UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	
ALPHA OMEGA RECYCLING INC.	§	
LONGVIEW, TEXAS	§	DOCKET NO. RCRA-R6-2014-0916
	§	
ID NO. TX981514383	§	
	§	
RESPONDENT	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6, ("Complainant") and Alpha Omega Recycling, Inc. ("Alpha Omega Recycling, Inc." or "AORI" herein) hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. STATEMENT OF AUTHORITY

1. This proceeding is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. The requirements of Subtitle C RCRA include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On December 26, 1984, the State of Texas received final authorization for its base RCRA program, and there have been

subsequent authorized revisions to said base program. The Texas Commission on Environmental Quality ("TCEQ") is the designated State Agency responsible for carrying out the Texas RCRA Program. The Director, Compliance Assurance and Enforcement Division, U.S. EPA, Region 6, has been delegated authority to issue actions of this type in the State of Texas.

3. Notice of the commencement of this action has been given to the State of Texas, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. RCRA STATUTORY AND REGULATORY BACKGROUND

4. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (the "HSWA"). RCRA established a comprehensive program to be administered by the Administrator of the EPA regulating the generation, treatment, storage and disposal of hazardous waste. RCRA hazardous waste regulations promulgated by the Administrator are codified as 40 C.F.R. Parts 260-272.

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when he or she determines that the state program is substantially equivalent to the federal program.

6. The State of Texas received final authorization to implement its hazardous waste management program effective December 26, 1984, with multiple program revisions approved by EPA since that time, as provided by 40 C.F.R. § 272.2201.

7. The State of Texas's hazardous waste management program is administered by the Texas Commission on Environmental Quality ("TCEQ") through regulations published as Chapter 335 of Title 30 of the Texas Administrative Code ("Chapter 335").

8. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce the federally-approved state hazardous waste management program, as well as the federal regulations promulgated under the HSWA, by issuing compliance orders assessing a civil penalty for any past or current violation and/or requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA (Sections 3001-3023 of RCRA), 42 U.S.C. §§ 6921-6939e. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 C.F.R. § 19.4, EPA may assess a civil penalty of up to $32,500 per day of violation for a violation occurring between March 15, 2004 and January 12, 2009 and $37,500 per day of violation for a violation occurring after January 12, 2009.

9. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. TCEQ administers Texas's authorized hazardous waste management program through Chapter 335. Therefore, a violation of any requirements of Chapter 335 is a violation of Subtitle C of RCRA.

III. FACTUAL BASIS FOR VIOLATIONS ALLEGED IN THIS COMPLAINT

10. For the purposes of this proceeding, AORI admits the jurisdictional allegations contained in this CAFO and neither admits nor denies the other factual allegations contained in this

CAFO. AORI consents to the assessment of the civil penalty, consents to the conditions specified in the Consent Agreement, and waives any right to contest the allegations or appeal the final order.

11. Alpha Omega Recycling, Inc., is a domestic for-profit corporation licensed on June 6, 1986, to do business in the State of Texas.

12. AORI is a "person" as that term is defined in 30 Texas Administrative Code (TAC) § 335.1, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

13. AORI's registered agent for service is Business Filings Incorporated, 701 Brazos Street, Suite 720, Austin, TX 78701.

14. AORI owns and operates a RCRA permitted Storage Facility located at 315 Whatley Road, Longview, Texas 75604.

15. AORI's place of business described in paragraph 14 above is a "Facility" as defined at 30 TEXAS ADMIN. CODE § 335.1 (*see also* 40 C.F.R. § 260.10).

16. AORI is the "owner" and "operator" of the Facility as those terms are defined at 30 TAC § 335.1 (*see also* 40 C.F.R. § 260.10).

17. AORI identified that it generates greater than 1,000 kg/month (2,200 lbs/month) of:

    a. solid waste which exceeds RCRA characteristic waste toxicity levels for the following: D001, D002, D003, D004, D005, D006, D007, D008, D009, D010, and D011; and

    b. the following listed hazardous waste: F006, and F019.

