

Re: Edusa Corporation
RCRA-06-2015-0901

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.
5. The CAFO resolves only those violations which are alleged herein.
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.
FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

9. Respondent is an authorized corporation in the State of Texas, authorized on March 27, 1989 to do business in Texas.

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10. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 260.10].
11. Respondent Registered Agent for service in the State of Texas is C.T. Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
12. Edusa is a company that imports hazardous waste from Mexico into the United States of America and as such Edusa must comply with the applicable requirements of Title 30 of the Texas Administrative Code and 40 C.F.R. Part 262. TEX.ADMIN.CODE § 335.76 and 40 C.F.R. § 262.60.
13. The Facility is also a “Transfer Facility” within the meaning of TEX.ADMIN.CODE § 335.1(152), [40 C.F.R. § 260.10].
14. During the period of January 2014 through April 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of Edusa’s performance as an importer and generator of hazardous waste for its Edusa operation in the State of Texas.
15. During the Investigation, EPA discovered that Edusa, at a minimum, imported the following waste:
 - i. D001, ignitable hazardous waste;
 - ii. D002 corrosive hazardous waste;
 - iii. Hazardous wastes that exhibit the toxicity characteristic for barium, chromium, lead, mercury, silver, chlorobenzene; and methyl ethyl ketone, respectively with the hazardous waste codes, D005, D007, D008, D009, D011, D021, and D035; and

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iv. At least three (3) listed hazardous waste streams described as spent non-halogenated solvent and spent halogenated with one or all of the following waste codes: F002; F003; and F005.

16. The waste streams identified in Paragraph 15 are hazardous waste as defined in

30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, 261.24 and 261.31].

17. From the Investigation, EPA determined that during the period of 2009 through April 2014,

Edusa imported the hazardous waste streams identified in Paragraph 15 and in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, which qualifies Edusa for the large quantity generator status as established under

30 TEX.ADMIN.CODE Subchapter C, [40 C.F.R. § 262].

18. Edusa is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in

Sections 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

19. As a generator of hazardous waste, Edusa is subject to the applicable requirements in

Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335 Subchapter C , [40 C.F.R Parts 262].

Claim i. Notification Requirements

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.

21. Within the meaning of 30 TEX.ADMIN.CODE § 335.61(c) and 40 C.F.R. §§ 262.10(e) and 262.60(a) Edusa is an importer of hazardous waste into the United States, and as such, must comply with the standards applicable to generators.

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22. 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 or listed hazardous wastes handled by such person.
23. At the time of the Investigation, Edusa had filed a RCRA 3010 EPA Notification Form 8700-12 ("Notification") indicating in Section 10.A.1 that it was and is an importer. However, Edusa did not indicate that it has been and is a generator, its generator size and status, neither did Edusa include any of the relevant waste codes (Section 11.A) for its federally regulated hazardous waste nor the waste codes (Section 11.B) for the State regulated hazardous waste.
24. Edusa did not file a complete RCRA 3010 Notification of hazardous waste activities with the Administrator or with the authorized State, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Comply with the Transfer Facility Requirements

25. The allegations in Paragraphs 1-24 are realleged and incorporated herein by reference.
26. Pursuant to 30 TEX.ADMIN.CODE §§ 335.94(a)(1) through (a)(6), which incorporates by reference 40 C.F.R. §§ 265.14, 265.15, 265.16 and 40 C.F.R. Subparts C and D, a transfer facility must have in place a personnel training program that comports with the requirements at 40 C. F.R. § 265.16.
27. For approximately two years, Edusa operated a transfer facility. At all times relevant to this CAFO, Edusa did not provide to the EPA documentation to demonstrate that there was a personnel training program that was initially provided and subsequently followed by an

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annual review of the initial training required by 40 C.F.R. § 265.16(a) for the transfer facility.

28. Edusa operated a transfer facility where the personnel had not been trained in violation of the regulations identified at 30 TEX.ADMIN.CODE §§ 335.94(a)(3), which incorporates by reference 40 C.F.R. § 265.16.

Claim iii. Failure to File Biennial Reports

29. The allegations in Paragraphs 1-28 are realleged and incorporated herein by reference.

30. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [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, and to the TCEQ, by March 1 of each even-numbered year as is required by 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41].

