

RE: RCRA-06-2019-0909

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2. Notice of the commencement of this action has been given to the State of Texas, under Section 3008(a)(2) of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).¹

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained in this CAFO.

4. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in this CAFO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives any right to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this CAFO.

5. This CAFO resolves only those violations which are alleged herein.

6. This CAFO covers the violations alleged herein and for the specific periods set forth in Section IV (Factual Allegations and Alleged Violations) and for the period covered by Section V (Compliance Order) Paragraph 109 of this CAFO.

7. 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 as set forth in Section V, (Compliance

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 to the EPA Authorized Texas Hazardous Waste Program refer to Title 30 of the Texas Administrative Code ("TEX. ADMIN. CODE"), as amended, 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 found within this CAFO are to the EPA authorized version of the TEX. ADMIN. CODE and citations may vary slightly from the Texas published version of the TEX. ADMIN. CODE. The corresponding C.F.R. citations are also provided.

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Order), Paragraph 109 of this CAFO.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent and their successor agencies, departments, or instrumentalities.

9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, 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

10. 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 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).

11. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take 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.

12. 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.

13. 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

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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.

STATUTORY AND REGULATORY BACKGROUND

14. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and the Hazardous and Solid Waste Amendments (“HSWA”) enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 *et seq.*

15. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.

16. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” They prohibit land disposal of certain hazardous wastes, and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.

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17. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded under 40 C.F.R. § 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or military munitions identified as a solid waste in 40 C.F.R. § 266.202. Materials are solid waste, as defined in 40 C.F.R. § 261.2, if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

18. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C or it is listed in C.F.R. Part 261, Subpart D.

19. Characteristic hazardous wastes are assigned "D" codes in 40 C.F.R. Part 261, Subpart C, depending on the specific hazardous characteristic that the waste exhibits.

20. An ignitable hazardous waste has a flash point of less than 60 degrees centigrade (140 degrees Fahrenheit) and is assigned the D001 hazardous waste code pursuant to 40 C.F.R. § 261.21.

21. A corrosive hazardous waste has a pH of less than or equal to 2.0 or greater than or equal to 12.5 and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22, and a reactive hazardous waste is assigned the D003 hazardous waste code pursuant to 40 C.F.R. § 261.23.

22. Listed hazardous wastes are assigned with "F", "K", "P", and "U" codes in 40 C.F.R. Part 261, Subpart D, depending on the specific waste generated from a non-specific source, a specific source, or discarded commercial chemical products, off-specification species, container residues and spill residues therefrom.

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23. 40 C.F.R. Parts 264 and/or 265 applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.

24. The relevant RCRA statutory and regulatory requirements to this CAFO require that generators of solid waste and hazardous waste must, among other things:

- A. Determine whether their generated solid wastes are hazardous, pursuant to 40 C.F.R. § 262.11;
- B. Comply with the statutory notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930;
- C. Comply with the manifest requirements, pursuant to 40 C.F.R. § 262.20; and
- D. Determine its generator status and meet the exemption conditions set forth at 40 C.F.R. § 262.34 or comply with the specific requirements set forth at 40 C.F.R. § 270.10.

IV.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

25. Respondent is an agency of the federal government, the United States Department of the Army, and operates a federal facility in Fort Hood, Texas.

26. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 30 Texas Administrative Code ("TEX.ADMIN.CODE") § 3.2(25), [40 C.F.R. § 260.10].

27. Respondent, Fort Hood is the "owner" and "operator," of the Facility at all times relevant to this CAFO and within the meaning of 30 TEX.ADMIN.CODE §§ 335.1(108) and (107), [40 C.F.R. § 260.10].

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28. Fort Hood is an army base and an active military installation in Bell County, Texas, and as part of its military activities and management of the Facility, generates several waste streams and operates several waste locations on the approximately 218,000 acres or 342 square miles Facility.

29. In its initial notification of hazardous waste activities, submitted to the State of Texas, on January 24, 1992, and again in its most recent RCRA notification dated February 8, 2018, Respondent identified itself as a large quantity generator ("LQG") of hazardous waste.

