



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 29, 2018

CERTIFIED MAIL- RETURN RECEIPT REQUESTED – 7015 1520 0003 3990 9170

Dwight Vorpahl
Vice President/General Counsel
Athlon Solutions, LLC
5500 North Sam Houston Parkway West
Suite 800
Houston, Texas 77086

**Re: In the Matter of Gulf Bayport Chemicals, LP, and Athlon Solutions, LLC: RCRA
3008 Consent Agreement and Final Order U.S. EPA Docket No. RCRA-06-2018-
0916**

Dear Mr. Vorpahl:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) agreed upon by the parties to the above referenced matter. You should have already received an electronic copy of the CAFO. The CAFO becomes final upon filing with the Regional Hearing Clerk, which is indicated by the date stamp.

If you have questions, please do not hesitate to contact me at (214) 665-8151 or by e-mail at moore.nathaniel@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel Moore".

Nathaniel Moore
Assistant Regional Counsel

Enclosure





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 29, 2018

CERTIFIED MAIL- RETURN RECEIPT REQUESTED – 7015 1520 0003 3990 9194

John Nowlan
CEO
Gulf Bayport Chemicals, LP
7700 San Felipe, Suite 125
Houston, Texas 77063

**Re: In the Matter of Gulf Bayport Chemicals, LP, and Athlon Solutions, LLC: RCRA
3008 Consent Agreement and Final Order U.S. EPA Docket No. RCRA-06-2018-
0916**

Dear Mr. Nowlan:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) agreed upon by the parties to the above referenced matter. You should have already received an electronic copy of the CAFO. The CAFO becomes final upon filing with the Regional Hearing Clerk, which is indicated by the date stamp.

If you have questions, please do not hesitate to contact me at (214) 665-8151 or by e-mail at moore.nathaniel@epa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nathaniel Moore".

Nathaniel Moore
Assistant Regional Counsel

Enclosure

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 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 Bayport is a Texas limited partnership registered to do business in the State of Texas on June 17, 2004.

10. Respondent Athlon is a Texas limited liability company registered to do business in the State of Texas on December 7, 2012.

11. Respondents are 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).

12. Respondents are or were an "owner" or "operator" of the Clear Lake Facility within the meaning of 30 TEX. ADMIN. CODE § 335.1(109), (110) (40 C.F.R. § 260.10).

13. Respondents are or were a "generator" of hazardous waste at the Clear Lake Facility, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).
14. As a generator of hazardous waste, Respondents are or were 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).
15. Between October 2016 and May 2017, EPA conducted an investigation and record review (Investigation) of Respondents' performance as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder.
16. From the Investigation, EPA determined Respondents' Clear Lake Facility, at a minimum, stored, generated, and offered for transport and treatment, hazardous waste.
17. From the Investigation, EPA determined in 2013 and 2014, Respondents' Clear Lake Facility, at a minimum, generated and stored hazardous waste in quantities that exceeded its generator status of small quantity generator (SQG) by storing and generating more than the threshold amount of an SQG of hazardous waste per month. These events qualified Respondent as Large Quantity Generator (LQG) in 2013 and 2014 under 30 TEX. ADMIN. CODE, Chapter 335, Subchapter C (40 C.F.R. § 262).
18. On October 18, 2013, Respondent Athlon purchased the Clear Lake Facility from Respondent Bayport through an Asset Purchase Agreement.
19. The Asset Purchase Agreement identified the parties' obligations and liabilities for disposing of the hazardous waste.
20. On August 22, 2013, the Clear Lake Facility determined that approximately 18,564 pounds (8,420 kilograms) of material which it had accumulated on-site would be disposed of as waste.

21. On December 31, 2013, the Clear Lake Facility shipped this 18,564 pounds (8,420 kilograms) of material for disposal as hazardous waste.

22. In its October 18, 2013 Asset Purchase Agreement, the Clear Lake Facility identified the contents of 19 onsite storage tanks as wastes.

23. On January 31, 2014, the Clear Lake Facility sent for disposal approximately 14,400 pounds (6,532 kilograms) of the material referenced in Paragraph 22, as hazardous waste.

Clear Lake Facility

Claim 1: Notification Requirements

24. Complainant hereby restates and incorporates by reference Paragraphs 1 through 23.

25. Pursuant to 30 TEX. ADMIN. CODE § 335.6(c), any person who generates hazardous waste in a quantity greater than 100 kilograms or any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must notify the executive director and shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director. *See also* RCRA § 3010(a), 42 U.S.C. § 6930(a).

26. At all times during the generation and storage events described in Paragraphs 20-23, and for more than 90 days following each event, the Clear Lake Facility was operating under a notification submitted on February 26, 2012, indicating it was a Conditionally Exempt Small Quantity Generator (CESQG) of hazardous waste.

