

3. For these proceedings, Respondents admit the jurisdictional allegations herein; however, the Respondents neither admit nor deny the specific factual allegations and alleged violations of law contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the final order contained in this CAFO and, for purposes of this proceeding, waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. The CAFO resolves only those violations which are alleged herein and the potential violations listed in Appendix I of the CAFO. However, this CAFO does not provide release for any violation(s) of storage of hazardous waste without a permit, the complete requirements of which are set forth at 30 TEX.ADMIN.CODE §§ 335.2 and 335.43, [40 Code of Federal Regulations (“C.F.R.”) Parts 270 and 271].

6. This CAFO covers the violations alleged herein, the potential violations listed in Appendix I of the CAFO, specific periods set forth in Section III (Factual Allegations and Alleged Violations), and for the time period covered by Section IV (Compliance Order) Paragraph 71 of this CAFO.

7. The Respondents consent to the issuance of this CAFO hereinafter recited, consent to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consent to the specific time period and requirements stated in Section IV (Compliance Order).

8. Respondents and Complainant, together (the “Parties”) by the execution and filing of this CAFO, have agreed to resolve the potential violations that are listed in Appendix I of this CAFO and

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.

disclosed by Respondents pursuant to the EPA's Policy on Incentives for Self-Policing (the "Audit Policy"), 65 Fed. Reg. 19168 (April 11, 2000) for the Dallas Facility.

9. By their signatures to this CAFO, EPA and Respondents agree to the use of electronic signatures for this matter. The EPA and Respondents further agree to electronic service of this CAFO, pursuant to 40 C.F.R. § 22.6, by email to the following addresses: EPA-Moncrieffe.marcia@epa.gov. and for Hempel, Michael A. Lodzinski, MIALOD@hempel.com. and James G. Votaw, votaw@khllaw.com.

II. JURISDICTION

10. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of the 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 CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

11. Respondents agree to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6, to issue or enforce this CAFO, and agree not to contest the validity of this CAFO or its terms or conditions.

III. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

12. Hempel (USA), Inc., ("Hempel" or "Respondent") is a corporation authorized to do business in the State of Texas. Jones-Blair Company, LLC ("Jones-Blair" or "Respondent") is a limited liability company authorized to do business in the State of Texas (Hempel and Jones-Blair together are "Respondents").

13. At all times relevant to this CAFO, Hempel owned and operated paint and coating manufacturing facilities at two locations in the State of Texas, which are the subjects of this CAFO. The two facilities are: (a) the Conroe Facility; and (b) the Dallas Facility. Further, at all times relevant to this CAFO, Jones-Blair or its predecessor owned the real estate underlying the Dallas Facility, and prior to January 1, 2016, owned and operated all of the equipment and structures at the Dallas Facility.

The Conroe Facility-TXR000032490

14. The Conroe Facility is situated on approximately 10 acres and operates several production processes, including its production, specifically of single and two-component paint and coatings (Primary NAICS code 32551-Paint and Coating Manufacturing).

15. In its Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) notification, Hempel notified EPA on January 22, 2008 that it operates as a conditionally small quantity generator (“CESQG”) and is the site owner and operator of the Conroe Facility.

16. On or about the week of July 17- 20, 2018, EPA, Region 6 conducted a RCRA inspection at the Conroe Facility (the “Conroe Inspection”) and concluded that certain waste streams generated during the manufacturing processes at the Conroe Facility are subject to 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262].

17. Subsequent to the Conroe Inspection, Respondents concluded that their Conroe Facility operates as a RCRA large quantity generator (“LQG”).

18. On or about March 21, 2019, EPA, Region 6 sent an informal information request to Hempel for its Conroe Facility (the “Request”).

19. On or about April 10, 2019, Hempel completed and submitted its response to the Request.

The Dallas Facility- TXD007327364

20. The Dallas Facility is situated on approximately 10 acres and operates several production processes, including its production, specifically of single and two-component paint and coatings (Primary NAICS code 32551-Paint and Coating Manufacturing).

21. In its Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) notification, Jones-Blair notified EPA on September 3, 2014 that it operates as a Small Quantity Generator (“SQG”) and is the site owner and operator of the Dallas Facility.