18. The material identified in paragraph 17 above is a "solid waste" as that term is defined at 30 TEXAS ADMIN. CODE § 335.1, 40 C.F.R. § 261.2, Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

19. "Hazardous Waste" is defined at 30 TEXAS ADMIN. CODE § 335.1 to mean "any solid waste identified or listed as a hazardous waste by the Administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended ."

20. The material identified in paragraph 17 above is a "hazardous waste", as defined in 30 TEXAS ADMIN. CODE § 335.1 (40 C.F.R. § 261.3).

21. AORI is a "generator" of hazardous waste as that term is defined at 30 TEXAS ADMIN. CODE § 335.1 (40 C.F.R. § 260.10).

22. The facility was inspected by EPA on July 20, 2010, October 10, 2010, and July 23, 2012.

23. AORI was issued an information request letter pursuant to Section 3007 of the Act, 42 U.S.C. §6927 ("3007 Information Request") on October 24, 2011. AORI submitted a response to EPA on November 22, 2011.

24. EPA has initiated this enforcement proceeding based on the findings contained in the Compliance Evaluation Inspection reports and the response to the 3007 Information Request.

25. During the July 20, 2010 and October 10, 2010 inspections an EPA representative visually inspected and photographed the following areas at the Facility: Blend Building, Shed Building Container Storage Area, and Process Building Container Storage Area.

26. At the time of the July 20, 2010 and October 10, 2010 inspections, the EPA representative observed listed hazardous waste (F006 and F019) being stored in the Blend Building prior to entry into AORI's recycling process. The amount stored was approximately 28,680 gallons. Representatives of AORI told the EPA representative that in 2009 AORI began using the Blend Building for mixing listed hazardous waste (F006 and F019).
27. At the time of the July 20, 2010 and October 10, 2010 inspections it was noted that AORI accumulated three supersacks of F006 and F019 waste in the Shed Building Container Storage Area. The supersacks were not labeled with the initial date of accumulation. AORI dated the supersacks during the inspection.
28. At the time of the July 20, 2010 and October 10, 2010 inspections it was noted that AORI stored an accumulation of 56,380 gallons of hazardous waste facility wide. AORI stored hazardous waste in the following storage units: Unit 1(Process Building Container Storage Area) – 27, 000 gallons, Unit 2 (Shed Building Container Storage Area) – 700 gallons, and Blend Building – 28,680 gallons. AORI is permitted to store 41,250 gallons of hazardous waste in two units (Process Building Container Storage Area and Shed Building Container Storage Area).
29. AORI was initially issued a RCRA permit by the TCEQ in 1987. AORI is permitted to store hazardous waste in Process Building Container Storage Area (Unit 1) for 29,370 gallons, and Shed Building Container Storage Area (Unit 2) for 11,880. AORI initially notified in July 7, 1986 as a Large Quantity Generator ("LQG"); Treatment, Storage and Disposal ("TSD") facility; and a Transporter. AORI also notified itself as a recipient of

off-site hazardous waste

IV. ALLEGED VIOLATIONS

COUNT I: FAILURE TO MODIFY PERMIT FOR STORAGE OF LISTED HAZARDOUS WASTE IN BLEND BUILDING, IN VIOLATION OF TCEQ PERMIT 50203 SECTION II.A. (30 TEXAS ADMIN. CODE §305.62)[40 CFR 270.41]

29. Paragraphs 1 through 29 are hereby incorporated by reference.

30. Pursuant to TCEQ Permit 5023 Section II.A., all facility units and operational methods are subject to the terms and conditions of this permit and TCEQ rules. Prior to constructing or operating any facility units in a manner which differs from either the related plans and specifications contained in the permit application or the limitations, terms or conditions of this permit, the permittee must comply with the TCEQ permit amendment/modification rules as provided in 30 TAC Section 305.62.

31. AORI was blending and batching listed hazardous waste (F006 and F019) prior to recycling in the Blend Building which is considered to be a form of treatment.