27. From the Investigation, EPA determined Respondents' Clear Lake Facility had not filed with the Administrator or with the State of Texas, a notification for a change in hazardous waste activities within the 90 days following the generation and storage of hazardous waste.

28. Respondent failed to file the required subsequent notification of hazardous waste activities for the Clear Lake Facility in violation of 30 TEX. ADMIN. CODE § 335.6(c) (Section 3010(a) of RCRA, 42 U.S.C. § 6930(a)).

Claim 2: Storage of Hazardous Waste

29. Complainant hereby restates and incorporates by reference Paragraphs 1 through 28.

30. 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, Chapter 335 and Chapter 305, unless it has been granted an extension to the 90-day period.

31. Respondent Bayport generated 18,564 pounds (8,420 kilograms) of hazardous waste on August 22, 2013.

32. The waste identified in Paragraph 31 was shipped for disposal on December 31, 2013.

33. Therefore, the Clear Lake Facility stored 18,564 pounds (8,420 kilograms) of hazardous waste from August 22, 2013 to December 31, 2013, or 131 days

34. Respondent Bayport generated 14,400 pounds (6,532 kilograms) of hazardous waste on October 18, 2013.

35. The waste identified in Paragraph 34 was shipped for disposal on January 31, 2014.

36. Therefore, the Clear Lake Facility stored 14,400 pounds (6,532 kilograms) of hazardous waste from October 18, 2013 to January 31, 2014, or 105 days.

37. Respondents 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 finds Respondents 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 Athlon shall certify in writing to EPA the following:

Respondent Athlon has complied with all the requirements of its current generator status, where applicable, and developed and implemented standard operating procedures to ensure that the Clear Lake 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 land disposal restrictions.

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 Athlon Solutions, LLC., 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:

John Penland
U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance II Section (6EN-H2)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

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 **\$113,600.00**. Respondent Bayport and Respondent Athlon are joint and severally liable for the full payment of the civil penalty.

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 Respondents' 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:

Gulf Bayport Chemicals LP
Athlon Solutions, LLC
RCRA-06-2018-0916

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 Gulf Bayport Chemicals, LP, and Athlon Solutions, LLC., Docket No. RCRA-06-2018-0916**) 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, Suite 1200
Dallas, TX 75202-2733

Mark Potts, Branch Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: John Penland

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, Respondents specifically waive 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 Respondents believe it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondents 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 Respondents' certification, then this CAFO is terminated on the basis of Respondents' certification.

D. Effective Date of Settlement

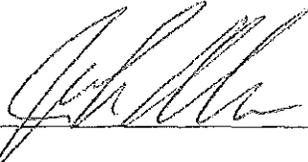
48. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Gulf Bayport Chemicals LP
Athlon Solutions, LLC
RCRA-06-2018-0916

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

FOR THE RESPONDENT:

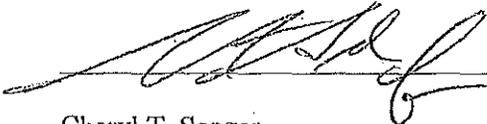
Date: March 14, 2018



Gulf Bayport Chemicals, LP
JOHN NOWLAN

FOR THE COMPLAINANT:

Date: 3-27-18

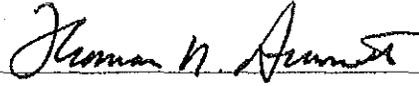


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

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

FOR THE RESPONDENT:

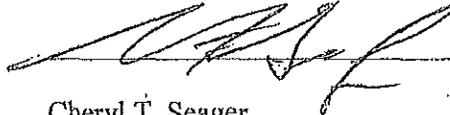
Date: _____



Athlon Solutions, LLC

FOR THE COMPLAINANT:

Date: 3-27-18 _____

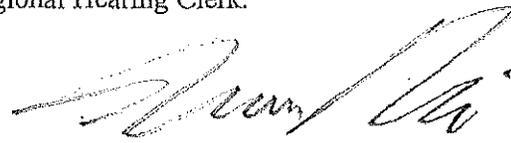


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

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: 3/28/18



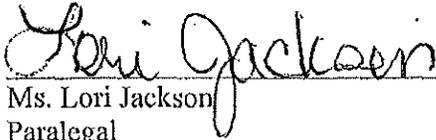
Thomas Rucki
Regional Judicial Officer

Gulf Bayport Chemicals LP
Athlon Solutions, LLC
RCRA-06-2018-0916

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of March, 2018, 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 7015152000339909194



Ms. Lori Jackson
Paralegal

