

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

22 MAY 16 AM 11:02

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Tulsa Cement, LLC

RESPONDENT

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§ Consent Agreement and Final Order
§ U.S. EPA Docket No. RCRA-06-2022-0915
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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, Tulsa Cement, LLC ("Respondent" or "Tulsa Cement") and concerns the facility Tulsa Cement located at 2609 N. 145th East Avenue, Tulsa, Oklahoma 74116 (the "Facility").

2. Notice of this action has been given to the State of Oklahoma, 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 this CAFO, Respondent admits the "Jurisdictional Allegations" contained in Section II of this CAFO; however, Respondent neither admits nor denies the "Findings of Fact and Conclusions of Law" contained in Section III of this CAFO, and Respondent neither admits nor denies the "Alleged Violations" contained in Section IV of this CAFO. This CAFO states a claim upon which relief may be granted.

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, and consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO.

7. For purposes of this CAFO, citations to the Code of Federal Regulations ("C.F.R.") Parts 260, 261, 262, and 273 is a citation to the corresponding Oklahoma Administrative Code sections at Title 252, Chapter 205 since the relevant sections of the Oklahoma Administrative Code incorporate by reference the corresponding federal regulations.

8. 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:

Jeffrey M. Clay
clay.jeffrey@epa.gov

To Respondent:

Hardberger, Derek
derek.hardberger@mcafeetaft.com

II. JURISDICTIONAL ALLEGATIONS

9. 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).

10. 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

11. Respondent is a limited liability company authorized to do business in the State of Oklahoma.

12. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

13. Respondent owns and/or operates the Facility identified in Paragraph 1.

14. The Facility is a business that manufactures cement primarily using fuel quality waste, along with various other sources of fuel, to operate its rotary kilns.

15. The Facility is a "facility" within the meaning of 40 C.F.R. § 260.10.

16. The Facility operates with the assigned EPA ID Number OKD064558703 and an Oklahoma Department of Environmental Quality Permit #064558703.

17. Respondent is a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10.

18. Pursuant to 40 C.F.R. § 270.1(c), RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 C.F.R. Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in 40 C.F.R. § 270.2.

19. Respondent is a "treatment, storage and disposal facility" as notified to the State of Oklahoma and in Section A, Part A Application of its Oklahoma Department of Environmental Quality Permit #064558703.

20. Respondent's facility conducts "management or hazardous waste management" operations as those terms are defined in 40 C.F.R. § 260.10.

21. From July 24th through July 26th, 2019, the EPA conducted a RCRA investigation ("Investigation") of the Facility's activities as a generator, as well as a treatment, storage, and disposal facility of hazardous waste.

22. On April 28, 2021, the EPA conducted a follow up conference call with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information and documentation.

23. Pursuant to 40 C.F.R. § 270.1, the permit regulations establish provisions for the Hazardous Waste Permit Program under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976.

24. Pursuant to 40 C.F.R. § 270.4, compliance with a RCRA permit during its term constitutes compliance, for the purposes of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit.

IV. ALLEGED VIOLATIONS

Claims 1. Failure to Comply with Oklahoma Department of Environmental Quality Permit #064558703 – Warning Signs

25. The allegations in Paragraphs 1-24 are realleged and incorporated by reference.

26. In accordance with Oklahoma Department of Environmental Quality Permit #064558703, Section F.1.2, signs bearing the legend "DANGER-UNAUTHORIZED PERSONNEL KEEP OUT" or similar language are posted at entrances to the Facility and at access stairways to the kiln floor area. These signs are legible from a distance of at least 25 feet and are visible from all angles of approach to the kiln floors.

27. During the Investigation, the EPA did not observe any warning signs posted at access stairways to the kiln floor. Therefore, Respondent violated Oklahoma Department of Environmental Quality Permit #064558703, Section F.1.2 [40 C.F.R. §§ 264.14 and 270.14(b)(4)].

