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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

RECEIVED
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:)	
)	
T. T. Barge Services Mile 237 LLC)	DOCKET NO. RCRA-06-2014-0914
Port Allen, Louisiana)	
)	
RESPONDENT)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6 (“Complainant”) and T. T. Barge Services Mile 237 LLC (“Respondent”) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (“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 Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Louisiana prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. RCRA STATUTORY AND REGULATORY BACKGROUND

7. RCRA was enacted on October 21, 1976, and established a comprehensive program to be administered by the Administrator of the EPA regulating the generation, treatment, storage and disposal of hazardous waste. RCRA hazardous waste regulations promulgated by the Administrator are codified as 40 C.F.R. Parts 260-272.

8. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when the Administrator determines that the state program is substantially equivalent to the federal program.

9. The State of Louisiana received final authorization to implement its hazardous waste management program effective February 7, 1985, with multiple program revisions approved by EPA since that time, as provided by 40 C.F.R. § 272.951.

10. The State of Louisiana's hazardous waste management program is administered by the Louisiana Department of Environmental Quality ("LDEQ") through regulations published as Part V of Title 33 of the Louisiana Administrative Code.

11. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce the federally-approved Louisiana hazardous waste management program, as well as the federal regulations promulgated under HSWA, by issuing compliance orders assessing a civil penalty for any past or current violation and/or requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA (Sections 3001-3023 of RCRA), 42 U.S.C. §§ 6921-6939e. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 C.F.R. § 19.4, EPA may assess a civil penalty of up to \$32,500 per day of violation for a violation occurring between March 15, 2004 and January 12, 2009 and \$37,500 per day of violation for a violation occurring after January 12, 2009.

12. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. LDEQ administers Louisiana's authorized hazardous waste management program through Louisiana Title 33, Part V. Therefore, a violation of any requirements of Louisiana Title 33, Part V is a violation of Subtitle C of RCRA.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

13. Respondent is a corporation incorporated and authorized to do business in the State of Louisiana.

14. "Person" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

15. Respondent is a "person" as that term is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. §§ 260.10 and 270.2].

16. "Owner" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

17. "Operator" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 as "whoever has legal authority and responsibility for a facility that generates, transports, treats, stores or disposes of any hazardous waste."

18. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

19. "Facility" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

20. Respondent owns and/or operates a barge cleaning and repair facility at 5127 North River Road, Port Allen, Louisiana.

21. The plant identified in Paragraph 20 is a "facility" as that term is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. § 260.10].

22. Respondent is the "owner" and/or "operator" of the facility identified in Paragraphs 19-21, as those terms are defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. §§ 260.10 and 270.2].

23. "Generator" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R. §§260.10] as meaning "any person, by site, whose act or process produces hazardous waste identified or listed, or whose act first causes a hazardous waste to become subject to regulation."

24. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), Respondent submitted its initial notice of hazardous waste activity on January 10, 1980, notifying EPA and LDEQ that it is a generator of hazardous waste, producing more than 1,000 kg of hazardous waste within a calendar month.

25. Respondent is a "Generator" as that term is defined in Louisiana Title 33, Part V, Subpart 1 §109 [40 C.F.R. § 260.10].

26. On or about September 25, 2012, Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

27. On or about March 18-20, 2012, Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

28. During the inspection of Respondent's facility, the EPA inspector observed the following compliance concerns: failure to prevent a release of hazardous waste containing

benzene (D018) to the environment; storage of hazardous waste without a permit; and failure to complete twelve hazardous waste manifests.

B. VIOLATIONS

Count One – Failure to operate the facility in a manner to prevent the release/discharge of hazardous waste containing benzene (D018) to the environment pursuant to LAC 33:V.1109.E.1.e [40 CFR § 262.34(a)(4) and 40 CFR § 265.31].

29. Pursuant to LAC 33:V.1109.E.1.e a generator of more than 1,000 kg of hazardous waste in a calendar month is subject to the requirements of LAC 33:V Chapter 43 Subchapter B.

