

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:

BAYLOR UNIVERSITY
WACO, TEXAS,

RESPONDENT

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CONSENT AGREEMENT AND
FINAL ORDER

DOCKET NO. RCRA-06-2016-0936

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is entered into by the United States Environmental Protection Agency, Region 6 and Baylor University ("Respondent" or "Baylor"), and concerns the facility located at 101 Bagby Avenue, Waco, Texas 76706.

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

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent does not admit 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 the violations alleged in this document for EPA ID: TXD982549180 and EPA ID: TXR000080212 from 2011 to the effective date of this CAFO.

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

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to RCRA § 3008(a), 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)-(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, and 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 university formed under the laws of the State of Texas and owns and operates the facility located at 101 Bagby Avenue, Waco, Texas 76706.

10. Respondent is a "person" within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

11. The facility is a "facility" within the meaning of 30 TEX. ADMIN. CODE § 335.1(59) (40 C.F.R. § 260.10).

12. The primary business at the facility is academic laboratory operations.

13. From December 2015 through February 2016, EPA conducted an investigation and record review of Respondent's performance as a generator of hazardous waste for the years 2011 through 2016.

14. EPA's investigation alleged that Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. §§ 261, 262, and 270 by failing to comply with the RCRA notification requirements, failing to operate within its stated generator status, and failing to perform adequate hazardous waste determination.

15. Respondent is a "generator" of "hazardous wastes" at the facility, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 TEX. ADMIN. CODE § 335.1(65), (69) (40 C.F.R. § 260.10).

16. As a generator of hazardous waste, Respondent is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX. ADMIN. CODE § 335(C), (F) (40 C.F.R. §§ 262 and/or 270).

Claim 1: Failure to file adequate or accurate initial or subsequent notifications Section 3010 (a) of RCRA, 42 U.S.C. 6930(a).

17. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

18. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed waste shall file with the Administrator or authorized state a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

19. Respondent operated as a small quantity generator (SQG) from 2011 to 2014, and operated as a large quantity generator in 2015.

20. At times from 2011 to 2014, Respondent generated hazardous waste in an amount exceeding SQG criteria.

21. Respondent had not filed with the Administrator or with the authorized state an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: Failure to meet the requirements of a Large Quantity Generator (LQG).

22. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

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

24. From 2011 to 2014 Respondent declared its generator status as a SQG, and in 2015, Respondent declared its generator status as LQG.

25. At times from 2011 to 2014, Respondent generated hazardous wastes exceeding the SQG threshold established in 30 TEX. ADMIN. CODE § 335.78 and therefore operated as a LQG.

26. While operating as a LQG in 2011 and 2015, Respondent failed to comply with one or more of the requirements for LQGs under 30 TEX. ADMIN. CODE § 335(C) and/or (F) (40 C.F.R. § 262 and/or 270).

Claim 3: Failure to Make Hazardous Waste Determinations (Including Failure to Make Accurate Hazardous Waste Determinations).

27. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

28. Pursuant to 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11), Respondent, as a generator of solid waste, must determine whether such waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the solid waste in light of the materials or the process.

29. At times relevant to this CAFO, Respondent generated several hazardous wastes, for which there was no adequate and complete hazardous waste determination.

30. Based on the EPA's knowledge of Respondent's activities at the Facility and the waste profile of the waste streams, during the periods of 2011 to 2015, Respondent failed to make adequate and complete hazardous waste determinations on all its solid waste streams in violation of 30 TEX. ADMIN. CODE § 335.62, (40 C.F.R. § 262.11).

IV. COMPLIANCE ORDER

31. 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 has assessed all its solid waste streams to determine the accurate waste codes and has modified its existing Standard Operating Procedures (SOP) to further ensure that Respondent is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for:

1. making hazardous waste determinations;
2. managing hazardous wastes; and
3. reporting, transporting, and disposing of hazardous waste.

B. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A, above.

32. 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 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."

33. Copies of all documents required by the CAFO shall be sent to the following:

Fred Deppe
Waste Compliance II Section (6EN-H2)
U.S. Environmental Protection Agency Region 6
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
1445 Ross Avenue
Dallas, Texas 75202-2733

V. TERMS OF SETTLEMENT

A. Supplemental Environmental Project.

34. Respondent shall undertake the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement.

35. Respondent will purchase emergency response equipment, as set forth below. The emergency response equipment will include an ACE-ID handheld explosive, narcotic, and toxic chemical identifier and a RAE Systems MultiRAE ProGas Monitor ("Emergency Response Equipment").

36. Respondent will purchase the Emergency Response Equipment and donate it to the Waco Fire Department.

37. Respondent shall complete its purchase and donation of emergency response equipment within 90 days from the effective date of this CAFO.

38. Respondent is responsible for the satisfactory completion of the SEP. The total expenditure for the SEP shall be no less than **\$33,990.00**. Eligible SEP costs do not include

inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

39. The Respondent hereby certifies that, as the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP was not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP.

40. The Respondent's signatory to this CAFO, by signing the CAFO, makes the following additional certification:

The Respondent, to the best of my knowledge and belief after reasonable inquiry, is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

41. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

SEP Completion Report

42. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

43. Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 49.

44. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

45. Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

46. After receipt of the SEP Completion Report described in Paragraph 42 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 49 below.

47. If EPA elects to exercise option (a) in Paragraph 46 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 46 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein,

as determined by EPA, a stipulated penalty shall be due and payable by Respondent to EPA in accordance with Paragraph 48 herein.

B. Penalty Provisions.

48. 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 stipulated civil penalty of \$11,330.00.

49. If Respondent fails to adequately perform the SEP as described above, Respondent agrees to pay a stipulated penalty of \$40,000.

50. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

51. 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.

52. 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, Missouri 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, Missouri 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 Baylor University, Docket No. RCRA-06-2016-0936**) shall be documented on or within your chosen method of payment to ensure proper credit.

53. 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, Texas 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: Fred Deppe

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

54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, 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. 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. 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

C. Costs.

55. 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.

D. Termination and Satisfaction.

56. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order, completion of the SEP and payment of

the civil penalty, Respondent shall certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order) and this Section V (Settlement Terms). Unless the 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.

E. Effective Date of Settlement.

57. 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: September 28, 2016

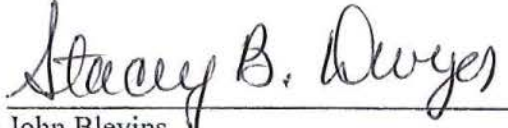


Dr. Reagan Ramsower
Senior Vice President and
Chief Operating Officer
Baylor University



FOR THE COMPLAINANT:

Date: Oct. 18, 2016

for 

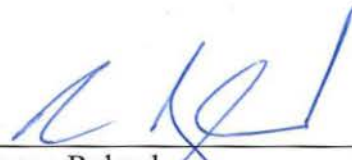
John Blevins
Director
Compliance Assurance and
Enforcement Division

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.

Dated

10/24/16



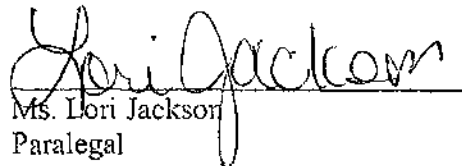
Renea Ryland
Regional Judicial Officer

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 7015 1520600339898504

Dr. Reagan Ramsower
Senior Vice President and
Chief Operating Officer
Baylor University
1 Bear Place
Waco, Texas 76798


Ms. Lori Jackson
Paralegal