

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

07 JUN 27 11 21 AM
REGIONAL HEADING OFFICE
EPA REGION VI

IN THE MATTER OF: §
TXI OPERATIONS, LP, § DOCKET NUMBER
MIDLOTHIAN, TEXAS 76065 § RCRA-06-2007-0904
EPA ID No. TXD007349327 § CONSENT AGREEMENT
RESPONDENT § AND FINAL ORDER
§ Pursuant to 40 C.F.R. § 22.13(b)

CONSENT AGREEMENT AND FINAL ORDER

I.

PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and compliance order is brought by the United States Environmental Protection Agency ("EPA") pursuant to Section 3008 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 Consent Agreement and Final Order ("CAFO") under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. This CAFO only resolves Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

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.

II.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

7. TXI Operations, LP ("Respondent") is a limited partnership which was formed under the laws of the State of Texas.

8. By letter dated August 30, 2005, and pursuant to EPA's final policy statement on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (65 Fed. Reg. 19618, April 11, 2000) ("Self-Disclosure Policy"), Respondent disclosed to EPA Region 6, *inter alia*, potential violations of RCRA and regulations promulgated under RCRA. Said letter is attached hereto as Appendix A and is hereby incorporated by reference.

9. On December 12, 2006, EPA Region 6 issued to Respondent a Notice of Determination, ICIS Number 13358, which, pursuant to the Self-Disclosure Policy, waived seventy-five percent (75%) of the gravity portion of the penalty associated with the voluntarily disclosed RCRA violations. The Notice of Determination further stated that EPA would collect, through a Consent Agreement and Final Order, the remaining twenty-five percent (25%) of the gravity portion of the penalty.

10. Respondent began doing business that involved processing waste-derived fuels in its cement kilns in the State of Texas in 1987.

11. Respondent is a limited partnership and therefore is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 Code of Federal Regulations (C.F.R.) § 260.10, and the Texas Administrative Code (TAC) at 30 TAC § 335.1.

12. Respondent's registered agent for service is C T Corporation System, 350 North St. Paul Street, Dallas, Texas, 75201.

13. Respondent owns and operates a resource recovery facility located at 245 Ward Road, Midlothian, Ellis County, Texas 76065 ("the Facility") that is authorized for the storage and processing of hazardous and nonhazardous class I industrial waste under the RCRA permit number HW 50316-001 ("RCRA Permit").

14. Respondent's Facility is a "facility" as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

15. Respondent is the "owner" and "operator" of the Facility, as those terms are defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

16. Each of the relevant substances identified in Appendix A is a "solid waste" as defined at 30 TAC § 335.1 [40 C.F.R. § 261.2].

17. Each of the relevant substances identified in Appendix A is a "hazardous waste" as defined at 30 TAC § 335.1 [40 C.F.R. § 261.3].

18. Each of the relevant substances identified in Appendix A is also a "hazardous industrial waste" as defined at 30 TAC § 335.1. For the purposes of this CAFO, the term "hazardous waste" shall mean "hazardous waste" and "hazardous industrial waste."

19. Therefore, based upon the above, Respondent is required to comply with the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities found in 30 TAC Chapter 335, Subchapter E [40 C.F.R. Part 264].
20. Pursuant to section I.I.4 of the RCRA Permit, TXI is required to follow the Waste Analysis Plan.
21. Pursuant to section II.D.4 of the RCRA Permit, TXI is required to determine at pre-acceptance whether waste loads will be subject to special unloading procedures set forth in the Waste Analysis Plan.
22. Section 2.0 of the Waste Analysis Plan requires TXI to obtain and evaluate a waste profile sheet before acceptance of a new waste stream.
23. On or about March 24, 2005, TXI accepted a waste load for which there is no record that a required profile sheet had been previously received and reviewed.
24. Therefore, TXI violated sections I.I.4 and II.D.4 of the RCRA Permit by accepting a waste load without a waste profile sheet before acceptance.
25. On or about June 3, 2005, TXI unloaded a railcar containing waste liquids into an on-site unit without having sampled the contents of the railcar.
26. Therefore, TXI violated sections I.I.4 and II.D.4 of the RCRA Permit by unloading waste into an on-site unit prior to sampling, as directed in the Waste Analysis Plan.
27. Pursuant to section I.C of the RCRA Permit, all waste management activities must be confined to authorized Facility units listed in Attachment C.
28. Pursuant to section I.H of the RCRA Permit, TXI must comply with the manifest requirements, as provided in the state and federal regulations.