22. Subsequent to the Conroe Inspection, Respondents voluntarily commenced a third-party compliance audit of the Dallas Facility and, on January 17, 2019, Respondents submitted to EPA corresponding self-disclosures pursuant to the EPA’s Policy on Incentives for Self-Policing (the “Audit Policy”), 65 Fed. Reg. 19168 (April 11, 2000) for the Dallas Facility.

23. Respondents, in their January 17, 2019, self-disclosures (the “Self-Disclosures”) disclosed fifteen (15) potential violations to the EPA, which are listed in Appendix I to this CAFO.

24. During the Conroe Inspection, EPA, Region 6 identified the Dallas Facility as one additional Hempel facility for a corresponding investigation. Respondents have stated that they had no knowledge that EPA had identified one additional Hempel facility with potential environmental issues and had started an investigation at its Dallas Facility.

25. EPA, Region 6 has concluded that Respondents’ Self-Disclosures do not meet Condition 4 for the Audit Policy because the disclosures are not considered independent where EPA is already investigating the facility in question.

26. For purposes of this CAFO, EPA, Region 6 in its discretion has provided penalty mitigation for the violations disclosed by Respondents.

Conroe Facility and the Dallas Facility

27. The factual allegations cited in Paragraphs 28 through 40 herein are applicable to the

Conroe Facility and the Dallas Facility, together (the “Facilities”).

28. Since July 2018 to present, EPA, Region 6 and Respondents have engaged in several phone conferences and written communications, regarding the Facilities, which resulted in Respondents cooperating with and providing additional information to EPA, Region 6’s informal requests (the “Response”).

29. Respondents are each a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 30 TEX.ADMIN.CODE § 3.2(25), [40 C.F.R. § 260.10].

30. At all relevant times hereto, Respondents’ Facilities were and continue to be each a “facility” as defined under 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10].

31. At all relevant times hereto, Respondents were and continue to be an “owner” and/or “operator” of the Facilities as defined under 30 TEX.ADMIN.CODE §§ 335.1(108) and (107), [40 C.F.R. § 260.10].

32. From EPA’s review of the Conroe Inspection, the Response, other information gathered from the Texas Commission of Environmental Quality (“TCEQ”) and EPA’s respective data bases (“Investigation”), EPA has determined that Respondents generate several “solid waste” streams from certain of Respondents’ manufacturing processes within the meaning of Section 1004(28) of RCRA, 42 U.S.C. § 6903(28) and 30 TEX.ADMIN.CODE § 335.1(138), [40 C.F.R. § 260.10].

33. From a review of the Investigation, EPA has determined that Respondents’ solid waste streams, generated from certain of their manufacturing processes, which are the subject of this CAFO, are not subject to the rules set forth at 30 TEX.ADMIN.CODE § 335.262, [40 C.F.R. § 261.9].

34. EPA discovered that Respondents generated, accumulated, and offered for transport and treatment, at a minimum, the following hazardous waste streams, generated from certain of their

manufacturing processes, at different times during the period of 2015 through 2019:

- i. Ignitable, corrosive, and reactive characteristic wastes with the hazardous waste codes, respectively D001, D002, and D003;
- ii. Toxicity characteristic wastes with the hazardous waste codes D006, D007, D008, D009, and D010, which correspond respectively to cadmium, chromium, lead, mercury, and selenium; and
- iii. Listed hazardous wastes, with the hazardous waste codes F003, F005, and U125.

35. The hazardous waste streams identified in Paragraph 34 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33].

36. From the Investigation, EPA has determined that Respondents are each a “generator” of “hazardous waste” at each of the Facilities, as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

37. From the Investigation, EPA has determined that Respondents at times generated in the aggregate at or about 54,000 kgs of hazardous waste at each facility from its production processes each month.

38. From the Investigation, EPA determined that during the time period of 2015 to early 2019, Respondents generated, at a minimum, the hazardous waste streams identified in Paragraph 34 in quantities that exceeded the threshold amount of 1000 kg of hazardous waste per month at each of the Facilities, which qualified Respondents for the LQG status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

39. From the Investigation, EPA has concluded that certain of Respondents’ solid waste streams generated from its production processes are determined to be hazardous waste and are the subject of this CAFO and must be managed pursuant to the applicable regulations at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], and all the applicable regulations referenced

therein.

40. From the Investigation, EPA concluded that Respondents failed to comply with several of the applicable generator standards and permit requirements in violation of the laws and regulations of RCRA promulgated at 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925.

