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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Ergon Baton Rouge, Inc.

RESPONDENT

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CONSENT AGREEMENT
AND FINAL ORDER

USEPA Docket No. RCRA-06-2022-0924

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is entered into by the United States Environmental Protection Agency Region 6 (EPA or Complainant) and Ergon Baton Rouge, Inc. (Respondent). The facility covered by this CAFO is located at 390 West Thomas Road in Baton Rouge, LA, 70874 (the Facility).

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

3. For the purposes of these proceedings, Respondent admits the jurisdictional allegations herein. However, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

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

5. This CAFO resolves only those violations that are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by 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 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

8. 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. Furthermore, Respondent agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a domestic corporation authorized to do business in the State of Louisiana.

10. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and Title 33 of the Louisiana Administrative Code (LAC), LAC 33: V.109¹ [40 C.F.R. § 260.10].

11. At all times relevant to this CAFO, Respondent was an “owner” or “operator” of the Ergon Baton Rouge facility within the meaning of LAC 33: V.109 [40 C.F.R. § 260.10].

12. From February 2020 through October 2020, EPA investigated, and reviewed records related to, Respondent’s hazardous waste related activities at the Facility and compliance with RCRA and the regulations promulgated thereunder (the “Investigation”).

13. Beginning with a letter dated February 20, 2020, and in subsequent correspondence, the EPA conferred with Respondent regarding the violations alleged herein and provided opportunities for Respondent to submit additional information or materials.

14. During the Investigation, EPA found that Respondent, at a minimum, generated and offered for transport and treatment hazardous waste having the characteristic of toxicity (D018) due to its benzene content.

15. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33: V.109 [40 C.F.R. § 260.10].

16. 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 in Title 33 of LAC Part V, Chapters 1 through 51 [40 C.F.R. Part 262].

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272.951; Louisiana State-Administered Program: Final Authorization. References and citations to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” may vary slightly from the State of Louisiana’s published version. The corresponding C.F.R. citations are also provided.

Claim i: Failure to Notify of Generator Category

17. EPA hereby restates and incorporates by reference Paragraphs 1 through 16.

18. 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 EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste 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).

19. The Louisiana Administrative Code in LAC 33. V.1017.A² requires generators to notify the Louisiana Office of Environmental Services within 7 days if any information submitted in the prior notification of hazardous waste activity changes.

20. Respondent's notification to the Louisiana Department of Environmental Quality (LDEQ) on August 13, 2015, identified the Facility as a Conditionally Exempt Small Quantity Generator (CESQG).

21. This status was not updated until February 26, 2020, when the Respondent notified LDEQ that it was a Large Quantity Generator (LQG).

22. Hazardous waste manifests from Respondent from June, July, and August of 2018 and January and February of 2020 indicate that, at some point in each of these years, Respondent generated greater than 1,000 kg per month of hazardous waste, making it a Large Quantity Generator for those periods.

23. Respondent failed to notify LDEQ of this change in its hazardous waste activity within 7 days in violation of LAC 33: V.1105.B.

² LAC 33: V.1105.B (2018) provides the equivalent regulations from the period before Louisiana adopted the generator improvements rule in July 2020.

Claim ii: Failure to Operate within Stated Generator Status

24. The allegations in paragraphs 1-23 are realleged and incorporated herein by reference.

25. In the years 2018 and 2020, Respondent accumulated waste generated at the Facility prior to transport, constituting short term “storage” as defined in 33 LAC: V.109 [40 C.F.R. § 260.10].

26. In the years 2018 and 2020, Respondent, as an entity generating waste in quantities sufficient to qualify as a Large Quantity Generator (LQG) and storing hazardous waste, was required to comply with the regulations for Treatment, Storage, and Disposal (TSD) facilities in LAC 33.V [40 C.F.R. § 270], or comply with the subset of those standards set forth in LAC 33.V.1109.E [40 C.F.R. 262.34(a)(4) (October 2016)³] as conditions for exemption from the full TSD regulations for LQGs accumulating waste for less than 90 days.

