

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

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EPA REGION VI

IN THE MATTER OF: §
§
RENTTECH NITROGEN § Consent Agreement and Final Order
PASADENA, LLC § USEPA Docket No. RCRA-06-2014-0909
Pasadena, Texas 77506 §
§
RESPONDENT §
EPA ID TXD099387474 §

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, Rentech Nitrogen Pasadena, LLC (“Rentech” or “Respondent”), and concerns the facility located at 2001 Jackson Road, Pasadena, Texas 77506 (the “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, the Respondent neither admits nor denies the factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. The 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 which 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.

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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 the EPA pursuant to Section 3008(a) of 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 Delaware limited liability company authorized to do business in the State of Texas, as of December 29, 2008 and continuing to the present.
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 designated registered agent for service in the State of Texas is Corporation Service Company, d/b/a CSC- Lawyers Incorporating Service Company located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

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12. Rentech owns and operates the Facility that manufactures sulfuric acid and ammonia-based fertilizer at 2001 Jackson Road, Pasadena, Texas 77506. The previous owner of the Facility was Agrifos Fertilizer, LLC.
13. During the period of January 2014 through July 2014, EPA conducted a RCRA investigation and record review ("Investigation") of Rentech's performance as a generator of hazardous waste.
14. During the Investigation, EPA discovered that Rentech, at a minimum, generated the following hazardous wastes from 2009 through 2013:
 - i. Ignitable characteristic waste, corrosive characteristic waste, and reactive characteristic waste, respectively with the hazardous waste codes D001, D002, and D003;
 - ii. Toxicity characteristic wastes, mercury, chromium, barium, cadmium, methyl ethyl ketone, tetrachloroethylene, respectively with the hazardous waste codes, D009, D007, D005, D006, D035, and D039; and
 - iii. Listed hazardous waste, two different streams of spent non-halogenated solvents and methyl ethyl ketone peroxide, with the respective hazardous waste codes, F003, F005, and U160.
15. The waste streams identified in Paragraph 14 are hazardous waste as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. § 261.24].
16. From the Investigation, EPA determined that the most recent RCRA 3010 Notification, (Form 8700-12) regarding the Facility, submitted by Agrifos Fertilizer Inc.,

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on September 11, 2003, reported that the Facility was operating as a Conditionally-Exempt Small Quantity Generator (“CESQG”) of hazardous waste with generation of less than 100 kilograms (220 pounds) per month of hazardous waste.

17. From the Investigation, EPA determined that during the period of 2009 through 2013, at times, the Facility generated some or all of the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amounts of under 100 kilograms of hazardous waste in a calendar month for it to qualify as a CESQG and of 1,000 kilograms of hazardous waste in a calendar month, qualifying the Facility, at times, for the large quantity generator (“LQG”) status as established under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262].
18. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10]; and a “hazardous waste management facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(71), [40 C.F.R. § 260.10].
19. Rentech 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].
20. As a generator of hazardous waste, Rentech 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, Subchapters C and F, [40 C.F.R Parts 262 and/or 270].

Claim i. Notification Requirements

21. The allegations in Paragraphs 1-20 are realleged and incorporated herein by reference.
22. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Rentech is a “generator” and has been engaged in the “treatment”, “storage”, and/or “disposal” of hazardous waste.
23. 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).
24. At the time of the Investigation, Rentech had not filed with the Administrator or with the authorized State subsequent and adequate notification(s) of its hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Operate within Its Stated Generator Status

25. The allegations in Paragraphs 1-24 are realleged and incorporated herein by reference.
26. During the Investigation, EPA determined that Agrifos Fertilizer Inc. declared its generator status for the Facility as a CESQG and there was not a subsequent declaration made by the Respondent.

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27. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b) and 40 C.F.R. § 261.5(b), as long as a CESQG generator complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78 (c), (f), (g) and (j) and 40 C.F.R. §§ 261.5 (e), (f), (g) and (j) then the generator's hazardous waste is not subject to full regulations under 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C-H and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.
28. During the periods of 2009 through 2013, the Facility on several occasions exceeded its declared CESQG status and operated, at times, as a LQG in violation of the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C and 40 C.F.R. Parts 262.34.

IV.
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 to determine the accurate waste codes and has developed and implemented Standard Operating Procedures ("SOP") to ensure that Rentech 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; and
(c) reporting, transporting, and disposing of hazardous waste;

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B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification; and

C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

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 Rentech 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-IIC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.
TERMS OF SETTLEMENT

i. 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 Eighty-Eight Thousand Four Hundred and Ninety Dollars (\$88,490).

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, MO 63197-9000

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-GI
St. Louis, MO 63101
314-418-1028

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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 Rentech Nitrogen Pasadena, LLC,
Docket No. RCRA-06-2014-0909) shall be clearly documented on or within your chosen
method of payment to ensure proper credit.

34. 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

Your 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 process and handling a delinquent claim. Interest on

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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 EPA'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 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.

ii. Costs

36. 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

37. 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 30. 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

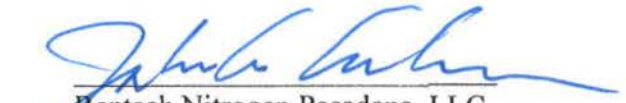
38. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

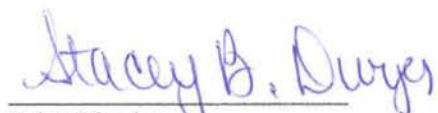
Date: 9/16/2014



Rentech Nitrogen Pasadena, LLC
John A. Ambrose

FOR THE COMPLAINANT:

Date: 09/23/2014



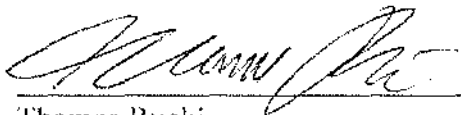
for John Blevins
Director
Compliance Assurance and
Enforcement Division

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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: 9/25/14



Thomas Rucki
Regional Judicial Officer

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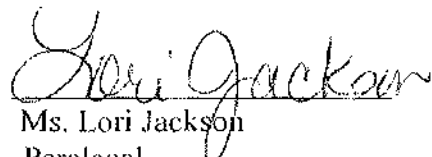
CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of Sept., 2014, 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 20140150000024533955

Roger Johnson
Environmental Manager
Rentech Nitrogen Pasadena, LLC
2001 Jackson Rd
Pasadena, TX 77506

Peter K. Wahl
Jackson Walker L.L.P.
Bank of America Plaza
901 Main Street, Suite 6000
Dallas, TX 75202


Ms. Lori Jackson
Paralegal