RCRA ALLEGATIONS

Claim i. Failure to make hazardous waste determinations

41. The allegations in Paragraphs 1-40 are realleged and incorporated herein by reference.

42. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1(138), [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.

43. For the periods relevant to this CAFO, Respondents failed to make and/or document adequate hazardous waste determination on a number of the waste streams generated at the Facilities during the manufacturing processes.

44. Respondents violated the requirements of RCRA and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11], by failing to make the requisite hazardous waste determinations for some of the solid waste streams generated by Respondents at the Facilities.

45. From the Investigation, EPA determined that for the periods relevant to this CAFO, Respondents failed to comply with 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11], and are therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim ii. Failure to file an adequate, accurate initial or subsequent notification

46. The relevant allegations in Paragraphs 1-45 are realleged and incorporated herein by reference.

47. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a CESQG in a calendar month if he generates no more than 100 kilograms of hazardous waste and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5(f), (g), and (j)].

48. Pursuant to 30 TEX.ADMIN.CODE § 335.69(f), [40 C.F.R. § 262.34(d)], a generator is a SQG if he generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and complies with 30 TEX.ADMIN.CODE §§ 335.69(f)(1) through (5), [40 C.F.R. §§ 262.34(d)(1) through (5)].

49. From the Investigation, EPA concluded that Respondents operated as LQGs at the Facilities for the relevant periods of this CAFO .

50. 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.

51. At the time of the Conroe Inspection, Hempel had not filed with the Administrator or the authorized

State a subsequent notification of its hazardous waste activities for the Dallas Facility:

- a) Since its 2016 acquisition to show a change in ownership of the operational equipment and structures;
- b) Indicating at any time that it generates and manages paint and paint related waste;
- c) Identifying itself as a LQG; and
- d) Listing all its waste codes generated at the Dallas Facility.

52. At the time of the Conroe Inspection, Hempel had not filed with the Administrator or the authorized

State a subsequent notification of its hazardous waste activities for the Conroe Facility:

- a) Indicating that it generates and manages paint and paint related waste;
- b) Identifying itself as a LQG; and
- c) Listing all its waste codes for all the waste streams generated at the Conroe Facility.

53. From the Investigation, EPA determined that for the periods relevant to this CAFO, Respondents failed to comply fully with Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim iii. Failure to meet the requirements for Large Quantity Generator

54. The relevant allegations in Paragraphs 1-53 are realleged and incorporated herein by reference.

55. During the Investigation, EPA determined that Respondents operated as LQGs at the Facilities for the relevant periods of this CAFO.

56. Pursuant to 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34], a generator of 1000 kilograms or greater of hazardous waste in a calendar month or greater than one (1) kilogram acute hazardous waste in a calendar month, may accumulate hazardous waste or acute hazardous waste on-site for 90 days or less without a permit or without having interim status provided that certain conditions are met.

57. During the Investigation and for the relevant periods of this CAFO, Respondents did not meet the required conditions for LQGs at the Facilities as set forth at 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34].

58. From the Investigation, EPA determined that for the relevant periods of this CAFO, Respondents failed to comply with 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262] at the Facilities, and are therefore subject to civil penalties pursuant to Section 3008(a) of

RCRA, 42 U.S.C. § 6928(a).

Claim iv. Failure to Perform Land Disposal Determination

59. The relevant allegations in Paragraphs 1-58 are realleged and incorporated herein by reference.

60. Pursuant to 30 TEX.ADMIN.CODE § 335.431, [40 C.F.R. §§ 268.7(a)(2) or 268.7(a)(3)(i)], and in accordance with all applicable requirements of the land disposal restrictions (“LDR”) found at 40 C.F.R. Part 268, at a minimum, a generator with its initial shipment of waste sent to each treatment, storage, or disposal facility must send a one-time written notice and place a copy in its file.

61. During the Investigation and for the relevant periods of this CAFO, in some instances, Hempel did not send the one-time written notice to each treatment, storage, and/or disposal facility and, in other instances, the written notice that was sent did not include all waste codes for the associated waste streams generated by Hempel.

