

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2015 FEB 18 PM 2:33
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Lamberti USA, Inc.
Wharton, Texas

RESPONDENT

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Consent Agreement and Final Order
Docket No. RCRA-06-2015-0909

CONSENT AGREEMENT AND FINAL ORDER

I.
PRELIMINARY STATEMENT

1. The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Lamberti USA Inc. (“Respondent”) agree that settlement of this proceeding is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of settling this matter. Therefore, before taking any testimony, without any adjudication of issues of law or fact herein, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

2. This CAFO is entered into by EPA and Respondent and concerns the facility located at Highway 59 at Country Road 212, Hungerford, TX 77448 (the “Facility”).

3. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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4. 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.

5. 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.

6. The CAFO resolves only those violations and facts which are alleged herein.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. 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

9. This CAFO is issued by the EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("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).

10. 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

11. Respondent is an authorized corporation in the State of Texas.
12. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); 40 C.F.R. § 260.10; and 30 TEX.ADMIN.CODE § 3.2(25).
13. Respondent’s Registered Agent for service is Luca Mandolesi, as set forth in the records of the Texas Secretary of State.
14. Respondent owns and operates the Facility and conducts the primary business of producing and marketing chemicals for industrial applications.
15. During the period of January 2014 through June 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of Respondent’s performance as a generator of hazardous waste.
16. As part of such Investigation, EPA issued a Request for Information pursuant to RCRA § 3007 on or about April 22, 2014.
17. Respondent provided a timely response to the RCRA Section 3007 Request for Information.
18. Pursuant to the Investigation, Respondent at times generated waste streams that are hazardous waste as defined in 30 TEX.ADMIN.CODE § 335.1 (69) and 40 C.F.R. § 261.24.
19. During the period of January 1, 2009 through December 31, 2013 (the “Review Period”), Respondent at times generated these hazardous waste streams in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, and qualified Respondent for large quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C and 40 C.F.R. Part 262.

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20. As a generator of hazardous waste, Respondent 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, and 40 C.F.R Parts 262 and/or 270.

Claim 1: 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, Respondent 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.

24. During the Review Period, Respondent at times did not file with the Administrator or with the authorized State an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: 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 Respondent declared its generator status as a small quantity generator (“SQG”).

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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 SQG generator complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(f), (g) and (j) and 40 C.F.R. §§ 261.5(f), (g) and (j) then the generator's hazardous waste is not subject to 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 Review Period, Respondent at times exceeded its declared SQG status and operated as a large quantity generator in violation of the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C and/or F and 40 C.F.R. Parts 262 and/or 270.

Claim 3. Failure to Make a Hazardous Waste Determination

29. The allegations in Paragraphs 1-28 are realleged and incorporated herein by reference.

30. Pursuant to 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11, a generator of solid waste must determine if that waste is hazardous waste.

31. During the Review Period, Respondent at times failed to determine whether its solid waste streams were hazardous wastes in violation of 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11.

Claim 4. Failure to Obtain a RCRA Permit

32. The allegations in Paragraphs 1-31 are realleged and incorporated herein by reference.

33. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 TEX.ADMIN.CODE. § 335.43(a) and 40 C.F.R. § 270.1(b), a RCRA permit is required for the treatment, storage, or disposal of hazardous waste.

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34. During the Review Period, Respondent at times stored hazardous wastes onsite without a permit in violation of Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 TEX.ADMIN.CODE. § 335.43(a) and 40 C.F.R. § 270.1(b).

IV.
COMPLIANCE ORDER

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

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 the Facility 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,

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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: Bill Mansfield

V.
TERMS OF SETTLEMENT

i. 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 \$230,000.00.

38. The penalty shall be made payable to the Treasurer United States.

39. 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

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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

The case name and docket number (In the Matter of Lamberti USA, Inc., Docket No. RCRA-06-2015-0909) 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, 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: Bill Mansfield

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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. § 1311, 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 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 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. 40 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.

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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 36. 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

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: 2-2-2014



Luca Mandolesi
Finance Manager
Lamberti USA Inc.

FOR THE COMPLAINANT:

Date: 2.17.15



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 violations 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: 2/18/15



Regional Judicial Officer

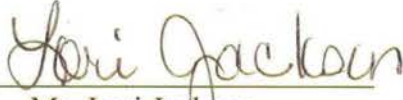
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 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 701401500000 24533559

Kelly Brown
Crain, Caton & James
Five Houston Center
1401 McKinney St., Suite 1700
Houston, Texas 77010


Ms. Lori Jackson
Paralegal