

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

DFW Waste Oil Services, Inc.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0956

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, DFW Waste Oil Services, Inc. ("Respondent" or "DFW") and concerns the facility located at 4315 S. I-35 W, Alvarado, TX 765009 ("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)¹.
3. For the purpose of this CAFO, 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.

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this CAFO are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2014, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on February 26, 2016. 80 Fed. Reg. 80672 (December 28, 2015); 40 C.F.R. § 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

4. Respondent 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 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. The Parties agree to electronic service of process in this matter.

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. Respondent is a small business pursuant to the Small Business Administration guidelines. Respondent is authorized to do business in the State of Texas.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 335.2(25), [40 C.F.R. § 260.10].

11. Respondent owns and operates the Facility.
12. The Facility is engaged in the collection, recycling, and disposal of used petroleum products and petroleum waste materials.
13. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
14. In 2019, EPA conducted an on-site RCRA inspection and investigation of the Facility's activities as a used oil transporter, transfer facility, processor, marketer and hazardous waste transporter.
15. EPA discovered that Respondent's Spill Prevention, Control, and Countermeasures (SPCC) plan was not complete as defined in 30 TEX.ADMIN.CODE § 324.12, [40 C.F.R. § 279.52].
16. EPA reviewed manifests and determined that Respondent held hazardous wastes in excess of 10 days as defined in 30 TEX.ADMIN.CODE § 335.94, [40 C.F.R. § 263.12(a)].
17. Respondent is a "used oil processor" and "transporter" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 324.2 and §§ 335.1(164) & (73) [40 C.F.R § 279.1; 40 C.F.R. § 260.10].
18. As a used oil processor and hazardous waste transporter, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 Texas Admin. Code Chapter 324 Subchapter A, and 335 Subchapter C, [40 C.F.R Part 279 and 263].

IV. VIOLATIONS

Claims 1. Failure to Meet General Facility Standards

19. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.
20. Pursuant to 30 TEX.ADMIN.CODE § 324.12, [40 C.F.R. § 279.52], a used oil processor must meet general facility standards.

21. A review of DFW's SPCC plan revealed that not all of the items required by 40 C.F.R. § 279.52 were incorporated.
22. At the time of the inspection, Respondent's SPCC plan did not include all the requirements, therefore, was in violation of 30 TEX.ADMIN.CODE § 324.12, [40 C.F.R. § 279.52(b)(2)(v)(vi)]. Following the inspection Respondent amended its SPCC Plan on November 8, 2019, to incorporate the used oil management provisions.

Claim 2. Transfer Facility Requirements

23. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.
24. Pursuant to 30 TEX.ADMIN.CODE § 335.94, [40 C.F.R. § 263.12(a)], a transporter can store manifested hazardous waste at a transfer facility for no longer than 10 days during the course of transportation to a permitted treatment, storage, and disposal facility.
25. A review of manifests related to Respondent's hazardous waste transportation identified manifested shipments of hazardous waste that were stored at the Facility for more than 10 days.
26. Therefore, at the time of the inspection DFW was in violation of 30 TEX.ADMIN.CODE §335.94 [40 C.F.R. § 263.12(a)].

V. COMPLIANCE ORDER

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

- A. Respondent shall certify that it has updated its operations and procedures to include all RCRA requirements promulgated thereunder, including: (a) development and implementation of standard operating procedures ("SOPs") to ensure that Respondent is operating the Facility in compliance with RCRA and the regulations, (b) manage transport

and storage of hazardous wastes within regulations; and (c) meet the requirements of SPCC plan.

- B. Respondent shall certify that it has complied with its RCRA Section 3010 notification for the DFW Facility and within the prescribed time period.
- C. Respondent shall provide a written description of its SOPs related to the management of hazardous wastes to EPA.
- D. EPA acknowledges that Respondent has provided EPA with a copy of Respondent's revised SPCC Plan dated November 8, 2019, which incorporates the used oil management requirements. Respondent estimates the cost of corrective actions related to the revision of its SPCC Plan to be \$2,020.

28. 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 (ECD-SR)
ATTN: Debra Pandak
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email to Enforcement Officer Debra Pandak at pandak.debra@epa.gov.

IV. TERMS OF SETTLEMENT

A. Penalty Provisions

29. Complainant reviewed the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, considered the entire record, including the above referenced Findings of Fact and Conclusions of Law, and took the statutory factors relating to penalty, including the seriousness of the alleged violations and Respondent's good faith efforts to comply with the applicable regulations, into account when determining an appropriate penalty. During the initial penalty discussions between Complainant and Respondent, the Respondent alerted Complainant that it would have issues paying the proposed penalty (i.e. an ability-to-pay). Respondent supplied appropriate financial information for Complainant's review. After reviewing the submitted financial information the parties agreed that \$5,000 was an appropriate amount to resolve the alleged violations.
30. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the "Treasurer of the United States."
31. 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

DFW Waste Oil Services, Inc.
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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 DFW Waste Oil Services, Inc., Docket No. RCRA-06-2020-0956**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

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 (ECD-SR)
ATTN: Debra Pandak
Dallas, Texas 75270-2102

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

33. 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).

34. 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.

A. Costs

35. 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.

B. Termination and Satisfaction

36. 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.

C. Effective Date of Settlement

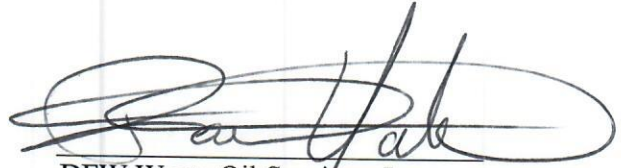
37. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

DFW Waste Oil Services, Inc.
RCRA-06-2020-0956

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

FOR THE RESPONDENT:

Date: 6-11-2020

A handwritten signature in black ink, appearing to read "Robert Yates", is written over a horizontal line. The signature is stylized and cursive.

DFW Waste Oil Services, Inc.
Robert Yates, President

DFW Waste Oil Services, Inc.
RCRA-06-2020-0956

FOR THE COMPLAINANT:

Date: _____

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.

Date: 6/11/2020

Thomas Rucki
Regional Judicial Officer

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 electronic mail to Complainant:

clay.jeffrey@epa.gov

Copy via electronic mail to Respondent:

robert@dfwwasteoil.com

Copy via electronic mail to EPA, Region 6, Regional hearing Clerk:

vaughn.loreana@epa.gov

EPA Region 6