31. At all times relevant to this CAFO, the EPA and/or the TCEQ did not receive the requisite number of biennial Reports that Edusa was required to file in violation of 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41].

Claim iv. Failure to Comply with the Manifest Requirements

32. The allegations in Paragraphs 1-31 are realleged and incorporated herein by reference.

33. Pursuant to 30 TEX.ADMIN.CODE §§ 335.76(d), [40 C.F.R. § 262.60(b)] when importing hazardous waste, a person must meet all the requirements of 30 TEX.ADMIN.CODE §§ 335.10(a), [40 C.F.R. § 262.20] for the manifest except that the importer of record must

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meet the special requirements at, 40 C.F.R. § 262.60(b)(1) and (2); (d); & (e), incorporated by reference in 30 TEX.ADMIN.CODE §§ 335.10 and (a). In addition, the generator must comply with 30 TEX.ADMIN.CODE § 335.10(a)(1).

34. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1), [40 C.F.R. § 262.20(a)] a 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 the EPA and Texas waste codes for each hazardous waste itemized on the manifest.

35. EPA reviewed twenty-five (25) manifests for Edusa, for the period of 2011 and 2014, which Edusa did not complete accurately for its shipments of hazardous waste.

36. Therefore, Edusa failed to accurately and adequately prepare its hazardous waste manifests for the shipments of hazardous waste during the period of 2011 and 2014 in violation of 30 TEX.ADMIN.CODE §§ 335.10(a) and (a)(1), [40 C.F.R. §§ 262.20(a) & 262.60(b)].

IV. COMPLIANCE ORDER

37. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of the settlement agreement, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has reviewed all environmental requirements (Federal and State) that are applicable to Edusa as an importer of hazardous waste and has developed and implemented a RCRA compliance plan designed to ensure that Edusa is meeting the

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applicable transfer facility, importer of record, and generator standards, including its manifest and reporting requirements;

B. Respondent shall certify that it has accurately complied with its RCRA Section 3010 Notification requirements; and

C. Respondent shall provide, with its certification, a copy of Respondent's RCRA compliance plan as described in subparagraph A above.

38. 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 Edusa 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 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

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V.
TERMS OF SETTLEMENT

i. Penalty Provisions

39. 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 Factual Allegation 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 Ninety-Nine Thousand One Hundred and Forty-Two Dollars (\$99,142).

40. 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.

41. 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

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

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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 Edusa Corporation, Docket No. RCRA-06-2015-0901) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

42. 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, 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.

43. 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 a delinquent claim. Interest on

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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 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 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. Cost

44. 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.

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iii. Termination and Satisfaction

45. When the Respondent believes that it has complied all the requirements of this CAFO, including compliance with the Compliance Order and the 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 38. Unless the EPA, Region 6 objects in writing with specific reasons within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

vi. Effective Date of Settlement

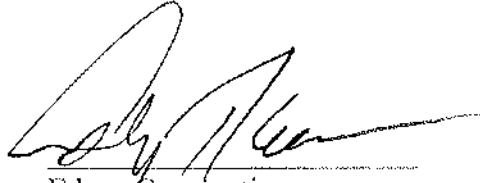
46. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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

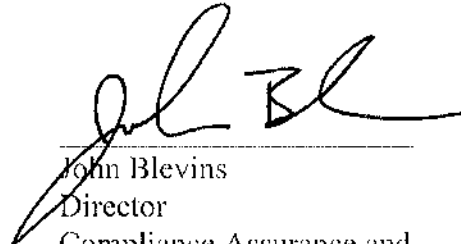
FOR THE RESPONDENT:

Date: 10/31/14


Edusa Corporation.
Ashley Kees

FOR THE COMPLAINANT:

Date: 11.6.14


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 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: 11/10/14



Thomas Rucki
Regional Judicial Officer

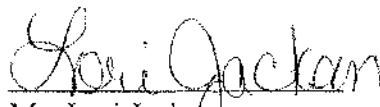
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of Nov., 2014, 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 2014215000024534082

Michael A. Nash
Associate General Counsel
Environmental, Health and Safety and Supply Chain
3M Office of General Counsel
3M Center, Bldg. 220-09-F-02
St. Paul, Minnesota 55133-3428


Ms. Lori Jackson
Paralegal