

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 6
 DALLAS, TX

FILED
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 REGIONAL HEARING CLERK
 EPA REGION VI

IN THE MATTER OF:

United States Department of Navy
 Respondent

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 § Consent Agreement and Final Order
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Naval Air Station Corpus Christi
 8851 Ocean Drive
 Corpus Christi, Texas 78419
 Facility

§ USEPA Docket No. RCRA-06-2018-0922
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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 the United States Department of the Navy (“Respondent”), and concerns the Naval Air Station located at 8851 Ocean Drive, Corpus Christi, Texas 78419 (“Facility”) that was owned and/or operated by Respondent at all times relevant to the violations alleged herein (“relevant time period”).
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, 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 final order contained in this CAFO, including any right to confer with the EPA Administrator under 40 Code of Federal Regulations (“C.F.R.”) § 22.31(c) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2), on all issues of fact and law set forth in this CAFO. Respondent waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
5. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.
6. Respondent consents to the issuance of the CAFO hereinafter recited, and 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 Compliance Order in this CAFO.
7. The provisions of this CAFO shall be binding upon Complainant and Respondent and their successor agencies, departments, or instrumentalities.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal law, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA or any regulations promulgated thereunder.

II.
JURISDICTION

9. 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 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

10. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) authorizes EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C or EPA's regulations promulgated thereunder.
11. Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), authorizes EPA to take enforcement action against departments, agencies, and instrumentalities of the federal government in the same manner and under the same circumstances as against any other person.
12. 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

13. In accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3), Complainant makes the findings of fact and conclusions of law which follow.
14. Respondent is an agency of the federal government operating a federal facility in Corpus Christi, Texas.
15. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes "each department, agency, and instrumentality of the United States," and within the meaning of and as defined by 30 TEX. ADMIN. CODE ("TAC") § 3.2 [40 C.F.R. § 260.10] which includes a "government agency."

16. During the relevant time period, Respondent owned and operated a Naval Air Station located at 8851 Ocean Drive, Corpus Christi, Texas 78419.
17. Respondent was the “owner” and “operator” of the facility as those terms are defined at 30 TAC § 335.1(114) and (115) [40 C.F.R. § 260.10] during the relevant time period.
18. The Naval Air Station described in paragraph 16 is a “facility” as defined at 30 TAC § 335.1(61) [40 C.F.R. § 260.10].
19. During the relevant time period, Respondent reported to the Texas Commission on Environmental Quality (“TCEQ”) as a large quantity generator (“LQG”) of hazardous waste, which is a facility that generates 1,000 kilograms or more of hazardous waste per month. RCRA § 3010(a), (42 U.S.C. § 6930(a)) [40 C.F.R. § 260.10] see also 40 C.F.R. § 262.13.
20. As an LQG, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, the regulations set forth at 30 TAC § 335, and 40 C.F.R. Parts 262 and 270.
21. From August 3, 2015 to August 7, 2015, representatives of EPA conducted an onsite inspection at the Facility (“inspection”) to evaluate compliance with RCRA regulations for generators of hazardous wastes.
22. 40 C.F.R. § 260.10 defines a “tank” as a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic), which provide structural support.
23. According to information obtained from Respondent, the Air Pollution Control Device (APCD) unit was taken out of service on February 25, 2014. The filters containing hazardous waste inside the APCD were not removed from the unit and stored in a 90-day storage area when the unit was taken out of service.

24. On or about May 25, 2014, ninety days after the date the APCD was taken out of service, the contaminated filters remained attached to the unit, and had not been disposed off-site.
25. Filters from the APCD were storing a sludge and were therefore a “solid waste” as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 261.2]. Samples taken of the sludge contained cadmium and chromium concentrations above the regulatory levels of 1.0 mg/l and 5.0 mg/l respectively. Therefore, the sludge exhibited the hazardous characteristic for toxicity as listed in 30 TAC § 335.504 [40 CFR 261.24].
26. Respondent contends that the APCD unit was ready to be removed on August 18, 2015. The time period from May 25, 2014 until August 18, 2015 is approximately 448 days. The APCD unit was dismantled in December 2015 and the materials removed from the unit were sampled for hazardous waste in March 2016.
27. The ACPD became a tank once its intended use could no longer be served, that is, when it was taken out of commission, but continued to contain hazardous waste.
28. Respondent began accumulating and storing hazardous waste without a permit as early as May 25, 2014.
29. In a review of Respondent’s training records, EPA found several training deficiencies. As a result of the deficiencies, Respondent failed to meet all of the training requirements pursuant to 40 C.F.R. § 265.16, as required by 40 C.F.R. § 262.34.
30. In order to qualify for a permit exemption, as set forth in 30 TAC § 335.2 [40 C.F.R. §§ 270.1 & 270.10], Respondent must meet all of the training requirements pursuant to 40 C.F.R. § 265.16, as required by 40 C.F.R. § 262.34.
31. Section 3308(a) of RCRA, 42 U.S.C. § 6928(a), as amended by EPA’s 2016 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in

accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of RCRA in amounts up to \$37,500 per day per violation for violations occurring after December 6, 2013 through November 2, 2015.