30. Pursuant to LAC 33:V.4325.A “Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

31. On or about September 25, 2012, an EPA Inspector observed and documented a leak of an indeterminable amount of hazardous waste demonstrating the toxicity characteristic for benzene (D018) from a pump at the facility which entered the environment (The Mississippi River).

32. On March 18-20, 2014, an EPA Inspector observed an accumulation of solid sludge-like material in a concrete containment area beneath a hazardous waste roll-off container. The concrete containment area was visibly cracked and degraded, rendering it incapable of containing the material.

33. On March 20, 2014, an EPA Inspector collected a sample of the solid sludge-like material and sent it to the EPA Region 6 laboratory in Houston, Texas, for analysis to determine

whether the material demonstrated any of the characteristics of hazardous waste or contained hazardous waste constituents. The final laboratory report indicated the presence of the hazardous waste constituent benzene (D018).

34. Therefore, Respondent has failed to operate the facility in a manner to prevent a release of hazardous waste or hazardous waste constituents to the surface water and soil, which could threaten human health or the environment in violation of LAC 33:V.4325.A and LAC 33:V.1109.E.1.e .

Count Two - Operation of a hazardous waste storage facility without a RCRA Permit pursuant to LAC 33:V.1109.E.2 [40 CFR § 262.34(b)].

35. Pursuant to LAC 33:V.1109.E.2 [40 CFR § 262.34(b)], a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility subject to permitting requirements of LAC 33:V. Subpart 1.

36. "Container" is defined in Louisiana Title 33, Part V, Subpart 1, § 109 [40 C.F.R § 260.10] as meaning, "any portable device in which a material is stored, transported, treated, disposed of or otherwise handled."

37. The barges identified as "Chem 94", "TT3", and "DM 907", the frac tanks, and the "dewatering boxes" are all portable devices used for the storage of material. Therefore each of these units is a container for the purposes of determining applicability under RCRA.

38. On March 18-20, 2014, during the inspection of the facility, an EPA Inspector documented the presence of 9,030 gallons of sludges demonstrating the hazardous waste toxicity characteristic for benzene (D018) in Compartment #2 of a barge identified as "Chem 94." According to a statement by the facility representatives on March 20, 2014, the barge had last

been emptied with sludges removed in 2010. Therefore, the facility had accumulated hazardous waste in Chem 94 for no less than 1172 days at the time of the inspection

39. On March 18-20, 2014, during the inspection of the facility, an EPA Inspector documented the presence of 4,308 gallons of wash water demonstrating the hazardous waste toxicity characteristic for benzene (D018) in Compartment #3 of a barge identified as "TT3." According to a statement by the facility representatives on March 20, 2014, the barge had last been emptied with sludges removed on January 12, 2012. Therefore, the facility had accumulated hazardous waste in TT3 for 795 days at the time of the inspection.

40. On March 18-20, 2014, during the inspection of the facility, an EPA Inspector received historical chemical inventory records for a barge identified as "DM907." According to a statement by the facility representatives on March 19, 2014, the contents of DM907, at the time of the inspection, were reflected on the chemical inventory taken on June 20, 2013. The June 20, 2013, chemical inventory did not characterize the contents of the individual tanks contained in the barge as hazardous or non-hazardous. However, an earlier chemical inventory dated April 2, 2012, did characterize the wastes contained in the various tanks as either hazardous or non-hazardous. From the tanks on the April 2, 2012, chemical inventory that contained wastes that were characterized as hazardous, tanks # 6, 10, 14, 15, 19, 20, 22, 23, and 26 were not empty on the June 20, 2013, chemical inventory report and have no record of ever having been emptied in the intervening chemical inventory reports. Therefore, to the best of EPA's knowledge, these tanks still contain hazardous waste and have accumulated that waste for no less than 717 days.

41. To date, Respondent has neither applied for nor received a permit from the LDEQ for the operation of a hazardous waste storage facility.

