

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

FILED  
2016 OCT 24 PM 4:04  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:	§	
	§	CONSENT AGREEMENT
DAL-TILE	§	AND FINAL ORDER
CORPORATION	§	Docket No. RCRA-06-2016-0953
CALHOUN, GEORGIA	§	
	§	
RESPONDENT	§	

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**CONSENT AGREEMENT AND FINAL ORDER**

**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 Respondent, Dal-Tile Corporation (“Respondent”) and applies to the facility located at 359 Clay Road located in Sunnyvale, Texas 75182 (“Sunnyvale facility”).

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

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 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 that have been raised or could have been raised to the claims set forth in the CAFO.

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

6. Respondent consents to the following: issuance of the CAFO hereinafter recited; the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO; and to the specific stated compliance order.

## 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 (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 Corporation formed under the laws of Pennsylvania and registered to do business in Texas on February 9, 1995.

10. Respondent is 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).

11. Respondent is an "owner" or "operator" of the Sunnyvale facility within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. § 260.10).

12. Respondent is a "generator" of hazardous waste at the facility, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

13. 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 at 30 TEX. ADMIN. CODE § 335(C) and/or (F) (40 C.F.R. §§ 262 and/or 270).

14. Between January 2016 and May 2016, EPA conducted an investigation and record review (“Investigation”) of Respondent’s performance as a hazardous waste generator.

15. During the Investigation, EPA discovered that Respondent’s Sunnyvale facility, at a minimum, generated and offered for transport and treatment in 2013 and 2014, 90,418 kg and 96,715 kg respectively, of hazardous waste with the hazardous waste characteristics for chromium (D007) and selenium (D010).

16. The waste identified in Paragraph 15 is “hazardous waste” as defined in 30 TEX. ADMIN. CODE § 335.1(69), (40 C.F.R. § 261.3).

17. From the Investigation, EPA determined that in 2013 and 2014, Respondent’s Sunnyvale facility generated, at a minimum, the hazardous waste streams identified in Paragraph 15 in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, which qualified Respondent for the large quantity generator (“LQG”) status under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).

18. From the Investigation, EPA determined that Respondent’s Sunnyvale facility was registered as a conditionally exempt small quantity generator (“CESQG”) for 2013 and 2014. However, in 2014, Respondent classified the Sunnyvale facility as a LQG in its biennial report, used for the reportable year of 2013.

19. From the Investigation, EPA determined that Respondent accumulated the hazardous waste specified in Paragraph 15, on site for more than 90 days, and was an operator of a storage facility, without obtaining a permit or extension.

20. From the Investigation, EPA determined that portions of Respondent's contingency plan, training, and preparedness and prevention procedures were deficient.

21. From the Investigation, EPA determined that in 2013 and 2014, Respondent incorrectly filled out manifests on numerous occasions.

**Claim 1: Failure to Operate Within Proper Generator Status**

22. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

23. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

24. 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 it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5).

25. In 2013 and 2014, the Sunnyvale facility was registered as a CESQG.

26. From the Investigation, EPA determined that Respondent, in 2013 and 2014, generated waste at a LQG level at the Sunnyvale facility and not as a CESQG.

27. In 2014, in filing its 2013 biennial report, Respondent accurately reported its waste and identified itself as a LQG.

28. While operating as a LQG, Respondent failed to comply with various sections of the applicable LQG requirements.

29. Respondent failed to fully comply with various sections of the applicable LQG requirements, in violation of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

**Claim 2: Manifest Violations**

30. Complainant hereby restates and incorporates by reference Paragraphs 1 through 29.

31. Pursuant to 40 C.F.R. § 262.20(a)(1), a generator who offers for transport hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22 according to the instructions found within the Appendix to Part 262—Uniform Hazardous waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their Instructions).

32. From the Investigation, EPA determined that in 2013 and 2014, Respondent sent multiple shipments of hazardous waste from its Sunnyvale facility with deficiencies in the accompanying manifests.

33. Respondent failed to adequately complete multiple manifests, EPA Form 8700-22, according to the instructions found within the Appendix to Part 262, in violation of 40 C.F.R. § 262.20(a)(1).

**Claim 3: Storage Violation**

34. The Complainant hereby restates and incorporates by reference Paragraphs 1 through 33.

35. Pursuant to 30 TEX. ADMIN. CODE § 335.69(b) (40 C.F.R. § 262.34(b)), a generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of 30 TEX. ADMIN. CODE, Chapters 335 and Chapter 305, unless it has been granted an extension to the 90-day period.

36. From the Investigation, EPA determined that Respondent accumulated hazardous waste for more than 90 days at its facility in 2013 and 2014.

37. Respondent did not obtain a permit under 30 TEX. ADMIN. CODE, Chapter 305 (40 C.F.R., Part 270) without the necessary permits and/or an extension under 30 TEX. ADMIN. CODE § 335.69(b) (40 C.F.R. § 262.34(b)).

38. From the Investigation, EPA determined that Respondent violated the regulations promulgated at 30 TEX. ADMIN. CODE § 335.69(b) (40 C.F.R. § 262.34(b)) by accumulating hazardous waste for more than 90 days without complying with the necessary regulations found at 30 TEX. ADMIN. CODE, Chapters 305 and 335 (40 C.F.R. Parts 264, 265, 267, and 270).

#### IV. COMPLIANCE ORDER

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

- a) Respondent shall certify that it developed and implemented standard operating procedures to ensure that the Sunnyvale facility is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
  - i. making hazardous waste determinations;
  - ii. training personnel involved in managing, reporting, transporting, and disposing of hazardous waste;
  - iii. preparing hazardous waste manifests; and
  - iv. meeting the requirements of the land disposal requirements.

40. 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 Dal-Tile Corporation 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:

Gabriel Salinas  
U.S. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Waste Compliance III Section (6EN-H3)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Provisions**

41. 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, 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 \$53,900.00.

42. 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.

43. 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 Dal-Tile Corporation, Docket No. RCRA-06-2016-0953**) shall be documented on or within your chosen method of payment to ensure proper credit.

44. The 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  
1445 Ross Avenue  
Dallas, TX 75202-2733

Mark Potts, Chief  
Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Gabriel Salinas

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



45. 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 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(b). 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**

46. 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.

**C. Termination and Satisfaction**

47. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 39. 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.

**D. Effective Date of Settlement**

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:

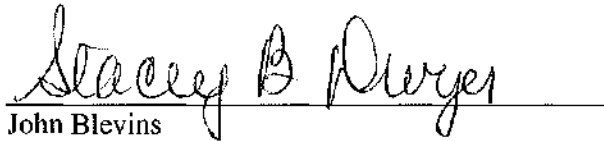
Date: OCTOBER 10, 2016



Dal-Tile Corporation  
David S. Baran  
Sr. VP Manufacturing Operations

FOR THE COMPLAINANT:

Date: OCT 20, 2016



John Blevins  
Director  
Compliance Assurance and Enforcement Division

**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 CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 10/24/16

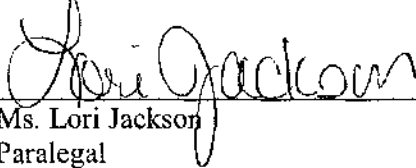
  
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Renea Ryland  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of October, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method below:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED** 70151520002339898511

Barbara Goetz  
Deputy General Counsel  
Dal-Tile Corporation (Mohawk Industries, Inc.)  
160 S. Industrial Boulevard  
Calhoun, Georgia 30701

  
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Ms. Lori Jackson  
Paralegal