Count I:

32. The allegations in Paragraphs 1 – 31 are re-alleged and incorporated herein by reference.
33. Pursuant to 30 TAC § 335.2 [40 C.F.R. §§ 270.1 & 270.10], owners/operators of hazardous waste storage units must have a permit during the active life of the units unless they meet the requirements for exemption in 30 TAC § 335.69 [40 C.F.R. §262.34].
34. Pursuant to the permit exemption requirements in 30 TAC § 335.69 [40 C.F.R. §262.34], LQGs of hazardous waste may accumulate hazardous waste on-site for ninety (90) days or less without a permit, provided that all exemption criteria are met.
35. Respondent stored hazardous waste from the APCD unit for 448 days without a permit.
36. Therefore, Respondent failed to meet the permit exemption and accumulation time requirements set forth in 30 TAC § 335.69 [40 C.F.R. §262.34], and was required to have a RCRA permit.
37. Respondent failed to acquire a RCRA permit to store hazardous waste.
38. Therefore, Respondent failed to meet the requirements of 30 TAC § 335.2 [40 C.F.R. §§ 270.1 & 270.10] by failing to obtain a RCRA permit.

IV.
COMPLIANCE ORDER

39. The Facility has provided to EPA documentation describing how the Facility has addressed the violations alleged herein, including details of corrective actions the Facility has taken to ensure compliance.
40. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following additional actions, and within one hundred and eighty (180) calendar days of the effective date of this CAFO, Respondent shall provide in writing certification that all training deficiencies identified in this CAFO as a result of the 2015 EPA inspection have been addressed pursuant to the requirements of 40 C.F.R. § 265.16. EPA acknowledges that Respondent is currently working to fill key environmental program vacancies at the Facility; notably the Installation Environmental Program Director and the Installation Hazardous Waste Program Manager positions.
41. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed and include the following certification:

“I certify under the penalty of law that these documents and all the 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
Waste Enforcement Branch
Waste Compliance I Section (6EN-H1)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Joyce Johnson

V.
TERMS OF SETTLEMENT

A. Penalty Provisions

42. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the *RCRA Civil Penalty Policy* (2003) and the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and taking into consideration the size of the Respondent's facility, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is Two Hundred Seventy-One Thousand Six-Hundred Dollars (\$271,600.00).
43. Respondent shall seek all existing funds to meet the requirements of this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
44. The penalty shall be paid within one hundred-eighty (180) days of the effective date of this CAFO, made payable to the Treasurer United States, and in the manner and prescribed time period set forth below.

45. The following are Respondent's options for transmitting the penalty payment:

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

IPAC payments

Payment may also be made using the Intra Governmental Payment and Collection (IPAC) application, ALC 68-01-0727, and Treasury Symbol 681099. Please include the Docket Number of this action (Docket No. RCRA-06-2018-0922) in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.

The case name and docket number (**In the Matter of the United States Department of Navy, Naval Air Station Corpus Christi - USEPA Docket No. RCRA-06-2018-0922**) shall be documented on or within your chosen method of payment to ensure proper credit.

46. 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, Suite 1200
Dallas, TX 75202-2733

Mark Potts, Branch Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Joyce Johnson

Your adherence to this request will ensure proper credit is given when the penalty payment is received by EPA.

B. Costs

47. Each party shall bear its own costs and attorney's fees.

C. Reservation of Rights

48. This CAFO resolves only those violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section

22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any right and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

D. Effect of Settlement

49. Payment of the penalty in Paragraph 42, above, in the manner set forth in Section V above, shall constitute full and final satisfaction of all civil claims for penalties that Complainant may have under RCRA for the specific violations alleged herein.

Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.

E. Termination and Satisfaction

50. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a)(1) and (g) and 6001(b) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g) and 6961(b), for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

51. When Respondent believes that it has complied with all the requirements of this CAFO, Respondent shall certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order). Unless 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.

F. Authority to Bind the Parties

52. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to it.

53. The undersigned Complainant certifies that he has the delegated authority to enter into the terms and conditions of this Consent Agreement and to bind EPA to it.

H. Effective Date of Settlement

54. 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: 18 MAY 18



Captain Philip M. Brock
Commanding Officer
Naval Air Station Corpus Christi

FOR THE COMPLAINANT:

Date: May 30, 2018



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement 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. Pursuant to 40 C.F.R. § 22.31(a), 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 violations 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. The undersigned Regional Judicial Officer has the delegated authority to issue this Final Order. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/4/18



Thomas Rucki
Regional Judicial Officer


CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of June, 2018, 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 7015152000339909132

P. M. Brock
Captain, U.S. Navy
Commanding Officer
Naval Air Station Corpus Christi
11001 D Street (Code 186)
Corpus Christi, TX 78419

Jennifer L. Roper
Assistant Region Counsel
Navy Region Southeast
Office of General Counsel
Box 102
NAS Jacksonville, FL 32212-0102



Ms. Lori Jackson
Paralegal