

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 AUG -3 AM 11:19
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

NUSTAR LOGISTICS, L.P.

RESPONDENT

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CONSENT AGREEMENT
AND FINAL ORDER
Docket No. RCRA-06-2016-0922

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, NuStar Logistics, L.P. (“NuStar” or “Respondent”). The facilities that are covered by this CAFO include:

- i. The facility located at 222 West Ingle Road in Edinburg, Texas 78541 (“Edinburg Facility”);
- ii. The facility located at 13380 S. Unitec Drive in Laredo, Texas 78045 (“Laredo Facility”); and
- iii. The facility located at 26306 F.M. 106 in Harlingen, Texas 78550 (“Harlingen 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.

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 the CAFO.

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

6. Respondent consents to the following: issuance of the 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 22.13(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 Delaware partnership, registered to do business in Texas on June 23, 2000.

10. Respondent's registered agent for service in the State of Texas is C T Corporation System with the registered office street address at 1999 Bryan Street, Suite 900 in Dallas, Texas 75201.

11. 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).

12. Respondent is an "owner" or "operator" of the Edinburg Facility, Laredo Facility, and Harlingen Facility within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. §260.10).

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

14. As a generator of hazardous waste, Respondent 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 § 335(C) and/or (F) (40 C.F.R. §§ 262 and/or 270).

15. Between October 2015 and March 2016, EPA conducted an investigation and record review ("Investigation") of Respondent's performance as a hazardous waste generator.

16. During the Investigation, EPA discovered that Respondent's Edinburg Facility, at a minimum, generated and offered for transport and treatment in 2013, 31,234 kilograms of hazardous waste with the hazardous waste characteristics for ignitability (D001) and benzene (D018).

17. During the Investigation, EPA discovered that Respondent's Laredo Facility, at a minimum, generated and offered for transport and treatment in 2014, 21,999 kilograms of hazardous waste with the hazardous waste characteristics for ignitability (D001) and benzene (D018).

18. During the Investigation, EPA discovered that Respondent's Harlingen Facility, at a minimum, generated and offered for transport and treatment in 2011, 3211 kilograms of hazardous waste, including a shipment indicating generation of over 1000 kilograms per month, having the hazardous waste characteristics for ignitability (D001) and benzene (D018).

19. The waste streams identified in Paragraph 16, 17, and 18 are hazardous waste as defined in 30 TEX. ADMIN. CODE § 335.1(69), (40 C.F.R. § 261.3).

20. From the Investigation, EPA determined that in 2013, Respondent's Edinburg Facility failed to comply on three separate occasions with the manifest requirements found at 40 C.F.R. § 262, Subpart B.

21. From the Investigation, EPA determined that in 2014, Respondent's Laredo Facility generated, at a minimum, the hazardous waste streams identified in Paragraph 17 in quantities that exceeded the threshold amount of 1000 kilograms of hazardous waste per month, which qualified Respondent for the large quantity generator (LQG) status under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).

22. From the Investigation, EPA determined that in 2011, Respondent's Harlingen Facility generated, at a minimum, the hazardous waste streams identified in Paragraph 18 in quantities that exceeded the threshold amount of 1000 kilograms of hazardous waste per month, which qualified Respondent for the LQG status under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).

23. From the Investigation, EPA determined that all of the Respondent's facilities mentioned above, were registered as conditionally exempt small quantity generators ("CESQG") for their respective years in violation. Respondent undertook efforts to comply with RCRA, and its

accompanying regulations, at the facilities, but exceeded the CESQG thresholds due to episodic generation of hazardous waste.

24. From the Investigation, EPA determined that Respondent violated the requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), by failing to comply with the RCRA notification requirements.

25. From the Investigation, EPA determined that Respondent violated the regulations promulgated at 40 C.F.R. § 262.34(a)(4) for failing to meet various requirements of a LQG.

26. From the Investigation, EPA determined that Respondent violated the requirements of 40 C.F.R. § 262.41 by failing to submit a biennial report for the Facility operating as a LQG.

Edinburg Facility

Claim 1: Manifest Violations

27. Complainant hereby restates and incorporates by reference Paragraphs 1 through 26.

28. Pursuant to 40 C.F.R. § 262.20(a)(1), a generator who offers for transport hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22 according to the instructions found within the Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their Instructions).

29. From the Investigation, EPA determined that in 2013, Respondent sent three shipments of hazardous waste from its Edinburg facility with deficiencies in the accompanying manifests.

30. Respondent failed to adequately complete three manifests, EPA Form 8700-22, according to the instructions found within the Appendix to Part 262, in violation of 40 C.F.R. 262.20(a)(1).

Laredo Facility

Claim 2: Notification Requirements

31. Complainant hereby restates and incorporates by reference Paragraphs 1 through 30.

32. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed 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.

33. In 2014, the Laredo Facility was registered as a CESQG.

34. From the Investigation, EPA determined that Respondent, in portions of 2014, generated waste at the Laredo Facility at the quantities of a LQG.

35. At the time of the Investigation, Respondent had not filed with the Administrator or with the authorized State, a notification of hazardous waste activities as a LQG in 2014.