62. From the Investigation, EPA determined that for the relevant periods of this CAFO, Hempel has therefore violated 30 TEX.ADMIN.CODE § 335.431, [40 C.F.R. § 268.7], of the LDR regulations for prohibited waste and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim v. Failure to submit Annual/Biennial Report

63. The relevant allegations in Paragraphs 1-62 are realleged and incorporated herein by reference.

64. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41], a large quantity generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA’s Regional Administrator, and to the TCEQ, by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30

TEX.ADMIN.CODE § 335.9.

65. During the Investigation and for the relevant periods of this CAFO, the EPA and/or the TCEQ did not receive the requisite number of Annual/Biennial Reports that Respondents were required to file for the Facilities.

66. From the Investigation, EPA determined that for the relevant periods of this CAFO, Respondents failed to comply with 30 TEX.ADMIN.CODE § 335.71 and 40 C.F.R. § 262.41 and are therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim vi. Failure to Comply with the Manifest Requirements

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

68. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)], a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.

69. From the Investigation, EPA determined that Respondents did not prepare all manifests as is required by the regulations.

70. From the Investigation, EPA determined that for the relevant periods of this CAFO, Respondents failed to comply with TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)], and are therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

IV. COMPLIANCE ORDER

71. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and within ninety (90) days of the effective date of this CAFO, Respondents are hereby ordered to take the actions necessary to

comply with the applicable RCRA laws and regulations, both State and federal, and shall certify to EPA in writing that the Facilities that are the subject of this CAFO are in compliance with all applicable federal and State requirements of RCRA and the implementing regulations. The Respondents have agreed that Jones-Blair is responsible to certify only with respect to the Dallas Facility.

- a) In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondents shall be signed by an owner or officer or officer's designee of Hempel 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.

- a) Copies of all documents required by this CAFO may be sent to the following:

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division
RCRA Enforcement Section (ECDSR)
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe

In the alternative and as set forth in Subsection iv of Section V of this CAFO (Notification), documents required by this CAFO may be sent to Fred Deppe via email at Deppe.Fred@epa.gov.

V. TERMS OF SETTLEMENT

i. Penalty Provisions

72. 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 Factual Allegations and Allegations of Violations, which are hereby adopted and made a part hereof, upon

the seriousness of the alleged violations, and Respondents' good faith efforts to comply with the applicable regulations, which includes Respondents' cooperation throughout the negotiation and information provided to EPA subsequent to the Conroe Inspection, it is ordered that Respondents be assessed a civil penalty of Seven Hundred and Twenty-Eight Thousand Eight Hundred and Seventeen Dollars (\$728,817.00). Respondents are jointly and severally liable for the total sum of the penalty assessed by EPA.

73. The penalty shall be paid in two (2) installments. The first installment of \$506,511.00² shall be made on or before sixty (60) days after the effective date of this CAFO. Additionally, the second and final installment of \$222,306.00³ shall be made on or before one hundred and twenty (120) days after the effective date of this CAFO.

74. Further, if Respondents should decide to sell or in any way relinquish ownership of any of the Facilities before the end of the 120 days referenced in Paragraph 73 above and before the full payment of the Seven Hundred and Twenty-Eight Thousand Eight Hundred and Seventeen Dollars (\$728,817.00) is made to the Treasurer of the United States, Respondents remain responsible for the full assessed civil payment. The payments shall be made by one of the following methods:

- a. By mailing a bank check, cashier's check, or certified check payable to

"Treasurer, United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004

2. Assessed civil penalty for the Conroe Facility.
3. Assessed civil penalty for the Dallas Facility.

Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

c. By overnight mail (Express, FedEx, DHL, etc.) to:

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

“In the matter of Hempel (USA), Inc., and Jones-Blair Company, LLC, Docket No. RCRA-06-2020-0968” shall be clearly marked on the check or other remittance, to ensure proper credit.

75. The Respondents shall send a simultaneous notice of such payment to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75202-2733
Vaughn.Lorena@epa.gov.

Margaret Osbourne, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@EPA.gov.

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

76. 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 process and handling a delinquent claim. Interest on the civil

penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling 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 fifteen dollar (\$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 fifteen dollars (\$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 which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b).

77. Should a 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.

ii. Stipulated Penalties

78. In addition to any other remedies or sanctions available to EPA, if the Respondents fail or refuse to comply with any provision of this CAFO, the Respondents 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 | \$500.00 |
| 16th through 30th day | \$1,000.00 |
| 31st day and beyond | \$5,000.00 |

79. Penalties shall accrue from the date of the noncompliance until the date the violation

is corrected, as determined by EPA. Respondents are jointly and severally liable for the total sum of the penalty assessed by EPA.

80. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection Vi. (Penalty Provisions) of this CAFO.

81. The Respondents shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

Margaret Osbourne, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@EPA.gov.

Chief, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.marcia@epa.gov.

82. Adherence to these procedures in addition to Respondents' compliance with the provisions of Section V, concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

83. 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 the Respondents' failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under RCRA.

84. If the Respondents dispute 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 the 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.

iii. Dispute Resolution

85. If a Respondent objects to any decision or directive of EPA regarding Section IV (Compliance Order) or Subsection VII. (Stipulated Penalties), the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Margaret Osbourne, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.fred@epa.gov.

Chief, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.marcia@epa.gov.

86. The Waste Enforcement Branch Chief ("Branch Chief") or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Chief and the Respondent, the agreement shall be reduced to writing and signed by the Branch Chief and the Respondent and incorporated by reference into this CAFO.

87. If no agreement is reached between the Branch Chief and the Respondent within

that time, the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division (“Division Director”) or his/her designee. The Division Director and the Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the 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 the Respondent are unable to reach agreement within this second fifteen (15)-day period, the Division Director shall provide a written statement of EPA’s decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

88. 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 the Subsection on Modification, below.

iv. Notification

89. Unless otherwise specified elsewhere in this CAFO, whenever written 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 email 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 party that another individual has been designated to receive the communication:

EPA: Margaret Osbourne, Chief
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.fred@epa.gov.

Respondents: Eric Massey
Hempel (USA), Inc.
600 Conroe Park North Drive
Conroe, Texas 77303
erma@hempel.com

Walter Yriarte
Hempel (USA), Inc.
600 Conroe Park North Drive
Conroe, Texas 77303
wayr@hempel.com

With Copy to: Michael A. Lodzinski
Region Senior Legal Counsel
Hempel (USA), Inc.
600 Conroe Park North Drive
Conroe, Texas 77303
mialod@hempel.com

v. Modification

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

vi. Retention of Enforcement Rights

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

92. 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 each of Respondents' Facilities. 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.

vii. Indemnification

93. 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 the Respondents, 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 a Respondent in carrying out the activities required by this CAFO.

viii. Record Preservation

94. Each 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.

ix. Cost

95. Each party shall bear its own costs and attorney's fees. Furthermore, each 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.

x. Termination and Satisfaction

96. When Respondents believe that they have complied with all the requirements of this CAFO, including compliance with Section IV (Compliance Order) and payment of the Subsection Vi. (Civil Penalty), Respondents shall individually certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 71 of this CAFO.

Unless the EPA objects in writing within sixty (60) days of EPA's receipt of Respondents' respective certifications, then this CAFO is terminated based on EPA's receipt of both Respondents' respective certifications; provided, however that the release of liability described in the following Paragraph 97 shall survive the termination of the CAFO.

97. This CAFO resolves the claims that occurred during the time period of 2015 to early 2019 and are set forth in Section III, Factual Allegations and Alleged Violations, and Respondents are released from liability for Federal civil penalties for the violations alleged in this CAFO and the potential violations listed in Appendix I of this CAFO that relate respectively to the Facilities through the effective date of this CAFO as provided in 40 C.F.R. § 22.18(c) upon the termination of this CAFO.

xi. Effective Date of Settlement

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

Docket No. RCRA-06-2020-0968

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

FOR THE RESPONDENT HEMPEL (USA), INC.:

Date: 9/4/20


Mr. Todd Cottrell
Regional Vice President
Hempel (USA), Inc.
600 Conroe Park North Drive
Conroe, TX 77303

FOR THE RESPONDENT JONES-BLAIR COMPANY, LLC.:

By: Hempel (USA), Inc.,
Its sole manager

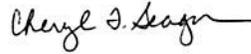
Date: 9/4/20


Mr. Todd Cottrell
Regional Vice President
Hempel (USA), Inc.
Manager of Jones-Blair Company, LLC.
600 Conroe Park North Drive
Conroe, TX 77303

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER (con't):**

FOR THE COMPLAINANT:

Date: _____



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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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 Respondents' (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 Respondents are 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: 9/10/2020