32. The listed hazardous waste (F006 and F019) are feedstocks for AORI's recycling process.

33. Storage of hazardous waste in the Blending building was a practice of AORI from 2009-2010.

34. AORI stored 28,680 gallons of listed hazardous waste in the Blend building. The Blend building is not a permitted unit for storage of hazardous waste.

35. AORI begin using the Blend building for mixing listed hazardous waste (F006 and F019) in July 2009.

36. Pursuant to TCEQ Permit 5023 Section VII.A.2, the permitee shall submit a written request for a permit modification or amendment to authorize a change in the approved Closure Plan(s), in accordance with 40 CFR 264.112(c). The written request shall include a copy of the amended Closure Plan(s) for approval by the Executive Director.

37. Pursuant to TCEQ Permit 5023 Section VII.B.1, the permittee shall provide financial assurance for closure of all existing permitted units covered by this permit in an amount not less than $180,640 (adjusted for the rate of inflation in 2007 as shown on Table VII.E.1 – Permitted Unit Closure Cost Summary). Financial assurance shall be secured and maintained in compliance with 30 TAC Chapter 37, Subchapter P; and 335.179.

38. Because AORI was storing listed hazardous waste in an unpermitted storage unit (Blend building), AORI is required to comply with paragraph 37 and 38 by submitting a closure document, a post-closure document and proof of adequate financial assurance.

39. The AORI facility was inspected by EPA Headquarters accompanied by Region 6 on July 23-24, 2012.

40. During the inspection, it was observed that AORI's financial assurance was deficient and it did not include coverage for the unpermitted hazardous waste storage unit (Blend Building).

41. EPA hereby alleges that AORI has violated the conditions set forth at Section II. A. of TCEQ Permit 50203, requiring compliance with 30 Texas Admin. Code §305.62

(see also 40 CFR 270.41) through its failure to modify the existing permit to include treatment and storage of listed hazardous waste in the Blend building.

COUNT II: FAILURE TO MEET CONDITION FOR "STORAGE PERMIT" EXEMPTIONS BY NOT LABELING SUPERSACKS IN CONTAINER STORAGE AREA WITH ACCUMULATION DATES, IN VIOLATION OF TCEQ PERMIT 50203 SECTION IV.B.5.A [(30 TEXAS ADMIN. CODE §335.69) 40 CFR 262.34(a)(2)]

42. Paragraphs 1 through 41 are hereby incorporated by reference.

43. Pursuant to TCEQ Permit 50203 Section IV.B.5.a, the permittee may store wastes restricted under 40 C.F.R. § 268 solely for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal provided that it meets the requirements of 40 C.F.R. § 268.50(a)(2) including, but not limited to the following: a) clearly marking each container to identify its contents and the date each period of accumulation begins.

44. AORI did not label three supersacks of listed hazardous waste (F006 and F019) with the initial date of accumulations stored in the Shed Building Container Storage Area.

45. EPA alleges that AORI has thus violated the conditions set forth in Section IV.B.5.a of TCEQ Permit 50203 which requires compliance with the permit storage requirements set forth at 30 TEXAS ADMIN. CODE §335.69 (*see also* 40 CFR 262.34(a)(2)).

COUNT III: FAILURE TO MEET STORAGE CAPACITY REQUIREMENTS, IN VIOLATION OF TCEQ PERMIT 50203 SECTION V.B.1)(30 TEXAS ADMIN. CODE §335.602(b)(3)[40 CFR 270.30(a)])

46. Paragraphs 1 through 45 are hereby incorporated by reference.

47. Pursuant to TCEQ permit 50203 Section V.B.1, the permitee is authorized to operate the facility container storage areas for storage subject to the limitation contained herein as shown in Table V.B.1:

    i. Storage capacity in Permit Unit 1 (Process Building container Storage Area) is 27,370 gallons.

    ii. Storage capacity in Permit Unit 2 (Shed Building Container Storage Area) is 11,880 gallons.

    iii. Total permitted amount of hazardous waste stored at the AORI facility is 41,250 gallons.