29. On or about July 15, 2005, TXI transported wastewater generated on-site from a 90-day accumulation tank at the Facility to a nearby truck yard without a manifest.

30. Therefore, TXI violated sections I.C and I.H of the RCRA Permit by not confining waste management activities to authorized units and by not complying with the manifest requirements.

31. Pursuant to section I.I.5 of the RCRA Permit, new employees at the Facility shall receive training regarding hazardous waste management operations before being engaged in these activities.

32. On or about January 25, 2005, TXI assigned a new employee that did not receive a formal off-site or on-site classroom training.

33. Therefore, TXI violated section I.I.5 of the RCRA Permit by not providing the formal training to the new employee.

34. Pursuant to section II.A of the RCRA Permit, TXI's design, construction, and operation shall comply with TCEQ rules and be in accordance with the permit.

35. Pursuant to section I.F.6 of the RCRA Permit, TXI must modify the permit when certain changes are made at the Facility.

36. On or about March 1, 2005, the piping system at the Facility was changed without modifying the permit.

37. Therefore, TXI violated sections II.A and I.F.6 of the RCRA Permit by changing the piping system without having the permit modified.

38. Pursuant to section I.F.11 of the RCRA Permit, TXI is required to submit an annual certification regarding waste minimization practices by January 25th for the previous calendar year.

39. TXI failed to prepare a certification by January 25, 2005, for the previous 2004 calendar year.

40. Therefore, TXI violated section I.F.11, by not having prepared and submitted a certification on January 25, 2005, for the previous calendar year.

41. Pursuant to section II.F of the RCRA Permit, TXI must follow the inspection schedule, as included in the permit, following the inspection with a remedy to any deterioration or malfunction discovered during the inspection, and keep records of such inspections on-site for three years.

42. Pursuant to section II.R of the RCRA Permit, TXI shall maintain and operate in proper condition all equipment and structures used to manage hazardous waste at the Facility.

43. Although it appears that TXI conducted its required inspections, there were inconsistencies with the daily inspection forms for maintenance and repairs.

44. During an inspection conducted on or about August 9, 2005, TXI identified the following items needing maintenance:

- a. two of eight bolts in the agitator drive on tank 5 were broken;
- b. flame arrestors on the tanks dirty; and
- c. nitrogen blanketing system valves on certain tanks closed.

45. Additionally, during further inspection and audits at the site, TXI discovered that the daily and weekly inspection sheets at the Facility did not contain the required information, as indicated in the permit.

46. Therefore, TXI violated sections II.F and II.R of the RCRA Permit, by not following an inspection schedule and not maintaining in proper condition all the equipment and structures used to manage hazardous waste at the Facility.

III.

COMPLIANCE ORDER

47. Respondent has provided to EPA documentation describing how Respondent has addressed the noncompliance observations at the Facility noted herein, including details of corrective actions Respondent has taken to ensure compliance with all hazardous waste regulations. Therefore, no additional corrective actions are being ordered herein.

48. Notwithstanding the foregoing, EPA expects Respondent to remain in compliance with all applicable Federal and State laws, regulations, and permitting conditions.

IV.

TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

49. 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, and upon consideration of the seriousness of the alleged violations, good faith efforts to comply with the applicable regulations, and the October 2003 RCRA Civil Penalty Policy, it is ordered that Respondent be assessed a civil penalty of Nine Thousand Three Hundred Seventy-Five Dollars (\$9,375.00).

50. The penalty shall be paid by mailing a cashier's check or certified check payable to the Treasurer of the United States of America, within thirty days of the effective date of this CAFO, to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The case name and docket number (In the Matter of TXI Operations, LP, Midlothian, TX, Docket No. RCRA-06-2007-0904) shall be clearly marked on each check to ensure proper credit.

51. Respondent shall send a simultaneous notice of each payment, including a copy of the cashier's check or certified check to the following:

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

Troy Stuckey, Chief
Texas Section (6EN-HT)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Gabriel Salinas

Your adherence to this request will ensure proper credit is given when penalties are received in the Region.

