

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

CHEMQUEST CHEMICALS,
LLC

PASADENA, TEXAS.

RESPONDENT

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CONSENT AGREEMENT AND
FINAL ORDER

DOCKET NO. RCRA-06-2017-0944

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is entered into by the United States Environmental Protection Agency, Region 6 ("EPA") and ChemQuest Chemicals, LLC ("ChemQuest" or "Respondent"), headquartered at 9730 Bay Area Boulevard, Pasadena, Texas, 77507-1866.
2. Notice of this action has been given to the State of Texas, under the Resource Conservation and Recovery Act (RCRA) § 3008(a) (2), 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 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 this CAFO.
5. This CAFO resolves only those violations alleged in this document.

6. The 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 EPA pursuant to RCRA § 3008(a), 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) -(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 corporation formed under the laws of the State of Texas and owns and operates a custom chemical blending and processing facility located at 9730 Bay Area Boulevard, Pasadena, Texas, 77507- 1866 (“the Facility” or “Facility”).

10. Respondent is a “person” within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 T.A.C § 3.2(25) [40 C.F.R. § 260.10]. The facility is a “facility” within the meaning of 30 T.A.C § 335.1(61) [40 C.F.R. § 260.10].

11. Respondent is a “generator” of “hazardous wastes” at its facilities, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 T.A.C § 335.1(67), (73) [40 C.F.R. § 260.10].

12. As a generator of hazardous waste, Respondent is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 T.A.C § 335(C), [40 C.F.R. §§ 262].

13. The primary business at the Respondent's facilities is chemical blending and process related services.

14. From October 2016 through July 2017, EPA conducted an investigation and records review of Respondent's performance as a generator of hazardous waste.

15. The investigation showed that Respondent, from 2014 to 2017, at minimum, generated and offered for transport hazardous waste with the hazardous characteristics for D002 (Corrosivity), P120 (Vanadium Pentoxide), D018(Benzene), P075 Nicotine.

16. EPA's investigation revealed evidence that Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. §§ 261 and 262 by failing to comply with the RCRA notification requirements, managing waste without an EPA ID number, failing to operate within its stated generator status, and failing to submit its biennial report.

Claim 1: Failure to File Initial or Subsequent 3010 Notification and Failure to Obtain an EPA ID Number.

17. The allegations in Paragraphs 1-16 are re-alleged and incorporated herein by reference.

18. Pursuant to Section 3010(a) of RCRA, 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 that the location and general description of such activity and the identified or listed hazardous wastes handled by such person ("Section 3010

Notification”) unless it is a conditionally exempt small quantity generator (“CESQG”). A CESQG generates less than 100 kg of hazardous in a calendar month.

19. On several occasions from 2014 to 2017, Respondent’s Facility produced hazardous waste in excess of 1,000kg in a single month, making the facility a large quantity generator (“LQG”).

20. During those years, Respondent failed to file a Section 3010 Notification for the Facility.

21. Respondent’s failure to file a Section 3010 Notification(s) constitutes a violation of 30 T.A.C. § 335.6(c) [42 U.S.C. § 6930(a)].

22. 30 T.A.C. § 335.63(a) [40 C.F.R. § 262.12(a) (2016)] prohibits generators from treating, storing, disposing of, transporting, or offering for transport hazardous waste without having received an EPA identification number from the Administrator.

23. During the years 2014 to 2017, Respondent offered hazardous waste for transport and disposal at the Facility.

24. Respondent failed to obtain an EPA ID number during those years at the Facility.

25. Respondent’s failure to obtain an EPA ID number before offering hazardous waste for transport and disposal constitutes a violation of 30 T.A.C. § 335.63(a) [40 C.F.R. § 262.12(a) (2016)].

Claim 2: Failure to Meet the Requirements of a Large Quantity Generator

26. The allegations in Paragraphs 1-16 are re-alleged and incorporated herein by reference.

27. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 T.A.C Chapter 335, Subchapters (C)-(H), (O) [40 C.F.R. Part § 262-68, 270].

28. Pursuant to 30 T.A.C §§ 335.78(a) and (b) [40 C.F.R. §§ 261.5(a), (b) (2016)], a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 T.A.C § 335.78 [40 C.F.R. § 261.5 (2016)].

29. On several occasions from 2014 to 2017, the Facility generated hazardous waste in excess of 1,000 kilograms in a single month, making Respondent a LQG.

30. During these years, while operating as a LQG, Respondent failed to provide adequate training to its employees, failed to document adequate emergency preparedness, and failed to provide an adequate contingency plan, as required in

30 T.A.C Chapter 335.69(a)(4) [40 C. F. R. § 262.34(a)(4) (2016), 40 C.F.R. Part 265, Subparts C and D].

31. Respondent's failure to meet the requirements of their generator status (LQG) from 2014 to 2017 at the Facility constitutes a violation of 30 T.A.C § 335.69(a)(4) [40 C.F.R. § 262.34(a)(4) (2016)].

Claim 3: Failure to make Hazardous Waste Determination

32. The allegations in Paragraphs 1-16 are re-alleged and incorporated herein by reference.

33. Pursuant to 30 T.A.C. § 335.62, (40 C.F.R. § 262.11) Respondent, as a generator of solid waste, must determine whether such waste is a hazardous waste either by applying the required test method or by applying its knowledge of the process generating the waste, taking into account the materials or the process.

34. Based on the EPA's knowledge of Respondent's activities at the facility and the waste profile of the waste streams, from 2014 to 2017, Respondent failed to make adequate and complete hazardous waste determination on its (D002) corrosive waste streams.

IV. COMPLIANCE ORDER

35. 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 assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented procedures to ensure that Respondent's Facility is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (i) managing hazardous wastes; and (ii) reporting, transporting, and disposing of hazardous waste;
- b. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification requirements for the Facility; and
- c. Respondent shall certify that it has adequate contingency plans, Emergency Procedures and proper training for managing, reporting, transporting and disposing of hazardous waste for the Facility in accordance with 30 T.A.C § 335.69(a)(4) [40 C.F.R. § 262.34(a)(4) (2016)].

36. 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 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 the CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Waste Compliance 1 Section (6EN-H1)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Tripti Thapa

V. TERMS OF SETTLEMENT

A. Penalty Provisions

37. 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 fifty-three thousand dollars and zero cents (\$53,000.00).

38. The penalty shall be paid in five equal quarterly payments starting thirty days after the effective date of this CAFO. Hence, the first payment of \$10,600 dollars will be

due within 30 days of the effective date of the CAFO, the second payment within 120 days of the effective date, and every 90 days thereafter for three additional quarters.

39. 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 ChemQuest Chemicals, LLC,**

Docket No. RCRA-06-2017-0944) shall be documented on or within your chosen

method of payment to ensure proper credit.

40. 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

Chief
Waste Compliance I (6EN-H1)
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.

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. 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. 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

41. 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

42. This CAFO shall be satisfied and terminate upon (i) submission of Respondent's certifications in Section IV of this CAFO, and (ii) Respondent's full payment of the civil penalty in accordance with Section V of this CAFO.

D. Effective Date of Settlement

43. 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: 9/14/17



ChemQuest Chemicals, LLC

FOR EPA REGION 6:

Date: 9/20/17



Cheryl Seager
Director
Compliance Assurance and Enforcement
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.

Date: _____

9/26/17



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2017, 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 70073020000015228571

Mr. Mathew R. Ring, Esquire
Taft, Stettinius & Hollister, LLP
425 Walnut Street
Suite 1800
Cincinnati, Ohio 45202-3957

Sandra Hardy
Paralegal