42. Therefore, Respondent is operating a hazardous waste storage facility in violation of the permit requirements of LAC 33:V.Subpart 1

Count Three – Offering for transportation a hazardous waste without a complete hazardous waste manifest, pursuant to LAC 33:V.1107.A.1 [40 CFR § 262.20(a)(1)]

43. Pursuant to LAC 33:V.1107A.1 [40 CFR § 262.20(a)(1)]; “[a] generator who transports or offers for transport a hazardous waste for offsite treatment, storage, or disposal...must prepare a Manifest on EPA form 8700-22 and, if necessary, EPA Form 8700-22A, according to the instructions included in the Appendix to 40 CFR Part 262.”

44. According to the instructions included in the Appendix to 40 CFR Part 262 for Item 11 of the hazardous manifest the generator must “[e]nter, in designated boxes, the total quantity of waste.”

45. On March 20, 2014, during the inspection of the facility, an EPA inspector and an LDEQ inspector reviewed all hazardous waste manifests generated by the facility during the years 2013 and 2014. During this review, the inspectors identified twelve manifests to Lonestar Ecology LLC in which Respondent failed to enter the total quantity of the waste offered for shipment. The manifest tracking numbers for the incomplete manifests were: 006100601FLE; 005795798JJK; 005260342FLE; 005803495JJK; 005803477JJK; 005803487JJK; 005803478JJK; 005803486JJK; 005260350FLE; 005803488JJK; 005795843JJK; and 005795842JJK.

46. Therefore, Respondent offered for transport a hazardous waste without a complete hazardous waste manifest in violation of LAC 33:V.1107A.1 [40 CFR § 262.20(a)(1)].

IV. COMPLIANCE ORDER

47. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the time period specified below:

(a) As of the effective date of this CAFO, Respondent shall ensure that hazardous waste is not discharged or released into the environment.

(b) Within thirty (30) days of the effective date of this CAFO, Respondent shall modify facility training and operation plans to ensure that employees are properly trained and educated, relative to the equipment being used at the facility, the correct operation of that equipment, how to identify equipment that is not operating correctly, and what to do in case of equipment failure, and the appropriate response to spills and leaks. In addition, company procedures/policy and training should ensure that no transfer of hazardous waste from one container to another is done without constant supervision by a trained operator.

(c) Within sixty (60) days of the effective date of this CAFO, Respondent shall ensure that all current employees have been trained and informed of the new policy and procedures and trained on the proper use and inspection of facility equipment. Respondent shall submit a copy of the revised policy and training documents and evidence that current employees have been trained with documentation that includes, the date training was conducted, name of employee who received training, their position

description and duties, employment period with the company, and the name and credentials of the instructor, as well as certification that all current employees received training.

(d) Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a plan to EPA outlining the measures it will take to prevent future discharge/release of hazardous waste. Respondent shall implement the plan within 60 days of the effective date of this CAFO, and submit notification to EPA of that implementation.

(e) Within thirty (30) days, Respondent shall submit a copy of the policy that the facility uses to ensure that all equipment used at the facility is inspected to ensure that it is in sound operating condition. This plan should include the frequency of the inspections, the equipment inspected, the personnel who is responsible for the inspection, how those inspections are documented, and copies of documentation used to record those inspections.

(f) By no later than December 31, 2014, Respondent shall submit documentation demonstrating that the hazardous wastes, including sludges, have been removed from the storage barges TT3, DM907, and Chem 94, and that the barges have been rendered empty as that term is defined in LAC 33:V.109.

(g) By no later than December 31, 2014, Respondent shall submit documentation demonstrating that the hazardous wastes, including sludges, removed from storage barges TT3, DM907, and Chem 94, have been transported offsite for proper disposal at a permitted disposal facility. This documentation should include the type of waste stream,

the volume, the method of disposition, the name and address of the facility the waste was sent to, the date it was sent, and a copy of the manifest associated with the disposal.

(h) If any of the waste mentioned in subsection (g), above, has not been disposed of by December 31, 2014, the facility should within thirty (30) days submit a permit application to the LDEQ as a Treatment, Storage, Disposal Facility, and provide a copy of that permit application to the EPA.