52. 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 costs 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 by the respective due date. Interest 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 first thirty-day period after the payment is due and an additional \$15.00 for each subsequent thirty days 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 days. 40 C.F.R. § 13.11(c). Should assessment of the 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.

B. GENERAL PROVISIONS:

1. PARTIES BOUND

53. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

2. STIPULATED PENALTIES

54. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any provision of this CAFO, Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$500
16th through 30th day	\$1,000
31st day and beyond	\$2,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

55. The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within thirty days of receipt of a demand letter for payment to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 371099M
Pittsburgh, PA 15251

The case name and docket number (In the Matter of TXI Operations, LP, Midlothian, TX, Docket No. RCRA-06-2007-0904) shall be clearly marked on the check to ensure proper credit.

Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check or certified check to the following:

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

Hazardous Waste Enforcement Branch (6EN-HT)
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Gabriel Salinas

Chief, RCRA Legal Branch (6RC-EW)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Adherence to these procedures will ensure proper credit when payments are received. Also, the provisions of Section IV concerning interest, penalties, and administrative costs also apply.

56. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of Respondent's failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under Section 3008 of RCRA, 42 U.S.C. § 6928.

57. If Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

3. DISPUTE RESOLUTION

58. If Respondent objects to any decision or directive of EPA in regard to Sections III or IV, Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen calendar days of receipt of EPA's decision or directive:

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

Chief, RCRA Legal Branch (6RC-EW)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

59. The Hazardous Waste Enforcement Associate Director or his designee (Associate Director) and Respondent shall then have fifteen calendar days from EPA's receipt of Respondent's written objections to work to resolve the dispute. If an agreement is reached

between the Associate Director and Respondent, the agreement shall be reduced to writing and signed by the Associate Director and Respondent and incorporated by reference into this CAFO.

60. If no agreement is reached between the Associate Director and Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his designee (Division Director). The Division Director and Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to Respondent, which shall be binding upon Respondent and incorporated by reference into the CAFO.

61. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.B.5 (Modifications).

4. NOTIFICATION

62. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Gabriel Salinas

Respondent: Mr. Frederick G. Anderson,
Vice President-General Counsel
TXI Operations, LP
1341 West Mockingbird Lane
Dallas, TX 75247

5. MODIFICATION

63. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and in the case of a substantial material modification or amendment, approval by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

6. RETENTION OF ENFORCEMENT RIGHTS

64. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

65. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

7. INDEMNIFICATION OF EPA

66. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by Respondent in carrying out the activities required by this CAFO.

8. RECORD PRESERVATION

67. Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.

9. COSTS

68. 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.104-121), and any regulations promulgated pursuant to those Acts.

10. TERMINATION

69. Upon payment of the civil penalty specified herein in accordance with the provisions set forth in this CAFO, this CAFO shall be thereby satisfied and terminated without further proceedings.


11. EFFECTIVE DATE

This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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

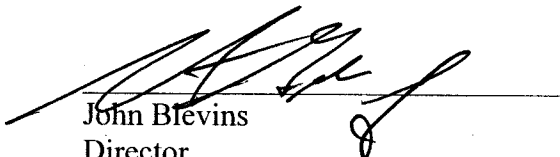
FOR THE RESPONDENT:

Date: 5-17-07


Vice President - Cement Manufacturing
of TXI Operating Trust, general partner
of TXI Operations, LP

FOR THE COMPLAINANT:

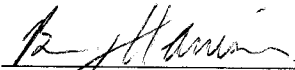
Date: 5-24-07


John Blevins
Director
Compliance Assurance and
Enforcement Division (6EN)

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement 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 in the Complaint. 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 Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6-7-07

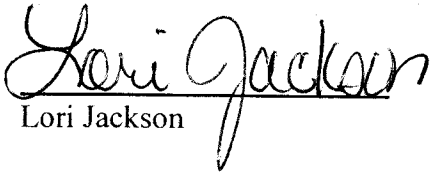


Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order concerning TXI Operations, LP, Docket No. RCRA-06-2007-0904, was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Consent Agreement and Final Order was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 7th day of June, 2007, addressed as follows:

Mr. Frederick G. Anderson
Vice President-General Counsel
TXI Operations, LP
1341 West Mockingbird Lane
Dallas, TX 75247


Lori Jackson