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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 DALLAS, TEXAS REGIONAL HEARING CLERK EPA REGION VI

IN THE MATTER OF: LOCKHEED MARTIN CORPORATION RESPONDENT CONSENT AGREEMENT AND FINAL ORDER Docket No. RCRA-06-2020-0978

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 Lockheed Martin Missiles and Fire Control (Respondent). The facility covered by this CAFO is located at 1008 North John Redditt Drive Innovation Drive, Lufkin, Texas (Lufkin 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.

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.

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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 corporation 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).

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

12. Respondent is or was a "generator" of hazardous waste at the Lufkin Facility, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

13. As a generator of hazardous waste, Respondent is or was 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 January 2020 and March 2020, EPA conducted an investigation and records 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 Respondent's Lufkin Facility, at a minimum, stored, generated, and offered for transport and treatment hazardous waste.

Claim 1: Notification Requirements

16. Complainant hereby restates and incorporates by reference Paragraphs 1 through 15.

17. Pursuant to 30 TEX. ADMIN. CODE § 335.6(c), any person who generates hazardous waste in a quantity greater than 100 kg in any calendar month shall notify the executive director of such activity. Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director of any such changes or additional information to that reported previously. *See also* Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

18. Respondent generated hazardous waste with, including but not limited to, the associated waste codes:

- a) D035;
- b) F003; and
- c) F005.

19. On Respondent's notification form, Respondent did not indicate it generated the waste associated with the waste codes found in paragraph 18.

20. Respondent did not notify EPA or TCEQ it generated the waste associated with the waste codes found in paragraph 18 between 2017 through 2020.

21. EPA finds Respondent failed to immediately document any changes or additional information and file the required subsequent notification of hazardous waste activities between 2017 through 2020 for the Lufkin Facility in violation of 30 TEX. ADMIN. CODE § 335.6(c) (*see also* Section 3010(a) of RCRA, 42 U.S.C. § 6930(a)).

**Claim 2: Generator Requirements
(Conditions for Exemptions Not Met)**

22. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

23. 30 TEX. ADMIN. CODE § 335.69(a)(4) provides a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that the generator complies with the requirements for owners or operators in 40 C.F.R. Part 265, Subparts C and D and with 40 C.F.R. § 265.16, as adopted by reference in 30 TEX. ADMIN. CODE §§ 335.112(a).

24. 30 TEX. ADMIN. CODE § 335.112(a) adopts by reference 40 C.F.R. Part 265 as amended and adopted in the C.F.R. through June 1, 1990 (55 FR 22685) and as further amended for the following: Subpart D-Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 C.F.R. § 265.56(d);

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

- a) Contingency Plan;
- b) Emergency Procedures; and/or
- c) Personnel training.

26. From the Investigation, EPA determined Respondent did not meet the conditions for exemption found in 30 TEX. ADMIN. CODE § 335.69(a)(4).

27. EPA finds Respondent stored, processed, and/or handled hazardous waste without a permit or interim status, in violation of 30 TEX. ADMIN. CODE § 335.2(a).

Claim 3: Manifest Requirements

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

29. 30 TEX. ADMIN. CODE § 335.10(a) provides that no person who generates, transports, processes, stores, or disposes of hazardous waste shall cause, suffer, allow, or permit the shipment of hazardous waste unless he complies with the manifest requirements in 40 C.F.R. §§ 262.20-262.23, 262.27, 262.42, 262.54, 262.55, and 262.60 and the Appendix to 40 C.F.R. Part 262, as these sections are amended through March 18, 2010 (75 FR 12989).

30. The appendix to 40 C.F.R. Part 262 (2010) provides instructions on how to properly complete a Uniform Hazardous Waste Manifest U.S. EPA Form 8700-22. Item 1 entitled Generator's U.S. EPA Identification, requires the generator to enter the generator's U.S. EPA twelve-digit identification number in box 1.

31. Respondent did not list its EPA identification number in box 1 on the following manifests:

- a) 008755041FLE; and

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b) 008755042FLE

32. EPA finds Respondent did not comply with the manifest requirements in violation of 30 TEX. ADMIN. CODE § 335.10(a).

IV. COMPLIANCE ORDER

33. 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 all its solid waste streams at the Lufkin Facility to accurately determine its status as hazardous waste or non-hazardous waste.
- b. Respondent shall certify it has developed and implemented standard operating procedures to ensure that the Lufkin Facility is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
 - i. preparing hazardous waste manifests; and
 - ii. training personnel involved in managing, reporting, transporting, and disposing of hazardous waste;
- c. Respondent shall certify it has developed and ~~implemented~~ ^{implemented} its contingency plan and emergency procedures intended to comply with the applicable provisions of RCRA and the regulations promulgated thereunder. (A)

34. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an authorized representative of the Respondent, and shall include the following certification:

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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:

Tripti Thapa
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

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer Tripti Thapa, respectively at thapa.tripti@epa.gov or at 214-665-7563.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

35. 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 \$14,000.00.

36. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

37. 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:

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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 Lockheed Martin Corporation, Docket No. RCRA-06-2020-0978) shall be documented on or within your chosen method of payment to ensure proper credit.

38. 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
1201 Elm Street, Suite 500
Dallas, Texas 75270
vaughn.lorena@epa.gov

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (6ECDSR)
ATTN: Tripti Thapa
Dallas, Texas 75270-2102
thapa.tripti@epa.gov

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

39. 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

40. 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

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Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

41. When Respondent believe^s 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). Unless EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent' certification, then this CAFO is terminated on the basis of Respondent' certification.

D. Effective Date of Settlement

42. 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:**

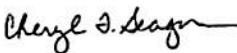
FOR THE RESPONDENT:

Date: August 18, 2020



Anthony Pittman, Production Operations Director
Lockheed Martin Corporation

FOR THE COMPLAINANT:



Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U. S. EPA, Region 6

Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
0.9.2342.19200300.100.1.1+68001003651793
Date: 2020.08.24 12:25:26 -0500

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: 2020.08.25 09:45:10 -05'00'

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 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:
moore.nathaniel@epa.gov

Copy via Email to Respondent:
joel.nagler@lmco.com

JEFFREY YURK

Digitally signed by JEFFREY YURK
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
c=US, email=JEFFREY.YURK@epa.gov,
0.9.2342.19200300.100.1.1-68001003652717
Date: 2020.08.26 08:42:05 -0500

Ms. Lori Jackson
Paralegal