48. In the Compliance Evaluation Inspection report dated July 20-22, 2010, it was noted that AORI stored listed hazardous waste in the total amount of 56,380 gallons and on October 10, 2012, AORI stored 45,000 gallons of listed hazardous waste in an unpermitted storage unit (e.g. the Blend Building). AORI exceeded the storage capacity in the amount of 15,130 gallons.

49. Through its failure to comply with permit storage requirements, EPA alleges that AORI violated the conditions set forth at Section V.B.1 of TCEQ Permit 50203, which requires compliance with 30 TEXAS ADMIN. CODE §335.602(b)(3) (*see also* 40 CFR 270.30(a)).

V. COMPLIANCE ORDER

50. Pursuant to 42 U.S.C. § 6928, AORI is hereby ORDERED to take the following actions and provide evidence of compliance within thirty (30) days of the effective date of this CAFO:

    a. AORI shall provide documentation, certified in the manner listed in paragraph 51, demonstrating that no hazardous waste is stored in the Blend Building.

51. In all instances in which this CAFO requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official":

> I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a "responsible official" of AORI means a person with the authority to bind AORI as to the truth, accuracy, and completeness of all certified information.

52. All documents required under this CAFO shall be sent to the following persons:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
Attn: Adolphus Talton

53. If AORI fails to take the required actions within times specified in this Compliance

Order, AORI may be liable for additional penalties of up to $37,500.00 for each day of continued noncompliance, and be subject to further enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), including injunction, as may be necessary to achieve compliance with Subtitle C of RCRA.

54. Notwithstanding any other provision of this Complaint, an enforcement action may be brought against AORI pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility presents an imminent and substantial endangerment to human health or the environment.

VI. CIVIL PENALTY

55. Section 3008 of RCRA authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($37,500) per day for each violation of RCRA and the regulations promulgated there under. The Complainant proposes to assess a civil penalty against AORI of Forty Thousand Dollars and Zero Cents ($40,000.00). The computation of this amount is based upon the seriousness of the violations, the RCRA Civil Penalty Policy, and other factors identified by statute, regulation, and EPA policy. Economic benefit, if any, was identified using the BEN computer model.

56. AORI shall pay the assessed penalty in four equal payments of Ten Thousand Dollars ($10,000.00) each. The first payment is due thirty (30) days after the effective date of this CAFO, with subsequent payments due 120 days after the effective date, 210 days after the effective date, and 300 days after the effective date. AORI shall pay the

assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular 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, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: The above referenced RCRA Docket number, RCRA-R6-2014-0916, shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference AORI's name and address, the case name, and

docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference AORI's name and address, the case name, and docket number of the CAFO. AORI shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

AORI's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

57. AORI agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty to be paid to the United States Treasurer pursuant to this CAFO.

58. If AORI fails to timely submit the first, or any subsequent payment, in the manner prescribed above, AORI may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

59. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 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 costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 CFR § 13.11(b).

60. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first 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 per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 CFR § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

VII. RETENTION OF ENFORCEMENT RIGHTS

61. The U.S. EPA does not waive any rights or remedies available to EPA for any other violations by AORI of federal or state laws, regulations, permit conditions, or other requirements. Nothing in this CAFO shall relieve AORI of the duty to comply with all applicable provisions of the Resource Conservation and Recovery Act (RCRA). Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at, or from AORI's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

VIII. COSTS

62. Each party shall bear its own costs and attorney's fees. Furthermore, AORI specifically waives its right to seek reimbursement of its costs or attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

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

FOR THE RESPONDENT:

Date: 9/12/14

Alpha Omega Recycling, Inc.

FOR THE COMPLAINANT:

Date: 09/22/2014

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement 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 in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect AORI'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. AORI is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 9/24/14

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint, Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: #7014 0150 0000 2453 3849

Business Filings Incorporated
Registered Agent for Alpha Omega Recycling, Inc.
701 Brazos Street, Suite 720
Austin, Texas 78701

Date: 9-25-2014

Lori Jackson
U.S. EPA, Region 6
Dallas, Texas