30. During the period of July 31, 2017, through August 4, 2017, EPA, conducted a RCRA inspection at the Facility, pursuant to RCRA Section 3007(a) 42 U.S.C. § 6927(a), ("Inspection").

31. Further, in May 2018, Respondent provided EPA with additional responses to EPA's informal request for documentations of certain communications between Respondent and the Texas Commission on Environmental Quality ("TCEQ").

32. EPA's record review of communications between Respondent and TCEQ, and EPA's review of its Inspection, including photographs taken during the Inspection are for purposes of this CAFO and within the meaning of this CAFO the "Investigation".

33. During the Inspection, EPA documented the following waste stream known as Thin Prep identified and photographed in a 55-gallon drum in what is known as a less than 90-day storage area.

34. For the waste stream identified in Paragraph 33 above, EPA concluded it was hazardous waste, as seen and documented during the Inspection by photographs, in a 55-gallon drum labeled by Respondent as "Hazardous Waste".

35. During the Inspection, EPA photographed and documented the following waste

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streams at their respective seven (7) locations throughout the Facility:

- A. Soil and absorbents contaminated with oil fuel, and/or lubricants at or near what is known as the Bio-treatment Unit;
- B. Several and various types of small containers of various waste streams at or near what is known as the Classification Unit;
- C. Several containers of used oil filters, spent fuel filters, various other spent materials on the floor, and containers of full or partially full containers of used oil at or near what is known as one of the three Used Product Reclamation Points ("UPRPs"), within or near what is known as the Second Battalion 227 Aviation;
- D. At or about five drums labeled as "empty oil can only", "contaminated rags only, no paper", "contaminated trash and paper only", and "oil filters only", within or near what is known as the UPRPs at or near the Dyno Corporation Building, Building 708;
- E. At or about four 5-gallon pails and one 10-gallon pail were labeled as "contaminated trash", "dirty poly pads", "empty plastics", "empty aerosol cans" and "empty cans" located at or near the Dyno Corporation International Building, Building 7012;
- F. At or about seven 55-gallon drums and two containers labeled as "empty oil cans only", "contaminated rags only, no paper", "contaminated poly pads only, no paper", "contaminated paper and trash only, no rags or poly", and "used grease, adhesive cans only, used aerosol cans", located at or near Dyno

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Corporation International Building 7012 and 7013; and

G. Spent oven dust and organic residual from diesel engine blocks or heads located at or near the LRC.

36. During the Inspection, EPA requested of Respondent hazardous waste determinations made by Respondent contemporaneously at the point of generation for the waste streams identified in Paragraph 35(A) through (G), and Respondent was unable to provide the requested hazardous waste determination.

37. During the Inspection, EPA photographed and documented one approximately 15-gallon "Step Can" labeled "contaminated paper and trash". During interviews with an employee, EPA learned that Respondent poured a liquid of some kind onto the "contaminated paper and trash" before disposing as non-hazardous waste.

38. EPA received no hazardous waste determination for the waste identified in Paragraph 37 above nor for the composition of the liquid poured on the waste stream before the disposal of the stream identified in Paragraph 37.

39. During the Inspection and interviews with Respondent's employees, EPA determined, photographed, and documented a "Step Can" of approximately 15 gallons and labeled by Respondent as "contaminated paper and trash", which was actually paint thinner or stripper.

40. Further, EPA determined during the Inspection (from interviews with Respondent's Employee) that it is Respondent's practice to pour liquid paints or paint thinners onto the content of the "Step Can".

41. During the Inspection, EPA photographed and documented six (6) locations with universal waste streams which included used batteries at or near the following locations:

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- A. M2 Service Corp (DUP);
- B. M2 Service Corp (Building 38003);
- C. Z Systems (Building 30033);
- D. Less than 90-day Storage Area (Classification Unit);
- E. Building 7007, including the UPRP unit; and
- F. Building 88035.

42. During the Inspection, EPA photographed and documented two locations with containers and/or pails with Used Oil at or near the 2nd Battalion 227 Aviation Building 7084 and at the Less than 90-day Storage Area ("Classification Unit").

