

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Texas Electric Cooperatives, Inc.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA 06-2021-0946

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 Respondent, Texas Electric Cooperatives, Inc. ("Respondent" or "TEC"), and concerns the facility located at 2240 Bevil Loop Road, Jasper, Texas, 75951 ("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, and consents to the compliance order in this CAFO.

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 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 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

9. Respondent is a statewide association with member distribution cooperatives and generation and transmission cooperatives which provide electrical service in 254 counties in Texas and is authorized to do business in the State of Texas.

10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 3.2(25), [40 C.F.R. § 260.10].
11. Respondent owns and operates the Facility.
12. The Facility is a wood treatment plant that manufactures utility poles and railroad ties using creosote or chromated copper arsenate (CCA) treatment processes.
13. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
14. From October 7, 2019, to October 10, 2019, EPA conducted a RCRA Compliance Evaluation Inspection (CEI) (2019 Inspection) of the Facility's activities.
15. 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]. During the 2019 Inspection, EPA reviewed Respondent's activities as a generator of hazardous waste, including generation, and offer for transport and treatment of 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].
16. Respondent is a Large Quantity Generator of hazardous waste. The primary waste streams at the Facility are creosote contaminated materials and CCA contaminated materials.
17. 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].

IV. VIOLATIONS

Claim 1. Failure to Comply with Standard Permit Conditions

18. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.

19. Pursuant to 30 Texas Admin. Code § 305.125(11)(A) [40 C.F.R. § 270.30], a permittee must comply with all conditions of a permit, including taking monitoring samples and measurements at times and in a manner so as to be representative of the monitored activity.
20. During the 2019 Inspection, EPA discovered that Monitoring Well 8 (a point of compliance well) was damaged and unrepaired for at least 15 months (07/2018 to 10/2019), representing a failure to maintain the well. Additionally, Respondent failed to maintain the Closed Hazardous Waste Landfill cap preservation, as evidenced by ruts and storage of equipment on the landfill cap.
21. EPA finds that at the time of the 2019 Inspection, Respondent failed to comply with the monitoring and maintenance conditions required by Permit No. 50345 issued on August 26, 2010, in violation of 30 Texas Admin. Code § 305.125(11)(A) [40 C.F.R. § 270.30].

Claim 2. Failure to Respond to Leaks and Spills

22. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.
23. Pursuant to 30 Texas Admin. Code § 335.112(a)(9), [40 C.F.R. § 265.196], a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy certain requirements.
24. During the 2019 Inspection, EPA found various leaks from equipment and systems at the Facility:
 - a) Leaks and spills at the ground water treatment unit.
 - b) Leaks and spills at wastewater treatment unit from hand skimming and manual transfer of creosote materials to drums.

c) Drips and drag-out on storage yard resulting in release constituting land disposal.

25. EPA finds that at the time of the 2019 Inspection, Respondent failed to properly respond to the leaks and spills described in Paragraph 24, in violation of 30 Texas Admin. Code § 335.112(a)(9), [40 C.F.R. § 265.196].

Claim 3. Failure to Properly the Clean Drip Pad Surface

26. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.

27. Pursuant to 30 Texas Admin. Code § 335.112(a)(18), [40 C.F.R. § 265.443(i)], a drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

28. Pursuant to 30 Texas Admin. Code § 335.112(a)(18), [40 C.F.R. § 265.443(j)], drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

29. During the 2019 Inspection, EPA found evidence of creosote sludge and creosote contaminated solids on the drip pad and equipment. The Respondent also was unable to provide complete records indicating that sufficient cleaning of the drip pad had taken place.

30. EPA finds that at the time of the 2019 Inspection, Respondent failed to properly clean the drip pad and equipment in a manner and frequency such that accumulated residues of hazardous

waste or other materials are removed, in violation of 30 Texas Admin. Code § 335.112(a)(18), [40 C.F.R. § 265.443(i)].

Claim 4. Failure to make Adequate Hazardous Waste Determinations

31. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.
32. Pursuant to 30 Texas Admin. Code § 335.62, [40 C.F.R. § 262.11(d)], a person who generates a solid waste, as defined in 30 Texas Admin. Code § 335.1 [40 C.F.R. § 261.2], and § 335.504 (relating to Hazardous Waste Determination), must classify any hazardous waste under the provisions of Chapter 335, Subchapter R (relating to Waste Classification).
33. During the 2019 Inspection, EPA found wastes considered hazardous, including creosote debris, PPE and used aerosol cans, which were disposed of in plant trash containers.
34. EPA finds that at the time of the 2019 Inspection, Respondent failed to make the requisite hazardous waste determination on solid waste streams generated by Respondent at the Facility, in violation of 30 Texas Admin. Code § 335.62 [40 C.F.R. § 262.11(d)].

Claim 5. Failure to Manage Containers

35. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.
36. Pursuant to 30 Texas Admin. Code § 335.112(a)(8), [40 C.F.R. 265.173(a)], a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
37. During the 2019 Inspection, EPA observed nine open containers of creosote sludge in the wastewater treatment unit and on the drip pad.

