



FILED

2016 NOV -3 AM 10: 59

REGIONAL HEARING CLERK  
EPA REGION VI

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:

HOUSTON PLATINGS AND  
COATINGS, LLC

HOUSTON, TEXAS

RESPONDENT

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. RCRA-06-2016-0946

**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 Houston Plating and Coatings, LLC (Respondent), and concerns Respondent's facilities (collectively, the "Facilities") located at the following addresses:

- a) 2622 Wilson Road in Humble, Texas (Wilson facility); and
- b) 1315 Georgia Street in South Houston, Texas (Georgia 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.

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. This CAFO resolves only those violations that 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 22.18(b)(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. 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 limited liability company registered to do business in the State of Texas on December 20, 2002.

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 is an "owner" or "operator" of the Facilities within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. §260.10).

12. Respondent is a "generator" of "hazardous waste" at the facilities, as the terms are defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10) and 30 TEX. ADMIN. CODE § 335.1(69) (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(C) and/or (F) (40 C.F.R. §§ 262 and/or 270).

14. Between October 2015 and June 2016, EPA conducted an investigation and record review (Investigation) of Respondent's performance as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder.

15. From the Investigation, EPA determined that on occasion in 2012, 2013, 2014, and 2015, Respondent, at the Wilson facility, generated hazardous waste in quantities that exceeded its generator status of a small quantity generator (SQG). On those occasions, by generating more than the threshold amount of 1,000 kg of hazardous waste per month, Respondent would have been a large quantity generator (LQG) under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).

16. From the Investigation, EPA determined that Respondent on December 28, 2015, for the Wilson facility, submitted a subsequent notification to change its generator status to a LQG.

17. From the Investigation, EPA determined that while acting as an LQG on occasion from 2012 to the effective date of the CAFO, Respondent, at the Wilson facility, did not meet the requirements of a LQG pursuant to the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

18. From the Investigation, EPA determined that on occasion from 2011 to the effective date of the CAFO, Respondent, at the Georgia facility, did not meet the requirements of a LQC pursuant to the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

### **Wilson Facility**

#### **Claim 1: Notification Requirements**

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

20. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed 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. This includes a subsequent notification for a change in the status of a generator. *See also* 30 TEX. ADMIN. CODE § 335.6(c).

21. From the Investigation, EPA determined that Respondent on occasion exceeded its respective generator status during 2012, 2013, 2014, and 2015.

22. From the Investigation, EPA determined that Respondent, for the applicable years, did not file with the Administrator or with the State of Texas, a notification for a change in hazardous waste activities until December 28, 2015.

23. Based on the allegations set forth above, EPA concluded that Respondent did not file a subsequent notification of hazardous waste activities in violation of 30 TEX. ADMIN. CODE § 335.6(c) (42 U.S.C. § 6930(a)).

#### **Claim 2: Failure to Operate Within Proper Generator Status**

24. Complainant hereby restates and incorporates by reference Paragraphs 1 through 23.

25. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

26. From the Investigation, EPA determined that on the occasions on which Respondent operated as an LQG Respondent did not comply with various sections of the applicable LQG requirements.

27. Based on the allegations set forth above, EPA concluded that Respondent failed to operate within its designated status from 2012 to the effective date of the CAFO in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. § 262 and/or 270).

#### **Georgia Facility**

#### **Claim 3: Failure to Operate Within Proper Generator Status**

28. Complainant hereby restates and incorporates by reference Paragraphs 1 through 27.

29. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

30. From the Investigation, EPA determined that on the occasions on which Respondent operated as an LQG, Respondent did not comply with various sections of the applicable LQG requirements.

31. Based on the allegations set for the above, EPA concluded that Respondent did not operate within its designated status from 2011 to the effective date of the CAFO in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. § 262 and/or 270).

#### IV. COMPLIANCE ORDER

32. 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 certify the following:

- a. Respondent has developed and implemented standard operating procedures to ensure that it is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
  - i. making hazardous waste determinations;
  - ii. training personnel involved in managing, reporting, transporting, and disposing of hazardous waste;
  - iii. preparing hazardous waste manifests; and
  - iv. meeting the requirements of the land disposal restrictions.

33. 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 Houston Plating and Coatings, LLC, 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 Enforcement Branch  
Waste Compliance III Section (GEN-H3)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

34. 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 \$120,100. This penalty is calculated concurrently and in conjunction with the Consent Agreement and Final Order for the matter of Houston Plating and Coatings, LLC: Docket No. RCRA-06-2016-0947.

35. The penalty shall be paid in twenty-four (24) monthly installments of \$5,004.17, beginning within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America. For purposes of this CAFO, an installment will not be considered overdue, subject to interest and late payments found at Paragraph 38, if paid by the last day of the month in which that installment is due.

36. 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:

Houston Plating and Coatings, LLC  
RCRA-06-2016-0946

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 Houston Plating and Coatings, LLC,  
Docket No. RCRA-06-2016-0946) shall be documented on or within your chosen method of  
payment to ensure proper credit.

37. 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

Mark Potts, Chief  
Waste Enforcement Branch (6EN-H)  
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.

38. 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**

39. 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**

40. 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 IV (Compliance Order), Paragraph 32. 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**

41. 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: 10/25/2016

  
Houston Plating and Coatings, LLC

FOR THE COMPLAINANT:

Date: 11-1-16


  
Stephen A. Gilrein, 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 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: \_\_\_\_\_

11/2/16

  
\_\_\_\_\_  
Renea Ryland  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of November, 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 below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED** 7001036000366749961

Ashley Prieto, Of Counsel  
Porter Hedges LLP on Behalf of Houston Plating and Coatings, LLC  
1000 Main Street, 36<sup>th</sup> Floor  
Houston, Texas 77002

*Hari Jackson*  
*Paralegal*