

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

|                           |   |                              |
|---------------------------|---|------------------------------|
| IN THE MATTER OF:         | § | CONSENT AGREEMENT            |
|                           | § | AND FINAL ORDER              |
|                           | § |                              |
| GRUENE TRANSPORTATION LLC | § | Docket No. RCRA-06-2021-0908 |
|                           | § |                              |
|                           | § |                              |
|                           | § |                              |
| RESPONDENT                | § |                              |

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**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 Gruene Transportation LLC (Respondent). The facility covered by this CAFO is located at 5685 Safari Dr., STE B in New Braunfels, Texas (Gruene 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).<sup>1</sup>

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.

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<sup>1</sup> 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 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 this CAFO.

5. This CAFO resolves only those violations that are alleged herein.

6. Respondent consents to the following: issuance of this 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 at the times relevant to this CAFO.

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. At all times relevant to this CAFO, Respondent was an “owner” or “operator” of the Gruene Facility within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. §260.10).

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

13. At all times relevant to this CAFO, Respondent was identified as a “transfer facility” as that term is defined in 30 TEX. ADMIN. CODE § 335.1(155) (40 C.F.R. § 260.10).

14. As a transporter of hazardous waste during the times relevant to this CAFO, Respondent was subject to Sections 3003 and 3010 of RCRA, 42 U.S.C. §§ 6923 and 6930, and the regulations set forth at 30 TEX. ADMIN. CODE § 335(D) and/or (F) (40 C.F.R. §§ 263 and/or 270).

15. From August 2019 through March 2020, EPA conducted an investigation and records review of Respondent’s performance as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder (the “Investigation”).

16. On 8/7/19, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

17. From the Investigation, EPA determined Respondent’s Gruene Facility, at a minimum, stored hazardous waste without a permit.

**Claim 1: Storage Without a Permit**

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

19. 30 TEX. ADMIN. CODE § 335.91(d) provides transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards.

20. 30 TEX. ADMIN. CODE § 335.94(a) (40 C.F.R. 263.12) provides that unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of 30 TEX. ADMIN. CODE § 335.65 at a transfer facility owned or operated by a registered transporter for a period of ten days or less is not subject to the requirement for a permit under 30 TEX. ADMIN. CODE § 335.2, with respect to the storage of those wastes provided that the transporter complies with the following sections:

- 1) 40 C.F.R. § 265.14;
- 2) 40 C.F.R. § 265.15;
- 3) 40 C.F.R. § 265.16;
- 4) 40 C.F.R. Part 265, Subpart C;
- 5) 40 C.F.R. Part 265, Subpart D (except § 265.56(j)) and 30 TEX. ADMIN. CODE § 335.113; and
- 6) 40 C.F.R. Part 265, Subpart I.

21. From the Investigation, EPA determined Respondent, on multiple occasions, stored hazardous waste for a period of greater than 10 days.

22. From the Investigation, EPA determined Respondent, on the occasions where it stored hazardous waste for a period of greater than 10 days was subject to the permit requirements and storage standards.

23. From the Investigation, EPA determined Respondent did not have a permit on the occasions where it stored hazardous waste for a period of greater than 10 days for the time period relevant to this CAFO

24. From the Investigation, EPA determined Respondent did not have interim status nor was in the process of applying for a permit on the occasions where it stored hazardous waste for a period of greater than 10 days for the time period relevant to this CAFO.

25. From the Investigation, EPA determined Respondent was deficient in at least one or more of the following areas:

- a) 40 C.F.R. § 265.14;
- b) 40 C.F.R. § 265.15;
- c) 40 C.F.R. § 265.16;
- d) 40 C.F.R. Part 265, Subpart C;
- e) 40 C.F.R. Part 265, Subpart D (except § 265.56(j)) and 30 TEX. ADMIN. CODE § 335.113; and
- f) 40 C.F.R. Part 265, Subpart I.

26. From the Investigation, EPA determined Respondent did not meet the conditions for a permit exemption found in 30 TEX. ADMIN. CODE § 335.94(a).

27. From the Investigation, EPA determined Respondent stored hazardous waste without a permit or interim status, in violation of 30 TEX. ADMIN. CODE § 335.2(a).

#### **IV. COMPLIANCE ORDER**

28. 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 CAFO, Respondent shall provide in writing the following:

- a. Respondent shall certify it has assessed any solid waste streams generated at the Gruene Facility to accurately determine their status as hazardous waste or non-hazardous waste.
- b. Respondent shall certify it has developed and implemented standard operating procedures to ensure that the Gruene Facility is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
  - i. Managing hazardous waste while it is at the transfer facility;
  - ii. Preparing hazardous waste manifests; and
  - iii. Training personnel involved in storing and transporting hazardous waste.

29. 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 the CAFO shall be sent to the following:

Fred Deppe  
U.S. Environmental Protection Agency  
Enforcement and Compliance Assurance Division  
Hazardous Waste Enforcement Branch  
Compliance Enforcement Section (6EN-H)  
1201 Elm Street, Suite 500  
Dallas, Texas 75270  
Deppe.Fred@epa.gov



## 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 regulations, it is ordered that Respondent be assessed a civil penalty of **Two Hundred Thirty-two Thousand and Eight Hundred Dollars (\$232,800.00)**.

31. The penalty shall be paid in two (2) equal payments. The first payment of **One Hundred Sixteen Thousand and Four Hundred Dollars (\$116,400.00)** is due within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer, United States of America. The second payment of **One Hundred Sixteen Thousand and Four Hundred Dollars (\$116,400.00)** is due within six (6) months of the effective date of this CAFO and made payable to the Treasurer, United States of America. For purposes of this CAFO, an installment will not be considered overdue, subject to interest and late payments found in Paragraph 33, if paid by the last day of the month in which that installment is due.

32. 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 Gruene Transportation LLC, Docket No. RCRA-06-2021-0908**) shall be documented on or within your chosen method of payment to ensure proper credit.

33. 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  
1201 Elm Street, Suite 500  
Dallas, Texas 75270  
Vaughn.Lorena@epa.gov

Margaret Osbourne, Branch Chief  
Waste Enforcement Branch (6EN-H)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270  
Osbourne.Margaret@epa.gov

Your 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). 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 (6%) 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**

35. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waive 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**

36. When Respondent believes 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 8. 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, effective as of the date of such certification.

**D. Effective Date of Settlement**

37. 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:**

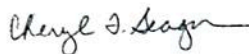
FOR THE RESPONDENT:

Date: Jan 8, 2021



Gruene Transportation LLC

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER  
DN: cn=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
0.9.2342.19200300.100.1.1=68001003651793  
Date: 2021.01.11 10:19:10 -0600

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 Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Rucki, Thomas

Digitally signed by Rucki, Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2021.01.11 14:35:37 -06'00'

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Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that the original 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, and that a true and correct copy of the CAFO was sent to the following by the method below:

**VIA ELECTRONIC MAIL**

kbrown@craincaton.com

**NATHANIEL  
MOORE**

Digitally signed by NATHANIEL  
MOORE  
Date: 2021.01.12 09:10:00 -08'00'

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EPA Region 6