) El Paso-Gateway,
- g) El Paso-Joe Battle, and
- h) Dallas-Forest Lane.

12. Respondent, at all times relevant to this CAFO, was a "generator" of hazardous waste at the facilities, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

13. 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 at 30 TEX. ADMIN. CODE § 335, Subchapter (C) and/or (F) (40 C.F.R. Parts 262 and/or 270).

14. Between November 2015 and January 2017, EPA conducted an investigation and records review (Investigation) of Respondent's performance as a hazardous waste generator and its

compliance with RCRA and the regulations promulgated thereunder, for the time period between January 2012 through January 2017.

15. During the Investigation, EPA discovered that at times Respondent's hazardous waste determinations for different hazardous drugs/chemotherapy agents were mischaracterized in connection with the transportation of those hazardous wastes for offsite disposal.

16. During the Investigation, EPA discovered that on separate occasions amongst the listed locations, hazardous waste was mischaracterized on manifests.

17. During the Investigation, Respondents provided a manifest showing that on at least one occasion, a pre-printed P-listed acutely hazardous waste profile and code was crossed out and changed to reflect the actual hazardous waste being transported.

IV. ALLEGED VIOLATIONS

Count 1: Failure to Make Adequate Hazardous Waste Determinations

18. Complainant hereby restates and incorporates by reference Paragraphs 1 through 17.

19. Pursuant to 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)), a person who generates a solid waste must determine if that waste is hazardous.

20. Respondent's hazardous waste determinations for different hazardous drugs/chemotherapy agents were mischaracterized on separate occasions during the time period between January 2012 through January 2017 for the Ft. Worth, Baytown, McAllen, Dallas-Worth Street, Brownsville, El Paso-Gateway, El Paso-Joe Battle, and Dallas-Forest Lane locations, in violation of 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)).

Count 2: Failure to Comply with Manifest Requirements

21. Pursuant to 30 TEX. ADMIN. CODE §§ 335.10(a)(1) (40 C.F.R. § 262.20(a)), a generator who offers for transport hazardous waste for offsite treatment, storage, or disposal, must prepare

a manifest on EPA Form 8700-22 according to the instructions found within the Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and its Instructions).

22. Respondent, on separate occasions during the time period between January 2012 through January 2017, sent shipments of hazardous waste from Respondent's Ft. Worth, Baytown, McAllen, Dallas-Worth Street, Brownsville, El Paso-Gateway, El Paso-Joe Battle, and Dallas-Forest Lane locations for offsite disposal.

23. The manifests accompanying the shipments of hazardous waste referenced in paragraph 22, were not accurately prepared.

24. Respondent failed to accurately prepare and complete manifests, EPA Form 8700-22, according to the instructions found within the Appendix to Part 262, in violation of 30 TEX. ADMIN. CODE §§ 335.10(a)(1) (40 C.F.R. § 262.20(a)(1)).

V. COMPLIANCE ORDER

25. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- a) Respondent shall certify that with respect to the alleged violations, it has revised and implemented standard operating procedures to ensure that Respondent's facilities are operating in compliance with RCRA and the regulations promulgated thereunder to prevent similar violations in the future. This includes, but is not limited to, procedures for:

- i) making hazardous waste determinations;

- ii) training personnel involved in managing, reporting, transporting, and arranging for the disposal of hazardous waste; and
- iii) preparing hazardous waste manifests.

26. 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 Texas Oncology, 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 the CAFO shall be sent to the following:

Ashley Pederson
U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Compliance III Section (6EN-H3)
1445 Ross Avenue
Dallas, Texas 75202-2733

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

27. 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 **\$43,900.00**.

28. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

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

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Checks sent via Overnight Mail (non-U.S. Postal Service) 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, MO 63101
314-418-1028

Wire Transfers should be remitted to:

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 Texas Oncology, P.A., Docket No. RCRA-06-2017-0931**) shall be documented on or within your chosen method of payment to ensure proper credit.

30. 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, TX 75202-2733

Chief
Waste Compliance III Section (6EN-H3)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Ashley Pederson

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

31. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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 that remains

delinquent more than ninety (90) days pursuant to 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 pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

32. 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

33. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order), Paragraph 26. Unless 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.

D. Effective Date of Settlement

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

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

FOR THE RESPONDENT:

Date: 5/30/17

Roy S Paulsen

Texas Oncology, P.A.

FOR THE COMPLAINANT:

Date: 6/5/17

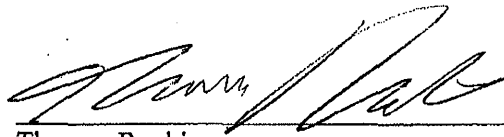
Cheryl T. Seager

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

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.

Date: 6-7-17




Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of June, 2017, 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 below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7015 1520 0003 39895084

John Edgcomb
Edgcomb Law Group, LLP on behalf of: Texas Oncology, P.A.
One Post Street, Suite 2100
San Francisco, California 94104-5225



Ms. Lori Jackson
Paralegal