

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

HERCULES OFFSHORE, INC.

RESPONDENT
EPA ID LAR000006148

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2015-0915

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, Hercules Offshore, Inc. ("HERCULES" or "Respondent").
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the 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. The 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 which have been raised or could have been raised to the claims set forth in the CAFO.

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5. The CAFO shall only resolve Respondent's liability for federal Civil Penalties for the violations and facts alleged in the complaint.
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 the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, 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 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 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, 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 incorporated under the laws of the State of Delaware, as of and continuing from June 27, 2004.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which include corporations; and within the meaning of Title 33 of the Louisiana Administrative Code ("LAC") LAC 33:V.109, [40 C.F.R. § 260.10].

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11. Respondent owns and/or operates oil and gas drilling rigs that it leases to exploration and production companies to use in connection with drilling or servicing wells in the Gulf of Mexico.
12. During the period of January 2014 through September 2014, EPA conducted a RCRA investigation and record review of HERCULES's performance as a generator of hazardous waste, ("Investigation") to determine HERCULES's compliance with RCRA and the regulations promulgated thereunder.
13. During the Investigation, EPA discovered that HERCULES, at a minimum, generated the following hazardous waste from time to time during 2011-2014:
 - a. Characteristic ignitability waste, with the hazardous waste code D001; and
 - b. Listed hazardous waste, with the waste codes F003 and F005.
14. The waste streams identified in Paragraph 13 above are designated as hazardous waste in LAC 33:V.4903. B and 4901. B, [40 C.F.R. §§ 261.21 and 261.31].
15. HERCULES is a "generator" of "hazardous wastes" as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6) and LAC 33:V.109, [40 C.F.R. §§ 260.10 and 261.3].
16. The exemptions set forth at LAC 33:V.108.C, [40 C.F.R. § 261.5(c)], are not applicable to HERCULES in connection with the violations that are the basis of this CAFO.
17. From the Investigation, EPA determined that at certain times during the period of 2011 through 2014, HERCULES generated the hazardous waste streams identified in Paragraph 13 in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month,

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which qualified HERCULES for the large quantity generator status as established under LAC 33:V 1109, [40 C.F.R. Part 262].

18. As a generator of hazardous waste, HERCULES is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R. Parts 262 and/or 270].

Claim i. Notification Requirements

19. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.
20. 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.
21. At the time of the Investigation, HERCULES had not filed with the Administrator or with the authorized State an adequate and subsequent notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Operate within Its Stated Generator Status

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
23. During the Investigation, EPA determined that the notification of hazardous waste activity filed by HERCULES with the EPA indicated that HERCULES's generator status is a conditionally exempt small quantity generator ("CESQG").

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24. Pursuant to LAC 33:V.108 and 40 C.F.R. § 261.5(b), as long as a CESQG generator complies with the applicable requirement under LAC 33:V.108.E, F,G, and J and 40 C.F.R. §§ 261.5(e), (f), (g) and (j) the generator's hazardous waste is not subject to regulation under LAC 33:V. Chapters 3-37, 41, 43, and 53, except for LAC.33:V .3105, Table 1; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.
25. For several instances during the period of 2011 through 2014, HERCULES exceeded its declared CESQG status and, for the period such hazardous waste remained onsite, HERCULES operated as a small quantity generator in some instances and as a large quantity generator in other instances in violation of one or more of the requirements for small or large quantity generators under LAC 33:V.1109.E, [40 C.F.R. Part 262].
26. For several instances during the period of 2011 through 2014, Respondent failed to comply with the small or large quantity generator requirements in violation of LAC 33:V.1109.E, [40 C.F.R. Part 262].

Claim iii. Failure to Comply with the Manifest Requirements

27. The allegations in Paragraphs 1-26 are realleged and incorporated herein by reference.
28. Pursuant to, LAC 33:V.1107.A.1, [40 C.F.R. § 262.20(a)(1)], a small or large quantity 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 Louisiana waste code for each hazardous waste itemized on the manifest.

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29. For several instances during the period of 2011 through 2014, Respondent generated and offered for shipment hazardous waste on manifests without an EPA identification number.
30. For several instances during the period of 2011 through 2014, HERCULES failed to accurately and adequately prepare its hazardous waste manifests for its shipment of hazardous waste in violation of LAC 33:V.1107.A.1, [40 C.F.R. § 262.20(a)(1)].

Claim iv. Failure to File Annual/Biennial Reports

31. The allegations in Paragraphs 1-30 are realleged and incorporated herein by reference.
32. Pursuant to LAC 33:V.1111.B, [40 C.F.R. § 262.41], a 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 on each even-numbered year, and an annual Report to the LDEQ, both by March 1. The Reports must be submitted on a form(s) provided by the Administrator and must comply with the requirements of LAC 33:V.1111.B, [40 C.F.R. § 262.41].
33. For several instances during the period of 2011 through 2014, the EPA and/or the LDEQ did not receive the requisite number of biennial and/or annual Reports that HERCULES was required to file in violation of LAC 33:V.1111.B, [40 C.F.R. § 262.41].

IV.
COMPLIANCE ORDER

34. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within sixty (60) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

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- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOP”) to ensure that HERCULES is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) accurate and adequate waste profiling; (b) making hazardous waste determinations; (c) managing hazardous wastes; (d) manifesting of hazardous waste; (e) reporting, transporting, and disposing of hazardous waste;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOP as described in subparagraph A above.

35. 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 HERCULES 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.”

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

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.
TERMS OF SETTLEMENT

i. Penalty Provisions

36. Pursuant to Section 3008(a) 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 One Hundred and Thirty One Thousand Six Hundred and Sixty Dollars (\$131,660).
37. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
38. The following are Respondent's options for transmitting the penalties:
Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express

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Mail, the check should be remitted to:

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

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

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

Wire Transfer:

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 Hercules Offshore, Inc.: Docket No. RCRA-06-2015-0915) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

39. 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

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Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

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

40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling of 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 EPA'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

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which 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. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Costs

41. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

iii. Termination and Satisfaction

42. 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 so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 35. 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.

iv Effective Date of Settlement

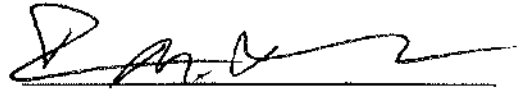
43. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

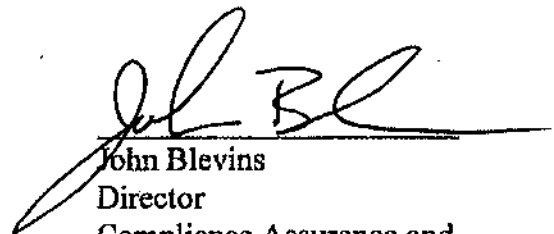
Date: 4/6/15



Hercules Offshore, Inc.

FOR THE COMPLAINANT:

Date: APR 14 2015




John Blevins
Director
Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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 and facts 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 4/16/15



Thomas Rucki
Regional Judicial Officer

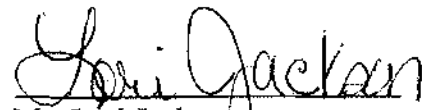
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2015, 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 identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 015200002453 8738

Hercules Offshore, Inc.
9 Greenway Plaza, Suite 2200
Houston, TX 77046
Attn: Mr. Bill Gordon
Ph.: 713-350-5100


Ms. Lori Jackson
Paralegal