

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

The Ritz-Carlton Hotel Company, L.L.C.
New Orleans, LA

LAR000036442

RESPONDENT

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EPA Docket No. RCRA-06-2016-0952

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 The Ritz-Carlton Hotel Company, L.L.C., as manager of The Ritz-Carlton, New Orleans ("Ritz-Carlton" or "Respondent") and concerns the facility located at 921 Canal St., New Orleans, LA 70112 (the "Facility").

2. Notice of this action has been given to the State of Louisiana, 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.

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 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 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**

A. Preliminary Allegations

9. Respondent is a Delaware Limited Liability Company authorized to do business under the laws of the State of Louisiana, which owns and operates the Facility located at 921 Canal St., New Orleans, Louisiana 70112.

10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and Louisiana Administrative Code ("LAC") 33:V.109, [40 C.F.R. § 260.10].

11. Respondent's business at the Facility is a full service hotel with on-site dry cleaning operations.

12. During the period of March 28, 2016 through May 19, 2016, EPA conducted a RCRA investigation and records review ("Investigation") of Respondent's performance as a generator of hazardous waste.

13. During the Investigation, EPA discovered that Respondent, at a minimum, generated hazardous wastes, including chromium (D007) and spent halogenated solvents (F002) such as tetrachloroethylene (D039), trichloroethylene (D040), and 1,2 dichloroethylene (D029).

14. The waste streams identified in Paragraph 13 are "hazardous waste" as defined in in LAC 33:V.4901.A, 4901.B, and 4903.E, [40 C.F.R. §§ 261.24, 261.30, and 261.31].

15. From the Investigation, EPA determined that during calendar years 2011 through 2014, Respondent generated, and offered for transport and treatment, the hazardous waste streams identified in Paragraph 13 in quantities that exceeded the threshold amount of 100 kg per calendar month for a conditionally exempt small quantity generator, which resulted in Respondent qualifying for the small quantity generator status under LAC 33:V.109, 40 C.F.R. Part 262, instead.

16. The Facility listed in Paragraph 9 above is a "facility" within the meaning of LAC 33:V.109 [40 C.F.R. § 260.10].

17. Respondent is a "generator" of "hazardous waste" as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and LAC 33:V.109 [40 C.F.R. § 260.10].

18. 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 LAC 33:Part V [40 C.F.R Part 262].

B. Alleged Violations

Claim i. Notification Requirements

19. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.

20. 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 the required notification has been given.

21. Respondent did not file with the Administrator or the authorized State a notification of its hazardous waste activities for at least the period of 2011 through 2014 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Operate with Its Stated Generator Status

22. The allegations in Paragraphs 1-21 are re-alleged and incorporated herein by reference.

23. During the Investigation, EPA determined that Respondent declared its generator status as a conditionally exempt small quantity generator ("CESQG"). A generator is a CESQG if it generates no more than 100 kg of hazardous waste per month. LAC 33:V.108.A.

24. Pursuant to LAC 33:V.108.B [40 C.F.R. § 261.5(b)], as long as a CESQG complies with the applicable requirements under LAC 33:V.108.F, 108.G, and 108.J [40 C.F.R. §§ 261.5 (e), (f), (g) and (j)] the generator's hazardous waste is not subject to regulation under

LAC 33:V.Chapters 3-37, 41, 43, and 53, except for LAC 33:V.3105, Table 1 [40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124].

25. During the period of at least 2011 through 2014, Respondent on several occasions generated more than 100 kg but less than 1000 kg of hazardous waste per month, and therefore, was subject to but did not comply with applicable regulations under LAC 33:V.Chapters 3-37, 41, 43, and 53, except for LAC 33:V.3105, Table 1 [40 C.F.R. Part 262].

IV.
COMPLIANCE ORDER

26. Pursuant to Section 3008(a) of RCRA, 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 Order, Respondent shall provide in writing the following:

A. Respondent shall certify that it has assessed all of its solid waste streams at the Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") for those waste streams to ensure that Respondent 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 manifests; and (e) meeting the requirements of the land disposal requirements;

B. Respondent shall certify that it has accurately and adequately complied with the notification requirements pursuant to RCRA § 3010, 42 U.S.C. §6930;

C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above; and

D. Respondent shall provide a reasonable estimate of the funds expended to bring the facility into compliance with the ordering provisions hereof and an estimate of any reduction of waste (if any), if applicable, as a result of such compliance.

27. 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 Respondent 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
Waste Enforcement Branch
Waste Compliance II Section (6EN-H2)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Debra Pandak

V.
TERMS OF SETTLEMENT

A. Civil Penalty

28. 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 **Twenty-Two Thousand Six Hundred Sixty Dollars (\$22,660.00)**.

29. 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 of America.