(i) Within sixty (60) days of the effective date of this CAFO, Respondent shall ensure that all current employees have been trained and informed of the programmatic importance of the hazardous waste manifest and the procedures for completing and issuing a hazardous waste manifest prior to shipment of a hazardous waste. Respondent shall submit a copy of the training documents and evidence that current employees have been trained with documentation that includes, the date training was conducted, name of employee who received training, their position description and duties, employment period with the company, and the name and credentials of the instructor, as well as certification that all current employees received training.

(j) In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

“I certify that the information contained in or accompanying this submission is 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.”

(k) Copies of all documents required by this Compliance Order shall be sent to the following:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Craig Easley
Waste Enforcement Section
Louisiana Department of Environmental Quality
Galvez Building
602 North Fifth Street
Baton Rouge, LA 70802

V. TERMS OF SETTLEMENT

A. CIVIL PENALTY

48. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, and the June 2003 RCRA Civil Penalty Policy, it is hereby ordered that the Respondent be assessed a civil penalty of **ONE HUNDRED AND TWO THOUSAND AND FIVE HUNDRED AND FIFTY-EIGHT DOLLARS (\$102,558.00)**. The following table displays the annual installment plan for payment of the penalty:

Payment	Payment Amount	Payment Due
1	\$34,530.00	Within 30 days after effective date of CAFO
2	\$34,530.00	Within 420 days after effective date of CAFO
3	\$34,530.00	Within 780 days after effective date of CAFO

49. Payments shall be made in accordance with the above schedule with the first payment being made within thirty (30) days after the effective date of this CAFO. Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express 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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be

Remitted to:

U.S. Bank
 Government Lockbox 979077 US EPA Fines & Penalties
 1005 Convention Plaza
 SL-MO-C2-GL
 St. Louis, MO 63101
 Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2014-0914 shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

50. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

51. 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 costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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. *See* 40 C.F.R. § 13.11(b).

52. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that 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. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

53. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the

Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

B. PARTIES BOUND

54. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT

55. Respondent shall implement a Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental or public health protection and improvement. The SEP **upgrades/changes/projects** shall involve the construction of a Wastewater Treatment System and the installation of a Pipe Rack to transfer materials across the levee to 90-day storage tanks as outlined below.

Construction of Wastewater Treatment System

56. Respondent shall install a Wastewater Treatment System at its facility. Respondent shall complete the installation of the Wastewater Treatment System by December 31, 2016, and shall notify the EPA upon completion of the installation. In addition to the final completion date, Respondent shall meet the following intermediate deadlines:

- (a) Respondent shall submit a Water Quality permit application and/or permit modification to LDEQ by December 31, 2014. Respondent shall submit a copy of the permit application and/or modification to EPA.

(b) Respondent shall submit an Air Quality permit application and/or permit modification to LDEQ by June 30, 2015. Respondent shall submit a copy of the permit application and/or modification to EPA.

Installation of Pipe Rack to Transfer Materials Across Levee to 90-day Storage Tanks

57. Respondent shall install a pipe rack to transfer materials across the levee to 90-day storage tanks at its facility. Respondent shall complete the installation of the pipe rack by December 31, 2016, and shall notify the EPA upon completion of the installation.

58. Respondent shall complete all aspects of the SEP by December 31, 2016, and shall notify the EPA upon completion of the SEP.

59. Respondent's total expenditure for the SEP shall not be less than three hundred and seven thousand and six hundred and seventy four dollars (\$307,674.00).

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

Respondent 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.

SEP Completion Report:

61. 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;
- (e) Photographs of the SEP construction activities from initiation of the SEP to conclusion; and
- (f) A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

62. 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 subparagraph 67(f).

63. 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.

64. 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.

65. After receipt of the SEP Completion Report described in Paragraph 61 above, EPA will notify 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 Section V.E below.

66. If EPA elects to exercise option (a) in Paragraph 65 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 Respondent the opportunity to object in writing to the notification of deficiency given within ten (10) days of receipt of such notification. EPA and 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 Respondent. 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, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Section V. E herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

67. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Section V. C of this CAFO and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 59 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a

stipulated penalty to the United States in the amount of \$307,674.00 (100% of the amount the penalty was mitigated).