43. During the Inspection, EPA photographed and documented at or about twelve to fourteen (12-14) locations, which stored several pails and/or containers with "Used Aerosol Cans" at or near the locations identified in the Inspection report.

44. Each of the above itemized and identified locations in Paragraph 43 above were identified and documented by EPA to have at least one UPRP and associated Satellite Accumulation Areas ("SAAs") at each location.

45. From a review of Respondent records, during the Inspection, EPA determined that Respondent has approximately 172 similar locations of UPRPs and/or SAAs throughout the Facility.

46. From its Inspection and subsequent information received by EPA from Respondent, since the Inspection, EPA determined that Respondent operates one "less than 90-day storage area" that accepts hazardous wastes from all hazardous waste generation and accumulation points at its Facility.

47. From the Investigation, EPA concluded that Respondent generates "solid waste"

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within the meaning of 30 TEX.ADMIN.CODE § 335.1(138), [40 C.F.R. § 261.2], from its Facility.

48. From the Investigation, EPA concluded that Respondent generates “hazardous waste” within the meaning of 30 TEX.ADMIN.CODE §§ 335.1 (69) and (70), [40 C.F.R. Part 261, Subparts C and D].

49. The Facility identified in Paragraph 1 is a “facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10].

50. For the Facility identified in Paragraph 1 of this CAFO, Respondent is a “generator” of “hazardous waste” as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

51. As a generator of hazardous waste at or from the Facility, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, 30 TEX.ADMIN.CODE, Chapter 335, and the regulations set forth at 40 C.F.R. Parts 262 and 270.

CLAIMS FOR RELIEF

STANDARDS APPLICABLE TO GENERATORS PART 262

FIRST CLAIM FOR RELIEF

(Storage of Hazardous Waste Without a Permit- One Location)

52. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)], a generator of hazardous waste is permitted to accumulate its hazardous waste on site for ninety (90) days or less without a permit or interim status, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)].

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53. During the Investigation and subsequently thereto, EPA identified and documented a location at the Facility where hazardous waste was stored and determined the location to be a less than 90 days storage area identified in Paragraph 33 above.

54. During the Inspection, EPA documented and photographed one 55-gallon drum, at or near the location identified in Paragraph 33 above.

55. From a review of Respondent's waste profile and/or because the 55-gallon drum was labeled as "Hazardous Waste", EPA, during the Inspection, determined that the drum stored "hazardous waste" as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21 and 261.22].

56. During the Inspection, EPA documented and photographed the drum identified in Paragraph 33 and managed by Respondent as Thin Prep in a 55-gallon drum in what is known as a less than 90-day storage area, labeled with the words "Hazardous Waste" and without an initial date of accumulation.

57. During the Inspection, EPA observed, documented, and photographed the area identified in Paragraphs 33 and 54 through 56 and determined that Respondent in its daily operations and practices and at all times relevant to this CAFO did not comply with 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)].

58. For all times relevant to this CAFO, Respondent has therefore operated its Facility and specifically the location identified in Paragraphs 33 and 54 through 56 in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43, [40 C.F.R. § 270.1(b)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

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SECOND CLAIM FOR RELIEF

(Storage of Hazardous Waste Without a Permit for Aerosol Cans at 14 Separate Locations)

59. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

60. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)], a generator of hazardous waste is permitted to accumulate its hazardous waste on site for ninety (90) days or less without a permit or interim status, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)].

61. At each of the UPRP locations identified in Paragraphs 43 through 45, EPA identified and documented various size containers, pails, bins, and/or drums with varied waste streams including aerosol cans in varied quantities.

62. During the Inspection, EPA identified and documented the aerosol cans in various states, including those that were full, partially full, and not punctured.

63. During the Inspection, EPA identified and documented the various size containers, pails, bins, and/or drums with aerosol cans identified in Paragraph 43 through 45 above were not properly labeled as "Hazardous Waste", did not have an initial date of accumulation, were not included in the Facility contingency plan and/or were opened.