36. Respondent failed to file the required notification of hazardous waste activities for the Laredo Facility in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 3. Failure to Operate Within Proper Generator Status

37. Complainant hereby restates and incorporates by reference Paragraphs 1 through 36.

38. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

39. Pursuant to 30 TEX. ADMIN. CODE §§ 335.78(a) and (b) (40 C.F.R. §§ 261.5(a) and (b)), a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5).

40. From the Investigation, EPA determined that Respondent, for portions of the relevant year, operated as a LQG at the Laredo Facility and not as a CESQG.

41. For the portions of the affected year while operating as a LQG, Respondent failed to comply with various sections of the applicable LQG requirements under 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

42. Respondent failed to operate within its designated status at the Laredo Facility in violation of 30 TEX. ADMIN. CODE § 335, subchapters (C) and/or (F) (40 C.F.R. § 262 and/or 270).

Harlingen Facility

Claim 4: Notification Requirements

43. Complainant hereby restates and incorporates by reference Paragraphs 1 through 42.

44. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), any person generating a characteristic or listed 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.

45. In 2011, the Harlingen Facility was registered as a CESQG.

46. From the Investigation, EPA determined that in portions of 2011, Respondent generated waste at the Harlingen Facility at quantities of a LQG.

47. At the time of the Investigation, Respondent had not filed with the Administrator or with the authorized State, a notification of hazardous waste activities as a LQG during 2011.

48. Respondent failed to file the required notification of hazardous waste activities for the Harlingen Facility in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 5. Failure to Operate Within Proper Generator Status

49. Complainant hereby restates and incorporates by reference Paragraphs 1 through 48.

50. A generator of hazardous waste is subject to multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

51. Pursuant to 30 TEX. ADMIN. CODE §§ 335.78(a) and (b) (40 C.F.R. §§ 261.5(a), (b)), a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5).

52. From the Investigation, EPA determined that Respondent, for portions of the relevant year, operated as a LQG at the Harlingen Facility and not as a CESQG.

53. For the portion of the affected year while operating as a LQG, Respondent failed to comply with various sections of the applicable LQG requirements under 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

54. Respondent failed to operate within its designated status at the Harlingen Facility in violation of 30 TEX. ADMIN. CODE § 335, subchapters (C) and/or (F) (40 C.F.R. § 262 and/or 270).

Claim 6. Failure to file a Biennial Report

55. The Complainant hereby restates and incorporates by reference Paragraphs 1 through 54.

56. Pursuant to 30 TEX. ADMIN. CODE § 335.71 (40 C.F.R. § 262.41), a large quantity generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA's Regional Administrator, and to the TCEQ, by March 1 of each even-numbered year for the previous year, in addition to the annual reporting, which is required under 30 TEX. ADMIN. CODE § 335.9.

57. From the Investigation, EPA determined that Respondent was a LQG for portions of calendar year 2011, and failed to submit an Annual or Biennial Report.

58. For the 2011 reporting year, the EPA and/or the TCEQ did not receive an Annual or Biennial Report that Respondent was required to file for its Harlingen Facility in violation of 30 TEX. ADMIN. CODE §§ 335.9 and 335.71 (40 C.F.R. § 262.41).

IV. COMPLIANCE ORDER

59. Pursuant to RCRA § 3008(a), 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 that it has filed a subsequent "Notification of Regulated Waste Activity: EPA Form 8700-12" to reflect accurate waste generation for each of the facilities covered by this CAFO.
- B. Respondent shall certify that it has proper training in place to ensure that EPA Forms 8700-22 (hazardous waste manifest) are completed properly.
- C. Respondent shall certify that it is currently in compliance with all of the applicable requirements for its designated generator status for the facilities covered by this CAFO.
- D. Respondent shall certify that it has filed its biennial/annual report for the facilities covered by this CAFO, when and where applicable.

60. 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 NuStar Logistics, L.P., 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:

Tripti Thapa
U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance I Section (6EN-H1)
1445 Ross Avenue
Dallas, Texas 75202-2733

V. TERMS OF SETTLEMENT

A. Penalty Provisions

61. 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 **\$56,658.00**.

62. 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.

63. 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 NuStar Logistics, L.P., Docket No. RCRA-06-2016-0922**) shall be documented on or within your chosen method of payment to ensure proper credit.

64. 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, TX 75202-2733

Mark Potts, Branch Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Tripti Thapa

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

65. 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 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

66. 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

67. 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 also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 59. 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.


D. Effective Date of Settlement

68. 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: 26 July 2016



Vice President
NuStar Logistics, L.P.
By NuStar GP, Inc., its general partner

FOR THE COMPLAINANT:

Date: 8.2.16

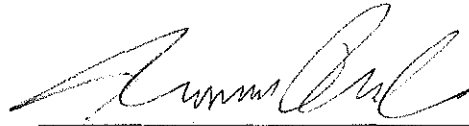


John Blevins
Director
Compliance Assurance and Enforcement Division

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.

Date: 8/3/16



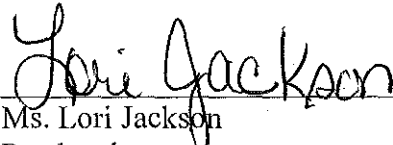
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of August, 2016, 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 below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7009 2820 0004 2109 1632

Michael Dillinger
Senior Counsel
NuStar Logistics, L.P.
19003 IH-10 West
San Antonio, Texas 78257



Ms. Lori Jackson
Paralegal