

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

21 MAY 11 PH 3: 36
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

New Industries, LLC

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0984

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, New Industries, LLC ("Respondent" or "New Industries") and concerns the facility located at 6032 Railroad Avenue, Morgan City, LA 70380 ("the New Industries Facility").
2. Notice of this action has been given to the State of Louisiana, 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, the Respondent neither admits nor denies the specific factual allegations 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 or 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. 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, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

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 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 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

9. Respondent is a Corporation authorized to do business in the State of Louisiana.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code (LAC) LAC 33:V.109¹,

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272.951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.

[40 C.F.R. § 260.10].

11. Respondent owns or operates the New Industries Facility.
12. The New Industries Facility provides fabrication services to oil and gas industries.
13. During the period from June through July 2020, EPA conducted a RCRA record review of the New Industries Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
14. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, certain hazardous wastes which were listed on the manifests as having the following waste codes:
 - A. Characteristic of Ignitability: D001 (Ignitability);
 - B. Characteristic for multiple toxicity waste: D007 (Chromium); D008 (Lead); D035 (Methyl ethyl ketone); and
 - C. F003 (Spent Non-Halogenated Solvent); F005 (Spent Non-Halogenated Solvent).
15. The New Industries Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.10].
16. The waste stream identified in Paragraph 14 is "hazardous waste" as defined in LAC 33: V.4901.B, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
17. From the Investigation, EPA determined that Respondent generated the hazardous waste stream identified in Paragraph 14 in quantities that exceeded the threshold amount of 100 kg/mo for a Conditionally Exempt Small Quantity Generator of hazardous waste under LAC 33:V.108, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
18. During the Investigation, EPA determined that the New Industries Facility had declared its generator status as a Conditionally Exempt Small Quantity Generator on or about March 3,

1999 and filed for a change in generator status to Small Quantity Generator on October 18, 2019.

19. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33:V.109, [40 C.F.R. § 260.10].
20. 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 in Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R Part 262 and 270].
21. The EPA conferred with Respondent regarding the violations alleged herein and provided opportunities for Respondent to submit additional information or materials, which established that the Respondent acted in good faith and that the Respondent complied with the vast majority of applicable regulatory requirements.

IV. VIOLATIONS

Claim. 1 Notification Requirements

22. The allegations in Paragraphs 1-21 are re-alleged and incorporated herein by reference.
23. Pursuant to LAC 33:V.1105.B, [42 U.S.C. § 6930(a)], a generator must notify the Office of Environmental Services within seven days if any of the information submitted in the application for the identification number changes.
24. As identified in Paragraph 17, Respondent generated hazardous waste above the threshold amount of a Conditionally Exempt Small Quantity Generator during 2016, 2018, and 2019.
25. Respondent did not file with EPA or Louisiana Office of Environmental Services an updated notification of its hazardous waste activities as a Small Quantity Generator at the New

Industries Facility during 2016, 2018 and 2019 until on or about October 18, 2019, in violation of LAC 33:V.1105.B, [42 U.S.C. § 6930(a)].

Claim. 2 Failure to Operate within Its Stated Generator Status

26. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
27. Pursuant to LAC 33:V.108.B, [40 C.F.R. § 261.5(b)], a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Chapters 3-37, 41, 43, and 53, except for LAC 33:V.3105, Table 1, provided the generator complies with the requirements of Subsections F, G, and J of this Section.
28. During portions of 2016, 2018 and 2019, the New Industries Facility exceeded their declared Conditionally Exempt Small Quantity Generator status and operated in some instances as a Small Quantity Generator in violation of one or more of the requirements for Small Quantity Generators under LAC 33:V.1109.E.7.a, [40 C.F.R. § 262.34(d)].

V. COMPLIANCE ORDER

29. 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 that it has assessed all its solid waste streams at the New Industries Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the New Industries Facility 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; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its 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 for the New Industries Facility 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.
 - D. Respondent shall certify the cost of implementation of injunctive relief.
30. 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 the Respondent 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. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Tripti Thapa
Dallas, Texas 75270-2102

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

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

31. 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 twenty-six thousand dollars (\$26,000.00).

32. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
33. 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, Missouri 63197-9000

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 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 New Industries, LLC., Docket No. RCRA-06-2020-0984**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

34. The Respondent shall send a simultaneous notice of such payment to the following:

New Industries, LLC.
RCRA-06-2020-0984

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

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

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

35. 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).
36. 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 (6%) 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.

B. Costs

37. 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

38. 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 V (Compliance Order). 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.

D. Effective Date of Settlement

39. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

New Industries, LLC.
RCRA-06-2020-0984

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

FOR THE RESPONDENT:

New Industries, LLC

William C.
New

Digitally signed by William C. New
DN: cn=William C. New, o=New
Industries, LLC, ou,
email=Bill.New@newindustries.com, c=US
Date: 2021.05.10 16:33:44 -0500'

By: William C. New, Manager

FOR THE COMPLAINANT:

Cheryl T. Seager

Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=CHERYL SEAGER,
o 92942.19200300.100.1.1+68001003651793
Date: 2021.05.11 12:18:15 -0500'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance 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.

Rucki,
Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.05.11 14:10:22 -05'00'

Thomas Rucki
Regional Judicial Officer

New Industries, LLC.
RCRA-06-2020-0984

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 addressees:

Copy via Email to Complainant:

pittman.lawrence@epa.gov

Copy via Email to Respondent:

cody.rink@newindustries.com

Pittman,
Lawrence

Digitally signed by Pittman, Lawrence
DN: cn=Pittman, Lawrence,
email=Pittman.Lawrence@epa.gov
Date: 2021.05.12 11:11:34 -05'00'

EPA Region 6

Electronic service was agreed to by the parties in lieu of service by certified mail to the following:

New Industries, LLC.
Attn: John B. King at jbk@bswllp.com