64. During the Inspection, EPA observed, documented, and photographed the areas identified in Paragraphs 43 through 45, and determined that Respondent in its daily operations and practices at all times relevant to this CAFO did not comply with 30 TEX.ADMIN.CODE § 335.69(a), [40 C.F.R. § 262.34(a)].

65. For all times relevant to this CAFO, Respondent has therefore operated its Facility and specifically the locations identified in Paragraphs 43 through 45 in violation of

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30 TEX.ADMIN.CODE §§ 335.2 & 335.43, [40 C.F.R. § 270.1(b)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

THIRD CLAIM FOR RELIEF

(Storage of Hazardous Waste Without a Permit for Aerosol Cans at 12 Separate Locations)

66. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

67. Pursuant to 30 TEX.ADMIN.CODE § 335.69(c)(1), [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulated (the Satellite Accumulation Area (SAA)), which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) provided the generator complies with 30 TEX.ADMIN.CODE §§ 335.69(c)(1)(i) and (ii), [40 C.F.R. §§ 262.34(c)(1)(i) and (ii)].

68. At each of the UPRP and/or SAA locations identified in Paragraphs 43 through 45, EPA identified and documented various size containers, pails, bins, and/or drums with varied waste streams including aerosol cans in varied quantities.

69. During the Inspection, EPA identified and documented the aerosol cans in various states, including those that were full, partially full, and not punctured.

70. During the Inspection, EPA identified and documented the various size containers, pails, bins, and/or drums with aerosol cans identified in Paragraphs 43 through 45 above were not properly labeled as "Hazardous Waste", did not have an initial date of accumulation, were not included in the Facility contingency plan and/or were opened.

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71. During the Inspection, EPA observed, documented, and photographed the areas identified in Paragraphs 43 through 45 and determined that Respondent in its daily operations and practices at all times relevant to this CAFO did not comply with 30 TEX.ADMIN.CODE §§ 335.69(c)(1)(i) and (ii), [40 C.F.R. §§ 262.34(c)(1)(i) and (ii)].

72. For all times relevant to this CAFO, Respondent has therefore operated its Facility and specifically the locations identified Paragraphs 43 through 45 in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43, [40 C.F.R. § 270.1(b)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

FOURTH CLAIM FOR RELIEF

*(Failure to Make Hazardous Waste Determinations on
All Solid Waste Streams at 12 Separate Locations)*

73. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

74. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2], must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used. Respondent, as a generator of solid waste, is required to make a hazardous waste determination.

75. During the Inspection, EPA sought from Respondent documentation of its waste determination made contemporaneously for the waste streams identified at the twelve (12) SAAs and described in Paragraphs 43 through 45 above.

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76. Respondent did not make the required hazardous waste determination and was not able to provide EPA with documentations of its waste determination for waste streams identified in Paragraphs 43 through 45 above.

77. Respondent has violated 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11], by failing to timely conduct hazardous waste determinations on all its solid waste streams in the manner proscribed by 40 C.F.R. § 262.11(c)(1) and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

FIFTH CLAIM FOR RELIEF

*(Failure to Make Hazardous Waste Determinations on
All Solid Waste Streams- Seven Separate Streams)*

78. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

79. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2], must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used. Respondent, as a generator of solid waste, is required to make a hazardous waste determination.

80. During the Inspection, EPA sought from Respondent documentation of its waste determination made contemporaneously for the seven (7) solid waste streams identified in Paragraphs 35 and 36 above.

81. Respondent did not make the required hazardous waste determination and was not able to provide EPA with documentation of its waste determination for the seven solid waste streams identified in Paragraphs 35 and 36 above.

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82. Respondent has violated 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11], by failing to timely conduct hazardous waste determinations on all its solid waste streams in the manner proscribed by 40 C.F.R. § 262.11(c)(1) and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

SIXTH CLAIM FOR RELIEF

(Treatment of Hazardous Waste Without a Permit)

83. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

84. Pursuant to TEX.ADMIN.CODE §§ 335.2 & 335.43, [40 C.F.R. § 270.1(b)], an owner or operator who treats hazardous waste on site must treat pursuant to a permit, unless he meets one of the allowable treatment exemptions found in a federal register notice, in the regulations, and/or statute.

