



Re: Berry Contracting LP  
RCRA-06-2015-0926

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. 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 shall only resolve Respondent's liability for federal Civil Penalties for the violations and facts alleged in the complaint.
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(a), 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,

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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, Berry Contracting LP, d/b/a Bay Ltd., is incorporated under the laws of the State of Texas as of and continuing from November 29, 2000.
10. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which include corporations; and within the meaning of Title 33 of the Louisiana Administrative Code (“LAC”) LAC 33:V.109, [40 C.F.R. § 260.10].
11. Respondent owns and/or operates the facilities at the respective locations identified in Paragraph 1 above, and at each facility operates as a fabricator of structural metal and a builder of industrial materials.
12. 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 information on Bay Ltd- Offshore Division hazardous wastes that it offered for transport and treatment (“Responses”).
13. During the period of January 2015 through April 2015, EPA conducted a RCRA investigation and record review (“Investigation”) of Respondent’s performance and operations as a generator of hazardous waste.

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14. During the Investigation, EPA discovered that Bay Ltd- Offshore Division, at a minimum, generated the following hazardous waste during the period of 2011 through 2015 and from the facilities identified in Paragraph 1 above.
  - a. Characteristic ignitability waste, with the hazardous waste code D001;
  - b. Toxicity wastes with the hazardous waste codes D005, D006, D007, D008, and D035, respectively barium, cadmium, chromium, lead, and methyl ethyl ketone; and
  - c. Listed hazardous waste, with the waste codes F003 and F005.
15. The waste streams identified in Paragraph 14 above are designated as “hazardous waste” in LAC 33:V.4903. B, 4903.E, and 4901. B, [40 C.F.R. §§ 261.21, 261.24, and 261.31].
16. The Facilities listed in Paragraph 1 above is each a “facility” within the meaning of LAC 33:V.109, [40 C.F.R. § 260.10].
17. EPA determined that the activities at all three (3) Facilities are similar in their operations and generation of hazardous waste.
18. Bay Ltd- Offshore Division is a “generator” of “hazardous wastes” as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6) and LAC 33:V.109, [40 C.F.R. §§ 260.10 and 261.3].
19. The exemptions set forth at LAC 33:V.108.C, [40 C.F.R. § 261.5(c)], are not applicable to Bay Ltd- Offshore Division in connection with the violations that are the basis of this CAFO.
20. From the Investigation, EPA determined that at certain times during the period of 2011 through 2015, Bay Ltd- Offshore Division at one or all its facilities listed in Paragraph 1 above generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold

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amount of 100 kilograms in some instances and/or in other instances the threshold amount of 1000 kilograms of hazardous waste per month, which qualified Bay Ltd- Offshore Division for the small quantity generator ("SQG") and/or the large quantity generator ("LQG") status as established under LAC 33: V 1109, [40 C.F.R. Part 262].

21. As a generator of hazardous waste, Bay Ltd- Offshore Division is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R. Parts 262 and/or 270].

**Amelia1, Amelia2, and Belle Chase<sup>1</sup> Facilities**  
**(During the Periods of 2011 to the Effective Date of the CAFO)**

**Claim i. Notification Requirements**

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
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.
24. At the time of the Investigation, Bay Ltd- Offshore Division had not filed with the Administrator or with the authorized State an adequate and subsequent notification of hazardous waste activities for all three(3) facilities that are relevant for this CAFO 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 1-21 are realleged and incorporated herein by reference.

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26. During the Investigation, EPA determined that the notification of hazardous waste activity filed by Bay Ltd- Offshore Division with the EPA indicated that Bay Ltd- Offshore Division declared itself at the: (1) Amelia 1 facility as conditionally exempt small quantity generator (“CESQG”); (2) Amelia 2 facility as a CESQG; and (3) Belle Chasse facility as a SQG.
27. For several instances during the period of 2011 through 2015, Amelia 1 and 2 exceeded their declared CESQG status and, for the period such hazardous waste remained onsite, operated as a small quantity generator in violation of one or more of the requirements for SQGs under LAC 33:V.1109.E, [40 C.F.R. Part 262].
28. During 2012, the Belle Chasse facility exceeded its declared SQG status and, for the period such hazardous waste remained onsite, operated as a LQG in violation of one or more of the requirements for LQGs under LAC 33:V.1109.E, [40 C.F.R. Part 262].

**Claim iii. Failure to Comply with the Record Keeping Requirements**

29. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
30. Pursuant to, LAC 33:V.1111.A.1, [40 C.F.R. § 262.40 (a)], a generator must keep a copy of each manifest signed in accordance with LAC 33:V.1107.D.1, [40 C.F.R. § 262.23(a)] for at least three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
31. Pursuant to, LAC 33:V.1101.A.3, [40 C.F.R. § 262.40 (c)], a generator must keep records of any test results, waste analyses or other determinations made in accordance with LAC

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33:V.1103, [40 C.F.R. § 262.11] for at least three years from when the waste was last sent to an on-site or off-site treatment, storage, or disposal facility.

32. For the relevant periods of this CAFO, Respondent was unable to provide to the EPA the records it is required by law to keep for each of its facilities identified in Paragraph 1 above.

33. For the relevant periods of this CAFO, Respondent has therefore violated LAC

33:V.1101.A.1 and 3, [40 C.F.R. § 262.40 (a) and (c)].

IV.  
COMPLIANCE ORDER

34. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within sixty (60) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following: to EPA:

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 Bay Ltd- Offshore Division is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) accurate and adequate waste profiling; (b) making hazardous waste determinations; (c) managing hazardous wastes; (d) manifesting of hazardous waste; (e) reporting, transporting, and disposing of hazardous waste;

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

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

35. 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 Bay Ltd- Offshore Division 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

V.

TERMS OF SETTLEMENT

**i. Penalty Provisions**

36. Pursuant to Section 3008(a) 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



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violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of Two Hundred Forty-Eight Thousand Seven Hundred and Five Dollars (248,705.00).

37. 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.

38. 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-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

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The case name and docket number (In the Matter of Bay Ltd-Offshore Division.: Docket No. RCRA-06-2015-0926) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

39. 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.

40. 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 of 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 EPA's administrative handling of overdue debts will be charged and

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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**

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.

**iii. Termination and Satisfaction**

42. 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 35. 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.

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**iv Effective Date of Settlement**

43. 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: August 13, 2015



Berry Contracting LP, d/b/a  
Bay Ltd- Offshore Division

FOR THE COMPLAINANT:

Date: AUG 18 2015



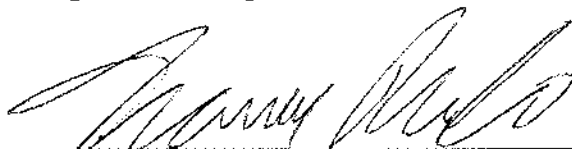
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

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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 and facts 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: 8/20/15



Thomas Rucki  
Regional Judicial Officer

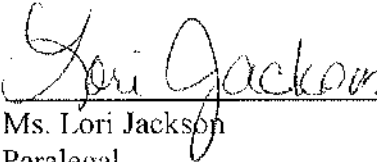
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of August, 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** 7014015000024544807

Mike Saunders  
Bay Ltd- Offshore Division  
382 Degravelle Road  
Amelia, Louisiana, LA 70340

  
Ms. Lori Jackson  
Paralegal

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<sup>1</sup> The Belle Chasse Facility concluded its operation at or about December 2014.