

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

IN THE MATTER OF: §
§
Gruene Environmental Services LLC § Administrative Compliance Order on Consent
§ US EPA Docket No. RCRA-06-2021-0905
§
§
RESPONDENT §
§

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (“ACOC”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, Gruene Environmental Services LLC, formerly known as Gruene Waste Services, LLC (“Respondent”),¹ and concerns the facility located at 5685 Safari Dr. Ste A, New Braunfels, Texas 78132 (“Facility”).
2. 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)².

¹ Gruene Waste Services, LLC was a limited liability company when it filed notifications with EPA in 2012. Gruene Wastes Services, LLC converted to a limited partnership (Gruene Waste Services, LP) in November 2013. Gruene Waste Services, LP was converted to Gruene Environmental Services LLC in June 2020.

² On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” may vary slightly from the State of Texas’ published version. The corresponding C.F.R. citations are also provided.

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 ACOC. This ACOC 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 ACOC and waives all defenses which have been raised or could have been raised to the claims set forth in the ACOC, but this waiver shall be limited to any administrative or legal action to enforce this ACOC and shall not apply to other matters, including without limitation any administrative or legal action for penalties or additional ordering provisions based on the allegations in this ACOC.
5. Respondent consents to the issuance of the ACOC hereinafter recited and consents to the specific stated Compliance Order of this ACOC.

JURISDICTION

6. This ACOC is issued by the EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this ACOC under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
7. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by the EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms or conditions.

STATEMENT OF PURPOSE

8. In entering into this ACOC, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid, hazardous, and universal waste, and to ensure that the injunctive relief that Respondent will complete as described in the Section VI, Compliance Order, is protective of human health and/or the environment.

STATUTORY AND REGULATORY BACKGROUND

9. 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.
10. 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.
11. 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 a military munition. 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.

12. 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 40 C.F.R. Part 261, Subpart D.
13. As part of the hazardous waste regulations, EPA designated certain waste as universal waste to streamline the hazardous waste management standards for certain categories of hazardous waste that are commonly generated by a wide variety of establishments. The streamlined regulations are found at 40 C.F.R. Part 273. The universal waste regulations require that the materials be managed in a way to prevent releases to the environment.
14. States can adopt the universal waste regulations and may add additional universal wastes to a state's universal waste program.
15. Pursuant to 30 Texas Administrative Code ("TEX. ADMIN. CODE") § 335.261(a), Texas has adopted by reference, with certain exceptions at (b), the universal waste regulation at 40 C.F.R. Part 273, as amended and adopted in the Federal Register through July 14, 2006 (71 FR 40254).
16. 30 TEX. ADMIN. CODE § 335.261(b)(16)(A) defines a "Destination facility" as "[a] facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 C.F.R. § 273.13(a) and (c) and 40 C.F.R. § 273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste."

17. 30 TEX. ADMIN. CODE § 335.261(b)(16)(C) defines “Large quantity handler of universal waste” as “A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. Respondent is authorized to do business in the State of Texas. The Facility is located at 5685 Safari Dr. Ste A, New Braunfels, Texas 78132.
19. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Texas Administrative Code (“TEX. ADMIN. CODE”) § 3.2(25), [40 C.F.R. § 260.10].
20. The Facility is a Large Quantity Handler of Universal Waste.
21. During the period of July 2019 - December 2019 EPA conducted a RCRA investigation and record review (“Investigation”) of Respondent’s performance as a Universal Waste Destination Facility and Large Quantity Handler of Universal Waste.

Notification Requirements

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
23. 30 TEX. ADMIN. CODE § 335.261(a), incorporating 40 C.F.R. § 273.60(a)(2006), as amended by 30 TEX. ADMIN. CODE § 335.261(b), provides “[t]he owner or operator of a destination

facility (as defined in §273.9) is subject to all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under section 3010 of RCRA.”