85. From its Investigation, including interviews with Respondent's employees, EPA determined that Respondent used paint stripper to strip military specification paint from contaminated rags before disposal, using the 'Step Can' as a treatment unit.

86. During the Inspection, EPA identified and documented that the 'Step Can' identified in Paragraphs 37 through 40 above was used as a treatment unit by Respondent, and that Respondent conducted "treatment" as defined in TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 260.10], in the 'Step Can'.

87. For all times relevant to this CAFO, EPA has not identified and/or attached any allowable exemptions to the "Step Can" and Respondent's activities of treatment in the unit nor is the 'Step Can' a permitted treatment unit covered by Respondent's permit.

88. For all times relevant to this CAFO, Respondent has therefore operated its Facility

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and specifically the unit identified in Paragraphs 37 through 40 in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43, [40 C.F.R. § 270.1(b)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

STANDARDS APPLICABLE TO GENERATORS OF SPENT LEAD-ACID BATTERIES, BEING RECLAIMED - PART 266, SUBPART G

SEVENTH CLAIM FOR RELIEF

(Failure to Comply with the Standards for Spent Lead-Acid Batteries Being Reclaimed)

89. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

90. Pursuant to TEX.ADMIN.CODE §§ 335.251, [40 C.F.R. Part 266, Subpart G], persons who generate, collect, transport, store, or regenerate lead-acid batteries may be exempt from certain hazardous waste management requirements if the generator has chosen to manage its spent lead-acid batteries as hazardous waste.

91. From its Investigation and a review of subsequent information provided to EPA by Respondent, EPA has determined that Respondent has made the choice to manage its spent lead-acid batteries as hazardous waste.

92. Pursuant to TEX.ADMIN.CODE §§ 335.251(a), [40 C.F.R. Part 266, Subpart G(a)], Respondent, at a minimum, is subject to TEX.ADMIN.CODE §§ 335.251(a), [40 C.F.R. Part 261, 40 C.F.R. § 262.11, and the applicable provisions under 40 C.F.R. Part 268].

93. During the Inspection, EPA identified and documented spent lead-acid batteries generated, collected, and stored by Respondent at the locations identified in Paragraph 41 above. The aggregate of the quantity observed by EPA at or near the identified locations was approximately 58 or more of spent lead-acid batteries.

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94. During the Inspection, EPA photographed the spent lead-acid batteries stored on wooden pallets both inside and outside at the locations identified in Paragraph 41 above.

95. At all times relevant to this CAFO, EPA has no documentation or evidence to demonstrate that Respondent has met and complied with the requirements TEX.ADMIN.CODE §§ 335.251(a), [40 C.F.R. Part 261, 40 C.F.R. § 262.11, and applicable provisions under 40 C.F.R. Part 268].

96. At all times relevant to this CAFO, Respondent did not manage its spent lead-acid batteries as is required by the regulations set forth at TEX.ADMIN.CODE §§ 335.251(a), [40 C.F.R. Part 261, 40 C.F.R. § 262.11, and applicable provisions under 40 C.F.R. Part 268], and is therefore in violation and is subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

STANDARDS APPLICABLE TO GENERATORS OF UNIVERSAL WASTE - PART 273

EIGHT CLAIM FOR RELIEF

(Failure to Comply with the Standards for Large Quantity Handlers of Universal Waste)

97. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

98. Pursuant to 40 C.F.R. Part 273, which is adopted by the Texas Administrative Code,² 40 C.F.R. §§ 273.33(a) and (d), require that a large quantity handler of universal waste must manage universal waste batteries in a way to prevent releases of any universal waste or component of the universal waste to the environment. Among the other requirements, the universal waste handler

2. The Texas Administrative Code, which set forth its Universal Waste Rules at 30 Texas Administrative Rules § 335.261 has adopted 40 C.F.R. Part 273 in pertinent parts that are relevant to this CAFO.

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must contain the waste, the container must remain closed, without structural defects, and must not show any sign of leakage or spillage to the environment.

