

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

21 NOV -1 PM 1:24
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Trinity Industries, Inc.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2021-0948

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, Trinity Industries, Inc. ("Respondent" or "Trinity Industries") and concerns the facility Trinity Industries Plant 23 located at 615 E. Sycamore St., Denton, TX 76205 ("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)¹.
3. For the purpose of this CAFO, 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.

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

4. Respondent 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 in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO.
7. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

Jacob Piehl
piehl.jacob@epa.gov

To Respondent:

Joshua Glubiak
joshua.glubiak@trin.net

II. JURISDICTION

8. 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 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2) and (3).
9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO,

Respondent agrees not to contest the authority or jurisdiction of 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

10. Respondent is a corporation authorized to do business in the State of Texas.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 335.2(25), [40 C.F.R. § 260.10].
12. Respondent previously owned and operated the Facility during the time that records and documents were generated regarding this investigation, to the date the facility was sold in February 13, 2020.
13. The Facility is a business that operated a fabricated structural metal manufacturing facility.
14. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
15. The Facility operated with the assigned EPA ID Number TXD007359318.
16. From August 2020 to May 2021, the EPA conducted a RCRA record review of the Facility's activities as a generator of hazardous waste.
17. On September 2, 2020, the EPA sent Respondent an Opportunity to Confer letter and began discussions with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information and documentation.
18. EPA discovered that Respondent generated, and offered for transport and treatment, hazardous wastes as defined in 30 Texas Admin. Code § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
19. Based on its review of the Facility's manifests, EPA determined that Respondent manifested for disposal as hazardous waste a quantity of waste that, if characteristically hazardous, exceeded the

threshold amount of 1,000 kilograms of non-acute hazardous waste in a month, corresponding to Large Quantity Generator (LQG) status under 30 Texas Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

20. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 335.1(66) & (70) [40 C.F.R. § 260.10].
21. 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 in 30 Texas Admin. Code Chapter 335, Subchapter C, [40 C.F.R Part 262].
22. On or about February 13, 2020, Trinity Industries sold their Plant 23 location at 615 E. Sycamore St., Denton, TX 76205 ("Facility").

IV. VIOLATIONS

Claims 1. Failure to Comply with the Manifest Requirements

23. The allegations in Paragraphs 1-22 are realleged and incorporated by reference.
24. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)(1)] a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.
25. EPA reviewed several manifests prepared by Respondent from 2020 and determined that in conjunction with the emptying and closure of product silos, the related manifests, which manifested the waste as hazardous waste to a facility authorized to receive hazardous waste, were not prepared as required by the regulations because the hazardous waste determination was incorrect. Therefore, Respondent violated 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)(1)].

Claims 2. Failure to Make Adequate Hazardous Waste Determinations

26. The allegations in Paragraphs 1-22 are realleged and incorporated by reference.
27. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2] must determine if the solid waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
28. EPA reviewed Respondent's records in 2020 and determined that Respondent failed to make an adequate hazardous waste determination on Respondent's solid waste streams generated from emptying product silos at the Facility by inaccurately managing and manifesting the material as hazardous waste.
29. Respondent violated the requirements of RCRA, and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62 [40 C.F.R. § 262.11], by failing to make the requisite accurate hazardous waste determination on the solid waste streams generated by Respondent when emptying product silos at the Trinity Industries Plant 23 Facility during the year 2020.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

30. 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

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regulations, it is ordered that Respondent be assessed a civil penalty of Nine Thousand Three Hundred Fifty-Three Dollars (\$9,353).

31. The penalty shall be paid within forty-five (45) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

32. The EPA web address, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, provides a list of options available for transmitting payment of penalties. Options for payment include:

Electronic payments via Pay.gov. <https://www.pay.gov/public/search>

Remittance by Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service

Express Mail, the check should be remitted to:

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

Overnight Mail (non-U.S. Postal Service), the check 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, Missouri 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 Trinity Industries Plant 23, Docket No. RCRA-06-2021-0948**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

33. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Gabriel Salinas
Dallas, Texas 75270-2102
salinas.gabriel@epa.gov

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

34. 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).

35. 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). The 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 (6%) 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. Costs

36. 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

37. When Respondent has complied with all the requirements of this CAFO, including payment of the civil penalty, and unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's payment, then this CAFO is terminated on the basis of Respondent's fulfillment of penalty obligations.

D. Effective Date of Settlement

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

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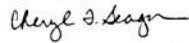
**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 10.18.21


Trinity Industries Plant 23

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
sn=CHERYL SEAGER,
0 9 2342 19200100 1 1 +66001003651793
Date: 2021.10.28 12:20:41 -0500

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance 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.

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
on=THOMAS RUCKI,
o=92342.19200300.100.1.1+68001003655804
Date: 2021.11.01 10:50:03 -0500

Thomas Rucki
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically 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:

piehl.jacob@epa.gov

Copy via Email to Respondent:

joshua.glubiak@trin.net

Ms. Lori Jackson
Paralegal