38. EPA finds that at the time of the 2019 Inspection, Respondent failed to keep the containers of creosote sludge in the wastewater treatment unit and on the drip, pad closed, in violation of 30 Texas Admin. Code § 335.112(a)(8), [40 C.F.R. § 265.173(a)]

Claim 6. Failure to Maintain Required Records (Training Records)

39. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.

40. Pursuant to 30 Texas Admin. Code § 335.112(a)(1) [40 C.F.R. § 265.16(d)(4)] and 40 C.F.R. § 265.1(b), owners and operators of facilities that treat, store or dispose of hazardous waste must maintain documents and records at the facility that document that facility personnel have received and completed the training or job experience required under 40 C.F.R. § 265.16 (a), (b), and (c).

41. During the 2019 Inspection, EPA reviewed the Respondent's training program and training records. The Respondent was unable to provide training records for the personnel records reviewed, as the Respondent did not maintain personnel training records at the Facility.

42. EPA finds that at the time of the 2019 Inspection, Respondent failed to maintain documents and records at the Facility to document Facility personnel received and completed the training or job experience required under 40 C.F.R. § 265.16(d), in violation of 30 Texas Admin. Code § 335.112(a)(1) [40 C.F.R. § 265.16(d)(4)].

Claim 7. Failure to Comply with the Manifest Requirements

43. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.

44. Pursuant to 30 Texas Admin. Code § 335.10(a) [40 C.F.R. § 261.20] 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.

45. During the 2019 Inspection, EPA reviewed manifests prepared by Respondent from July 10, 2018 to October 7, 2019, and determined that manifest 009033541FLE was not prepared as required by the regulations by lacking the facility's EPA ID number.
46. EPA finds that at the time of the 2019 Inspection, Respondent incorrectly prepared the standard EPA manifest form, in violation of 30 Texas Admin. Code § 335.10(a) [40 C.F.R. § 261.20].

Claim 8. Failure to Label Hazardous Waste Containers

47. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.
48. 30 Texas Admin. Code § 335.69(a)(3) [40 C.F.R. § 262.34(a)], identifies container labeling requirements for 90-day accumulation of hazardous waste by large quantity generators.
49. During the inspection, EPA observed eleven unlabeled containers of hazardous waste at the Facility.
50. EPA finds that at the time of the 2019 Inspection, Respondent failed to properly label containers of hazardous waste at the Facility, in violation of 30 Texas Admin. Code § 335.69(a)(3) [40 C.F.R. § 262.34(a)].

Claim 9. Failure to Label Universal Waste

51. The allegations in Paragraphs 1-18 are realleged and incorporated by reference.
52. Pursuant to 30 Texas Admin. Code § 335.261(a), [40 C.F.R. § 273.14(e)], a small quantity handler of universal waste must clearly label or mark each lamp, container, or package in which such lamps are contained with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".
53. During the 2019 Inspection, EPA observed five opened fluorescent lamps that were not contained and not labeled or clearly marked as universal waste lamps.

54. EPA finds that at the time of the 2019 Inspection, Respondent failed to properly label open universal waste fluorescent lamps, in violation of 30 Texas Admin. Code § 335.261(a) [40 C.F.R. § 273.14(e)].

V. COMPLIANCE ORDER

55. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 60 calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams at the TEC Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the TEC Facility 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 its manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facility and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

56. 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 the 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. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECD)
ATTN: Angela Hays
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer Angela Hays, respectively at hays.angela@epa.gov or at 214-665-2285.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

57. 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 \$137,024.86; one hundred thirty-seven thousand twenty four dollars and eighty-six cents.
58. 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.
59. 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:

Texas Electric Cooperatives, Inc.
RCRA 06-2021-0946

- A. Electronic payments via Pay.gov. <https://www.pay.gov/public/form/start/11751879>
- B. 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

- C. 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

- D. 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 Texas Electric Cooperatives, Inc., Docket No. RCRA 06-2021-0946**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

- 60. 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

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECD)
ATTN: Angela Hays
Dallas, Texas 75270-2102

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

61. 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).
62. 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 (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.
63. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the

Compliance Order and payment of the civil penalty are restitution, remediation, or required to come into compliance with the law.

B. Costs

64. 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

65. 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). 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.

D. Effective Date of Settlement

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

Texas Electric Cooperatives, Inc.
RCRA 06-2021-0946

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

FOR THE RESPONDENT:

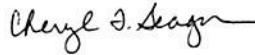
Date: _____



Texas Electric Cooperatives, Inc.

Texas Electric Cooperatives, Inc.
RCRA 06-2021-0946

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance 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.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=68001003655804
Date: 2021.11.16 09:45:53 -06'00'

Thomas Rucki
Regional Judicial Officer

Texas Electric Cooperatives, Inc.
RCRA 06-2021-0946

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:

Pittman.lawrence@epa.gov

Copy via Email to Respondent:

arlopez@texas-ec.org

ldyar@mcginnislaw.com

Pittman,
Lawrence

EPA Representative

Digitally signed by Pittman,
Lawrence
DN: cn=Pittman, Lawrence,
email=Pittman.Lawrence@epa.gov
Date: 2021.11.16 11:51:34 -06'00'