(b) If the SEP is not completed in accordance with Paragraphs 55 - 60, but EPA determines that Respondent:

- i) Made good faith and timely efforts to complete the project; and
- ii) Certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(c) If the SEP is completed in accordance with Paragraphs 55 - 60, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$61,534.00 [20% of the amount the penalty was mitigated penalty (\$307,674.00)].

(d) If the SEP is completed in accordance with Paragraphs 55 - 60, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(e) If Respondent fails to timely complete the SEP, or fails to timely submit any deliverable due as part of an intermediate step for the SEP, for any reason other than a force majeure event, Respondent shall pay stipulated penalties in accordance with the table and procedures contained in Section V. E, *infra*.

(f) For failure to submit the SEP Completion Report required by Paragraph 65 above, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

68. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

69. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

70. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act (RCRA)."

71. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by the Respondent in connection with the SEP undertaken pursuant to this CAFO.

D. FORCE MAJEURE

72. A "force majeure event" is any event beyond the control of Respondent, its contractors, or any entity controlled by Respondent that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as

it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Respondent's financial inability to perform any obligation under this CAFO.

73. Respondent shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of: a claimed force majeure event. Respondent shall also provide written notice, within seven days of the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Respondent's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Respondent's rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude Respondent from asserting any claim of force majeure.

74. If Complainant agrees that a force majeure event has occurred, Complainant may agree to extend the time for Respondent to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section V.H of this CAFO.

75. If Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Respondent, Complainant's position shall be binding, unless Respondent invokes Dispute Resolution under Section V.F of this CAFO. In any such dispute, Respondent bears the burden of proving, by a preponderance of the evidence, that each

claimed force majeure event is a force majeure event; that Respondent gave the notice required by the paragraph above, that the force majeure event caused any delay Respondent claims was attributable to that event; and that Respondent exercised its reasonable best efforts to prevent or minimize any delay caused by the event.

E. STIPULATED PENALTIES

76. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any provision of Section IV of this CAFO, fails to timely complete its SEP, or fails to timely submit any deliverable due as part of an intermediate step for the SEP, pursuant to subparagraph 67(e), Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply or failure to complete continues:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,000

77. All stipulated penalties contemplated within this CAFO shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

78. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 49 herein.

F. DISPUTE RESOLUTION

79. If the Respondent objects to any decision or directive of EPA in regard to Section IV, 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:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

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

81. If no agreement is reached between the Associate Director and Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee ("Division Director"). The Division Director and Respondent shall then have a second 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 Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to Respondent, which shall be binding upon Respondent and incorporated by reference into the CAFO.

82. 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 Section V. H.

G. NOTIFICATION

83. Unless otherwise specified elsewhere in this CAFO, whenever 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 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 parties that another individual has been designated to receive the communication:

EPA: Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent: Mr. Raymond Greenwell
T. T. Barge Services Mile 237 LLC
19368 HWY 36
Covington, LA 70433

H. MODIFICATION

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

I. RETENTION OF ENFORCEMENT RIGHTS

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

86. Nothing in this CAFO 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 Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

J. INDEMNIFICATION OF EPA

87. 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 Respondent, 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 Respondent in carrying out the activities required by this CAFO.

K. COSTS

88. 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 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

89. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

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

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

FOR RESPONDENT:

Date: 9/18. 2014



T. T. Barge Services Mile 237 LLC
Mark S. Toeffel

FOR COMPLAINANT:

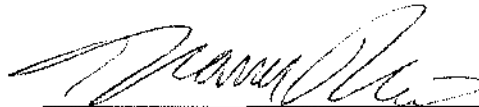
Date: 09/22/2014

for Stacey B. Dwyer
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement 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. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 9/25/14


Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2014, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (CAFO) 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 were placed in the United States Mail, certified mail, return receipt requested, 700411ed000303620162 addressed to the following:

Lori Jackson