**Rucki,
Thomas**

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Thomas
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email=Rucki.Thomas@epa.gov
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Regional Judicial Officer
Thomas Rucki

CERTIFICATE OF SERVICE

I hereby certify that on the day and year seen below, the original of the foregoing Consent Agreement and Final Order (“CAFO”) was emailed to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270. Also, a true and correct copy of the RCRA CAFO, Docket No. RCRA-06-2020-0968 CAFO was transmitted via email to counsel for Respondents at- Michael A. Lodzinski, MIALOD@hempel.com. and James G. Votaw, votaw@khlaw.com.

moncrieffe.marcia@
epa.gov

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moncrieffe.marcia@epa.gov
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Date: 2020.09.10 12:16:15 -05'00'

Name and Date: Marcia E. Moncrieffe
Counsel for EPA
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Moncrieffe.marcia@epa.gov.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:)

Hempel (USA), Inc., and)
Jones-Blair Company, LLC)

USEPA Docket No. RCRA-06-2020-0968

APPENDIX I

**POTENTIAL VIOLATION DISCLOSED PURSUANT TO
EPA'S POLICY ON INCENTIVES FOR SELF-POLICING
65 FED. REG. 19,168 (APR. 11, 2000) ("AUDIT POLICY")**

Hempel (USA), Inc. and its wholly-owned subsidiary, Jones-Blair Company, LLC,¹ each disclosed certain potential violations occurring at the Hempel facility in Dallas, Texas arising under the Texas solid waste management rules constituting elements of the authorized state program implementing the federal Resource Conservation and Recovery Act ("RCRA") in Texas. The potential violations were discovered in the course of a voluntary compliance audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act ("Audit Act") and disclosed to the TCEQ and US EPA pursuant to the Audit Act and the Audit Policy, respectively. The violations disclosed included potential failures to:

1. Retain hazardous waste containers in designated accumulation areas pursuant to 30 T.A.C. § 335.69;
2. Make an accurate generator category determination pursuant to 30 T.A.C. § 335.262;
3. Maintain adequate written hazardous waste determinations, and applicable supporting documentation, on-site pursuant to 30 T.A.C. § 335.513;
4. Conduct weekly central accumulation area inspections pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. Part 265, Subpart I as incorporated by reference in 30 T.A.C. § 335.112(a);
5. Sufficiently secure hazardous waste containers pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. Part 265, Subparts I and CC as incorporated by reference in 30 T.A.C. § 335.112(a);
6. Adequately mark containers and tanks accumulating hazardous waste pursuant to 30 T.A.C. § 335.69;

¹ Jones-Blair Company, LLC acquired an interest in the facility when it merged with the prior owner on March 6, 2015. Thereafter, Hempel (USA), Inc. acquired an interest in the facility when it acquired all of the equipment and structures at the facility and became the operator on January 1, 2016. Jones-Blair remains the owner of the underlying real estate.

7. Adequately label containers of universal waste pursuant to 40 C.F.R. Part 273, as incorporated by reference in 30 T.A.C. § 335.261(a);
8. Utilize aboveground storage tanks that meet the tank system and air emission standards pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. Part 265, Subpart J, as incorporated by reference in 30 T.A.C. § 335.112(a);
9. Institute an adequate hazardous waste training program and maintain proper training records pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. 265.16, as incorporated by reference in 30 T.A.C. § 335.112(a);
10. Properly manage satellite accumulation area(s) pursuant to 30 T.A.C. § 335.69;
11. Properly label containers storing used oil pursuant to 40 C.F.R. Part 279, as incorporated by reference in 30 T.A.C. § 324.6;
12. Maintain an adequate Emergency Response Plan on-site pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. Part 265, Subpart D, as incorporated by reference in 30 T.A.C. § 335.112(a);
13. Make arrangements with local authorities pursuant to 30 T.A.C. § 335.69 and 40 C.F.R. Part 265, Subpart C, as incorporated by reference in 30 T.A.C. § 335.112(a);
14. Accurately track the accumulation of certain containers of hazardous waste, such that either the accumulation did not exceed 90-days, or the requisite permitted status was obtained pursuant 30 T.A.C. §§ 335.43, 335.2; and
15. Timely submit a notification regarding updates to the facility's generator status pursuant to 30 T.A.C. § 335.6.

Necessary corrections were timely made in accordance with the Audit Policy, including under timely requests for extensions.

* * * *