27. During portions of 2018 and 2020, the Facility failed to meet these standards, in violation of one or more of the requirements for large quantity generators storing waste under LAC 33: V.1109.E [40 C.F.R. § 262.34].

Claim iii: Storage of Hazardous Waste without Permit or Interim Status

28. EPA hereby restates and incorporates by reference Paragraphs 1 through 27.

29. Pursuant to RCRA sections 3005(a), (e), 42 U.S.C. § 6925(a), (e), and LAC 33: V.305 [40 C.F.R. § 270.1(c)], among other things, and subject to certain exceptions, the owner and operator of a hazardous waste management unit(s) must have a permit or interim status for the treatment, storage and/or disposal of any hazardous waste.

³ Citation is to the Federal Code prior to the finalization of the Generator Improvements Rule, *Hazardous Waste Generator Improvements Rule*, 81 Fed. Reg. 85,732 (November 28, 2016), which had not been adopted by Louisiana during the time period relevant to this investigation.

30. Information provided to EPA by Respondent indicates that greater than 1,000 kg of hazardous waste was stored at the Facility for a period of 100 days (March 24, 2018, to July 2, 2018).

31. During this period, Respondent neither held a RCRA permit nor had interim status for this storage of hazardous waste.

32. Respondent has therefore engaged in the storage of hazardous waste at the Facility without a permit in violation of RCRA section 3005(a), (e), 42 U.S.C. § 6925(a), (e), and LAC 33: V.305 [40 C.F.R. § 270.1(c)].

IV. COMPLIANCE ORDER

33. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions within ninety (90) calendar days of the effective date of this CAFO:

- A. Respondent shall certify it has developed and implemented standard operating procedures (SOPs) to ensure that the Facility is operating in compliance with RCRA, and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
 - i. Managing hazardous waste while it is at the Facility, and
 - ii. Accurate counting of generated waste and notifying appropriate authorities of generator status.
- B. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

34. 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 Respondent, 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 the CAFO shall be sent to the following:

Adolphus Talton
U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270
Talton.Adolphus@epa.gov

35. For purposes of the identification requirement in section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of paragraphs 33 and 34 of this agreement are restitution, remediation, or required to come into compliance with the law.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

36. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), 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 \$46,946

37. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

38. The following are Respondent's options for transmitting the penalties:

Checks sent via U.S. Postal Mail (including certified mail), or U.S. Postal Service Express Mail should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of Ergon Baton Rouge, Inc., Docket No. RCRA-06-2022-0924) shall be documented on or within your chosen method of payment to ensure proper credit.

39. 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
1201 Elm Street, Suite 500
Dallas, Texas 75270
Vaughn.Lorena@epa.gov

Margaret Osbourne, Branch Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270
Osbourne.Margaret@epa.gov

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

40. 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 cost 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 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 in accordance with 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 (6%) per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days pursuant to 40 C.F.R. § 13.11(c). Should a penalty charge

on the debt be required, it shall accrue from the first day payment is delinquent pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

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

C. Termination and Satisfaction

42. When Respondent believes it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 33.

43. Unless EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification, effective as of the date of such certification.

44. Full payment of the civil penalty assessed through this CAFO resolves the claims that are alleged to have occurred in Section III, Findings of Fact and Conclusions of Law, and Respondent is released from liability for Federal civil penalties for the violations alleged in this CAFO as provided in 40 C.F.R. § 22.18(c).

D. Effective Date of Settlement

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

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

FOR THE RESPONDENT:

Date: 4/28/2022



Joel Pastorek, President
Ergon Baton Rouge, Inc.

FOR THE COMPLAINANT:

Cheryl T. Seager Digitally signed by
CHERYL SEAGER
Date: 2022.05.03
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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 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. 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.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
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Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Suite 500 Dallas, Texas 75270, and that a true and correct copy of the CAFO was sent to the following by the method below:

VIA ELECTRONIC MAIL

abromer@perkinscoie.com

Lori Jackson