99. Pursuant to 40 C.F.R. §§ 273.35, 273.36, and 273.37, the large quantity handler of universal waste is further required to comply with the accumulation time limits, employee training, and must immediately contain all releases of universal waste and other residues from universal waste.

100. During the Inspection, EPA identified and documented universal waste streams of spent lithium batteries generated by Respondent and managed at the locations identified in Paragraph 41 above. The aggregate of the quantity observed by EPA was well over the 5000 kilograms or more of universal waste.

101. During the Inspection, EPA photographed universal wastes, specifically the spent lithium batteries stored on shelves and on wooden pallets.

102. During the Inspection, EPA photographed universal wastes, the spent lithium batteries, which were not in containers and without the markings of 'Universal Waste' and 'Dates of Accumulation'.

103. At all times relevant to this CAFO, Respondent did not manage its universal waste as is required by the regulations set forth at 30 TEX.ADMIN.CODE § 335.261 and 40 C.F.R. Part 273. Respondent is therefore in violation, and is subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

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STANDARDS APPLICABLE TO USED OIL GENERATORS - PART 279

NINTH CLAIM FOR RELIEF

(Failure to Comply with the Applicable Standards for Used Oil Generators)

104. The allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

105. Pursuant to 30 TEX.ADMIN.CODE Chapter 324, [40 C.F.R. Part 279, Subpart C], generators of "Used Oil" as defined by the regulations set forth at 30 TEX.ADMIN.CODE Chapter 324, [40 C.F.R. § 279.1], are subject to all Spill Prevention, Control and Countermeasures and are also subject to several requirements relating to the storage of Used Oil including storage units and their conditions, labeling, and the generator's responses to release.

106. During the Inspection, EPA identified and documented the storage of Used Oil in several containers in the locations identified in Paragraph 42 above.

107. The containers identified in Paragraph 42 above were not closed, labeled with the words "Used Oil", and were not managed in a manner to prevent releases.

108. At all times relevant to this CAFO, Respondent did not comply with the applicable standards set forth for a Used Oil generator, has therefore violated 30 TEX.ADMIN.CODE Chapter 324, [40 C.F.R. Part 279, Subpart C], and is and is subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

V.

COMPLIANCE ORDER

109. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within nine (9) months (two hundred seventy calendar days) of the effective date of this CAFO, Respondent shall provide in writing the following to EPA:

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- A. Respondent shall certify that it has assessed all its solid waste streams at its Facility subject to this CAFO to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOPs”) to ensure Respondent is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (i) making hazardous waste determinations; (ii) managing hazardous wastes; (iii) reporting, transporting, and disposing of hazardous waste; (iv) preparing its manifests; (v) keeping the required records; and (vi) meeting the requirements of Land Disposal Restriction regulations;
- B. Respondent shall certify that it has accurately and adequately complied with its obligations as a large quantity universal waste handler and as a Used Oil generator. Further, Respondent’s SOP identified in subsection A of this Paragraph 109, shall set forth steps Respondent has implemented to comply with the requirements as a large quantity universal waste handler and as a Used Oil generator;
- C. Respondent shall provide interim status reports of its compliance. The first at ninety (90) calendar days) after the effective date of this CAFO and a second status report at one hundred eighty (180) calendar days) after the effective date of this CAFO, followed by its certification of full compliance and a copy of Respondent’s SOPs (as described in subparagraph A of this Paragraph 109) at two hundred seventy (270) calendar days) after the effective date of this CAFO; and

- D. If Respondent cannot comply within two hundred seventy (270) calendar days of the effective date of this CAFO, Respondent shall notify EPA and request an extension of time, including a timetable for compliance. EPA will grant an extension of up to ninety (90) calendar days. If Respondent determines that it needs longer than the additional ninety (90) calendar days to come into compliance, Respondent will need to initiate a conference call with EPA to discuss the rationale for the delay, before EPA will grant additional extensions.
- E. Fort Hood shall perform the requirements of this CAFO within the time frames set forth herein unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Fort Hood which cannot be overcome by due diligence. A force majeure shall mean any event arising from causes beyond the control of a party that causes a delay in, or prevents the performance of, any obligation under this consent order, including but not limited to, acts of God, public enemy, unforeseen strikes or work stoppages, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage, or war. Fort Hood will notify the EPA in writing within five (5) days when it learns that performance will be prevented or delayed, setting forth the cause of the delay and its anticipated duration. The burden of showing that a force majeure event has prevented or delayed performance of this CAFO lies upon Fort Hood.