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

Checks sent via U.S. Postal Service 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
US 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 The Ritz-Carlton Hotel Company, L.L.C., Docket No. RCRA-06-2016-0952**) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

31. 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, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Debra Pandak

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

32. 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. 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. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Supplemental Environmental Project

33. Respondent shall undertake the supplemental environmental project ("SEP") described in this section, which the parties agree is intended to secure significant environmental or public health protection and improvement.

34. As a SEP, Respondent has elected to implement a pollution prevention project at The Ritz-Carlton, New Orleans located at 921 Canal St., New Orleans, LA. No later than December 31, 2016, Respondent shall purchase, install, and operate, at its sole expense, a new dry cleaning system, which will replace the existing dry cleaning system that uses perchloroethylene-based solvent. This project will include the removal and proper disposal of the old unit. In the event that circumstances outside of Respondent's control (e.g., shipping delays, discontinuation or unavailability of equipment subject to the SEP) will delay or make impossible the timely performance of some or all of the SEP, Respondent will provide notice to EPA within fifteen (15) calendar days of Respondent's actual notice of such circumstances and may, at its election, propose a reasonable alternative schedule and/or substitution of equivalent equipment to EPA to be satisfactorily completed in lieu of payment of the stipulated penalty set forth in Paragraph 45 below. EPA may, in its discretion, accept the Respondent's proposal and will not unreasonably withhold acceptance.

35. The SEP will provide Respondent with the ability to reduce the quantity and toxicity of wastes generated from the on-site dry cleaning operations. The new dry cleaning system uses a less toxic dry cleaning fluid formulation, and wastes generated from it will be non-

hazardous. As such, the SEP will protect the health of hotel workers and guests, and the environment, by reducing the potential for exposure of human beings and the environment to releases of hazardous wastes or their constituents.

36. Respondent is responsible for the satisfactory completion of the SEP. The total expenditure for the SEP described in Paragraph 34 shall be no less than **One Hundred Fourteen Thousand Five Hundred Seventy-Five Dollars (\$114,575)**. Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that Respondent in good faith estimates that the cost to implement the SEP is no less than **One Hundred Fourteen Thousand Five Hundred Seventy-Five Dollars (\$114,575)**. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

37. Respondent hereby certifies that as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that the SEP was not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

38. Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 34.

39. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against The Ritz-Carlton, New Orleans, taken on behalf of the EPA to enforce federal laws."

40. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

i. SEP Completion Report

41. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A description of the SEP as implemented, including photographs demonstrating removal and replacement of the dry cleaning unit;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Copies of receipts for all SEP-related expenditures; and
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

42. Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 45.

43. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

44. Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

**ii. Stipulated Penalties for Failure to Complete SEP or
Failure to Spend Agreed-On Amount**

45. If Respondent fails to complete the SEP described in Paragraph 34 by December 31, 2016 and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 36 above, Respondent agrees to pay a lump sum stipulated penalty of one hundred thirty percent (130%) of the minimum SEP amount set forth in Paragraph 36, minus documented costs already expended by Respondent in pursuit of the SEP, payable not later than thirty (30) days of receipt by Respondent of a written demand by EPA for such penalty. The method of payment shall be in accordance with the provisions of Paragraphs 29 and 30. In the event that circumstances outside of Respondent's control (e.g. shipping delays, discontinuation

or unavailability of equipment subject to the SEP) will delay or make impossible the timely performance of some or all of the SEP, Respondent will provide notice to EPA within fifteen (15) calendar days of Respondent's actual notice of such circumstances and may, at its election, propose a reasonable alternative schedule and/or substitution of equivalent equipment to EPA to be satisfactorily completed in lieu of payment of the stipulated penalty. EPA may, in its discretion, accept Respondent's proposal, which acceptance shall not be unreasonably withheld.

46. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

C. Cost

47. 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.

D. Termination and Satisfaction

48. 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 so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 27. 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.

E. Effective Date of Settlement

49. 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:

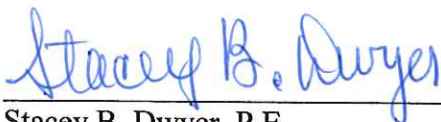
Date: 10/24/2016



The Ritz-Carlton Hotel Company, L.L.C.

FOR THE COMPLAINANT:

Date: Oct. 26, 2016



Stacey B. Dwyer, P.E.
Acting 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. 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 11/2/16

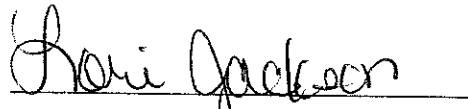

Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of Nov., 2016, 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

Amy L. Edwards
Holland & Knight LLP
800 17th St., N.W., Suite 1100
Washington, DC 20006

A handwritten signature in cursive script, reading "Lori Jackson", is written over a horizontal line.

Ms. Lori Jackson
Paralegal