

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2015 JAN -5 PM 3: 30
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

PRO PLASTICS INC.,
9530 Baythorne Drive
Houston, Texas 77041

RESPONDENT
(No EPA ID NUMBER)

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2015-0905

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, Pro Plastics, Inc., ("Pro Plastics" or "Respondent"), and concerns the facility located at 9530 Baythorne Drive, Houston, Texas 77041 (the "Facility").
2. Notice 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).
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.
4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO.
5. The CAFO resolves only those violations which are alleged herein.

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6. Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

7. This CAFO is issued by the EPA pursuant to Section 3008(a) 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 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 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, 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 Texas corporation, authorized to do business in the State of Texas on May 1, 1986 and is located at 9530 Baythorne Drive, Houston, Texas 77041.
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. Respondent's Registered Agent for service in the State of Texas is Mr. Doug Ferrell, located at 110 Marrakech Ct., Bellaire, Texas 77401-5122.

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12. Pro Plastics owns and operates a Facility that manufactures low density and/or high density polyethylene and polypropylene bags, sheets, and banners.
13. During the period of January 2014 through August 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of Pro Plastics’ performance as a generator of hazardous waste.
14. In May 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities (“TSDs”) and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained additional information on Pro Plastics’ hazardous wastes that it offered for transport and treatment (“Responses”).
15. From the Investigation and review of the Responses, EPA alleges that Pro Plastics, at a minimum, generated and offered for transport and treatment the following hazardous waste, during 2011 through 2014:
 - i. 2012- Seventeen drums (each in shipments averaging greater than 100 kg) containing a total of 2,799 kg of hazardous waste, having the hazardous waste characteristic of ignitability (D001);
 - ii. 2013- Twenty-two drums (each in shipments averaging greater than 100 kg) containing a total of 3,582 kg of hazardous waste, having the hazardous waste characteristic of ignitability (D001); and
 - iii. 2014 – Eleven drums (each in shipments averaging greater than 100 kg) containing a total of 1,811 kg of hazardous waste, having the hazardous waste characteristic of ignitability (D001).

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16. The waste streams identified in Paragraph 15 are hazardous waste as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.24, 261.31 and 261.33].
17. From the Investigation and review of the Responses, EPA alleges that during the period of 2011 through 2014, Pro Plastics generated, at a minimum, the hazardous waste streams identified in Paragraph 15 in quantities that exceeded the threshold amount of 100 kilograms of hazardous waste per month, which qualified Pro Plastics, at minimum, for the small quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262], for the periods that such wastes remained onsite.
18. From the Investigation and review of the Responses, EPA alleges that Pro Plastics is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
19. As a generator of hazardous waste, Pro Plastics is 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, Chapter 335, Subchapter C, [40 C.F.R Part 262].

Claim i. Notification Requirements

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
21. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a conditionally exempt small quantity generator (“CESQG”) in a calendar month if he generates no more than 100 kg of hazardous waste and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5 (f), (g), and (j)].

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22. From the Investigation and review of the Responses, EPA alleges that Pro Plastics has not and does not operate as a CESQG.
23. From the Investigation and review of the Responses, EPA alleges that Pro Plastics, at a minimum, has been and is a small quantity generator ("SQG").
24. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
25. From the Investigation and review of the Responses, EPA alleges that Pro Plastics did not file with the Administrator or the authorized State a notification of its hazardous waste activities for, at a minimum, the period of 2011 through 2013 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to apply and obtain a Generator Identification Number

26. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.
27. Pursuant to 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)], a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.
28. From the Investigation and review of the Responses, EPA alleges that Pro Plastics did not apply to the Administrator and received an EPA identification number.

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29. From the Investigation and review of the Responses, at all times relevant to this CAFO, EPA alleges that Pro Plastic did not have an EPA identification number.
30. From the investigation and review of the Response, EPA alleges that at all relevant times to the CAFO, Pro Plastics treated, stored, disposed of, and/or offered for transportation hazardous waste without first receiving an EPA identification number from the Administrator in violation of 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)].

IV.
COMPLIANCE ORDER

31. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered, and upon the effective date of this Order, not to treat, store, dispose of, transport, or offer for transportation, hazardous waste without first receiving an EPA identification number from the State of Texas.
32. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of this Order, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOP”) to ensure that Pro Plastics is operating 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;

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(c) reporting, transporting, and disposing of hazardous waste; (d) preparing the 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 and the requirements of Paragraph 33 above 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.

33. 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 Pro Plastics 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. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

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V.
TERMS OF SETTLEMENT

i. Penalty Provisions

34. 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 Eighty-One Thousand Two Hundred and Fifty Dollars (\$81,250.00).

35. The penalty shall be paid within ten (10) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

36. The following are Respondent's options for transmitting the penalties:

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, MO 63197-9000

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Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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 Pro Plastics, Inc., Docket No. RCRA-06-2015-0905) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

37. 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
1445 Ross Avenue
Dallas, Texas 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

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

38. 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 process 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 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 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.

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ii. Cost

39. 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.

iii. Termination and Satisfaction

40. 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 so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 33. 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.

iv Effective Date of Settlement

41. 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: 12/15/2014


Pro Plastics Inc.

FOR THE COMPLAINANT:

Date: 12/18/2014


John Blevins
Director
Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 1/6/15



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7000 0520 0022 2558 5377 and 7000 0520 0022 2558 5384, Respectively

Mr. Doug Ferrell
Registered Agent for Service
110 Marrakech Ct
Bellaire, TX 77401-5122

Ms. Emily Rogacion
Pro Plastics Inc.
9530 Baythorne Drive
Houston, TX 77041


Ms. Lori Jackson
Paralegal