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110. 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 Fort Hood 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
Enforcement and Compliance Assurance Division
RCRA Enforcement Section (ECDSR)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Gabriel Salinas

In the alternative, documents required by this CAFO may be sent to Gabriel Salinas via email at Salinas.Gabriel@EPA.GOV.

VI.

TERMS OF SETTLEMENT

i. Penalty Provisions

111. 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 Factual Allegations and Alleged Violations, 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 Two Hundred and Fifty Thousand Dollars (\$250,000.00). The Penalty shall be paid within thirty (30) calendar days of the effective date of this

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CAFO, and made payable to the Treasurer, United States.

112. Respondent's Treasury Account Symbol is 21192020. Inquiries concerning this payment can be made to Liane Forsythe. Liane Forsythe may be contacted at liane.t.forsythe.civ@mail.mil or 1-254-278-3514.

113. Further, Respondent shall seek all existing funds to meet the requirements of the CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the CAFO. Nothing in this CAFO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. 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

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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 The US Department of the Army, Fort Hood Docket No. RCRA-06-2019-0909) shall be clearly documented on or within Respondent's chosen method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Attention: Gabriel Salinas

Adherence to this request will ensure proper credit is given when penalties are received by EPA.

ii. Termination and Satisfaction

115. 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 V (Compliance Order), Paragraph 109 of this CAFO. Unless the EPA, objects in writing

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within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

116. This CAFO resolves the claims set forth in Section IV, Factual Allegations and Alleged Violations, and Respondents, are released from liability for Federal civil penalties for the violations and facts alleged in this CAFO that relate to the Facility through the effective date of this CAFO as provided in 40 C.F.R. § 22.18(c) upon the termination of this CAFO.

117. This CAFO resolves the claims set forth in Section IV, Factual Allegations and Alleged Violations, and Respondent is released from liability for Federal civil penalties for the violations alleged in this CAFO that relate to the Facility through the effective date of this CAFO as provided in 40 C.F.R. § 22.18(c) upon the termination of this CAFO.

118. 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 claims pertaining to 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.

iii. Authority to Bind the Parties

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

120. The undersigned Complainant certifies that he or she has the delegated authority to enter into the terms and conditions of this Consent Agreement and bind EPA hereto.

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iv. Reservation of Rights

121. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. 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 rights 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.

v. Effective Date of Settlement

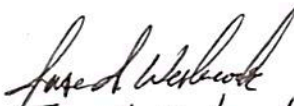
122. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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

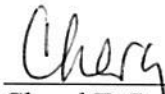
FOR THE RESPONDENT:

Date: 28 May 2019


Jason A. Westbrook
United States Department of The Army
Fort Hood
Commanding

FOR THE COMPLAINANT:

Date: 6-4-19



Cheryl T. Seager, Director
Enforcement and Compliance Assurance
Division

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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. 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 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/5/2019



Thomas Rucki
Regional Judicial Officer

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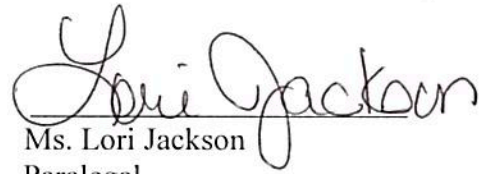
CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2019, the original of the foregoing Consent Agreement and Final Order was hand 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 of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

United States Department of Army
Directorate of Public Works
4612 Engineer Drive
Fort Hood, TX 76544

Nancy Sanchez
Attorney-Advisor
Administrative and Civil Law
Office of the Staff Judge Advocate
III Corps and Fort Hood
Room Number: C224
1001 761st Tank Battalion Avenue
Fort Hood, TX 76544
(254) 287-2458


Ms. Lori Jackson
Paralegal