24. 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 characteristic or listed hazardous wastes handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
25. During the Investigation, Respondent indicated it is not a Universal Waste Destination Facility under 30 TEX. ADMIN. CODE § 335.261(b)(16)(A), and indicated Respondent, then known as Gruene Waste Services, LLC, mistakenly identified the Facility in its notification as a Universal Waste Destination Facility.
26. From the Investigation, EPA confirmed Respondent was a Large Quantity Handler of Universal Waste (“LQH”) established under 30 TEX. ADMIN. CODE, § 335.261(b)(16)(C).
27. As an LQH of universal waste, Respondent is subject to notification requirements found in 30 TEX. ADMIN. CODE, § 335.261(b)(16)(C), 40 C.F.R. § 273.32(a)(2006).
28. At times relevant to this ACOC, EPA finds Respondent, as an LQH of universal waste, did not comply with the notification requirements found in 30 TEX. ADMIN. CODE, § 335.261(b)(16)(C), 40 C.F.R. § 273.32(a)(2006).

COMPLIANCE ORDER

29. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of the settlement agreement, Respondent shall provide in writing the following:

A. Respondent shall certify that it has accurately and adequately complied with the RCRA Notification requirements.

30. In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Respondent and shall include the following certification:

I certify under the penalty of law that this document and all of 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 ACOC shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Fred Deppe
Dallas, Texas 75270-2102

Notice shall be sent electronically by email to Fred Deppe, at deppe.fred@epa.gov.

TERMS OF SETTLEMENT

i. Modification

31. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

ii. Indemnification

32. 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 ACOC, 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 ACOC.

iii. Record Preservation

33. Until this ACOC is terminated, pursuant to Section vi below or as otherwise terminated, Respondent shall preserve all records and documents in its possession or in the possession of its divisions, employees, or agents that relate to this ACOC regardless of any document retention policy to the contrary.

iv. Cost

34. 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.

v. Reservation of Rights

35. Notwithstanding any other provisions of this ACOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
36. EPA reserves all its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this ACOC.
37. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
38. EPA reserves the right to initiate an action seeking civil penalties for the same violations and facts set forth herein; as a compliance order, this ACOC does not resolve any potential liability for Federal civil penalties.

vi. Termination and Satisfaction

39. When Respondent believes that it has complied with all the requirements of this ACOC, including compliance with the Compliance Order, Respondent shall so certify in writing and in accordance with the certification language set forth in Section VI (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.
40. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Administrative Compliance Order on Consent, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

Complainant:

Fred Deppe
deppe.fred@epa.gov

Respondent:

Kelly D. Brown
kbrown@craincaton.com

vii. Effective Date of Settlement

41. This ACOC shall become effective upon filing with the Regional Hearing Clerk.

RCRA-06-2021-0905
Gruene Environmental Services LLC

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:**

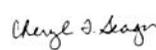
FOR THE RESPONDENT:

Date: 12-10-2020



Partner
Gruene Environmental Services LLC

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER
DN: cn=U.S. Government,
ou=Environmental Protection Agency,
o=CHERYL SEAGER,
c=US, email=1003651793
Date: 2020.12.16 13:25:00 -0500

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U. S. EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing ACOC is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate civil penalties, injunctive or other equitable relief or criminal sanctions for any violations of law, including 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. The Respondent is ordered to comply with the Compliance Order and the Terms of Settlement as set forth in this ACOC. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

ELIZABETH
RYLAND

Digitally signed by ELIZABETH RYLAND
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=ELIZABETH RYLAND,
0.9.2342.19200300.100.1.1=68001003652752
Date: 2020.12.22 15:28:55 -06'00'

Thomas Rucki Elizabeth Ryland
Regional Judicial Officer

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Gruene Environmental Services LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the email addresses:

Copy via Email to Complainant:

deppe.fred@epa.gov

Copy via Email to Respondent:

kbrown@craincaton.com

Ms. Lori Jackson
Paralegal