Claims 2. Failure to Prepare Manifests as Required by the Regulations

28. The allegations in Paragraphs 1-24 are realleged and incorporated by reference.

29. Pursuant to 40 C.F.R. Subpart B § 262.20, a generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or treatment, storage, or disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

30. During the records review portion of the Investigation, EPA determined that Respondent failed to accurately complete Manifest Number 011651510FLE dated 3/29/2018. Using form approved OMB No. 2050-0039, the Respondent's manifest has "CESQG" entered as the Generator ID Number. The Respondent's Generator ID Number is OKD064558703.

31. Respondent violated the requirements of RCRA's manifest requirements, and the regulations promulgated under 40 C.F.R. Subpart B § 262.20 by failing to accurately enter the correct Generator ID Number into its manifest.

Claims 3. Failure to Comply with Oklahoma Department of Environmental Quality Permit #064558703 – Procedures to Prevent Hazards and Training Plan

32. The allegations in Paragraphs 1-24 are realleged and incorporated by reference.

33. Pursuant to Oklahoma Department of Environmental Quality Permit #064558703, Section F.3.5 Arrangements with Local Authorities, the facility should have made arrangements with local authorities as described in the Contingency Plan in Section G. Local authorities were

to include the Sheriff's Department, the Fire Department, the Hospital, and Ambulance Service that provide emergency services during a fire, explosion, or major release of hazardous waste.

34. Under this same section of the permit, all local authorities who enter into an agreement with the Facility receive a copy of the Facility's Contingency Plan and any updates or modifications to the Contingency Plan as they become available.

35. During the Investigation, EPA determined that the Contingency Plan documents failed to comply with the requirements of the Permit to make arrangements with local authorities.

36. Pursuant to Oklahoma Department of Environmental Quality Permit #064558703, Section H.6 Training for Emergency Response, facility personnel are to receive training in implementing the Contingency Plan, both during the initial training and during annual review. Personnel should be familiar with emergency procedures, equipment, and systems and will be able to respond promptly and safely should the need arise.

37. During the Investigation, EPA determined that facility training in implementing the Contingency Plan was inadequate.

38. Respondent violated the requirements in Oklahoma Department of Environmental Quality Permit #064558703, Sections F.3.5 and H.6 by failing to comply with the respective Contingency Plan and training requirements.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

39. 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 Thirty-Three Thousand Thirty-Eight Dollars and Zero Cents. (\$33,038.00).

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

41. 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 may be made via Pay.gov. <https://www.pay.gov/public/search>

For 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

For 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 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

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The case name and docket number (**In the Matter of Tulsa Cement, LLC, Docket No. RCRA-06-2022-0915**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

42. 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

-AND-

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.

43. 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).

44. Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period that the debt is overdue, pursuant to 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 that 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, 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

45. 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

46. 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

47. 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: _____

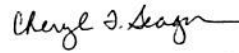
Christopher
Thrower

Digitally signed by Christopher
Thrower
Date: 2022.05.11 18:07:30 -05'00'

Tulsa Cement, LLC

Tulsa Cement, LLC
RCRA-06-2022-0915

FOR THE COMPLAINANT:



Digitally signed by CHERYL
SEAGER
Date: 2022.05.12 17:06:37 -05'00'

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, ou=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1+68001003655804
Date: 2022.05.16.09:51:01 -0500

Thomas Rucki
Regional Judicial Officer

Tulsa Cement, LLC
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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:

clay.jeffrey@epa.gov

Copy via Email to Respondent:

derek.hardberger@mcafeetaft.com

Copy via Email to Regional Hearing Clerk:

Vaughn.Lorena@epa.gov

LORI JACKSON

Digitally signed by LORI JACKSON
DN: cn=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=LORI JACKSON,
0.9.2342.19200300.100.1.1+68001003655539
Date: 2022.05.17 08:10:22 -0500

Office of Regional Counsel