

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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IN THE MATTER OF:)
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)
US ECOLOGY TEXAS, INC., and) DOCKET NOS. CAA-06-2013-3336
TD*X ASSOCIATES LP) and CAA-06-2013-3337
)
RESPONDENTS)
_____)

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 US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) 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 assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), 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 22.34.

2. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

3. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondents' liability for civil penalties for those violations which are set forth herein.

5. The Respondents consent to the issuance of the CAFO hereinafter recited and payment of the civil penalty in the amount and by the method set forth in this CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

6. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

7. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

8. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e) as meaning "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

9. The Respondent USET is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. The Respondent TD*X is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Road 69, Robstown, TX 78380, EPA I.D. No.

TXD069452340, Permit No. HW-50052-001. The facility includes two stabilization buildings (STAB2 – Permit No. 90163 and STAB3 – Permit No. 92320), and an oil reclamation unit.

12. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30), three mix tanks (T-31, T-32, and T-33), a centrifuge, a surge tank (T-34), and three containers at the oil reclamation unit.

13. “Stationary source” is defined in Section 302(z) of the CAA, 42 U.S.C. § 7602(z), and 40 C.F.R. § 70.2 as “any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.”

14. The facility identified in Paragraph 11 is a “stationary source” as that term is defined in Section 302(z) of the CAA, 42 U.S.C. § 7602(z), and 40 C.F.R. § 70.2.

15. “Major Source” is defined in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2 as including any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit 25 tons or more of any combination of hazardous air pollutants.

16. The facility identified in Paragraph 11 currently operates under a combination of air authorizations, including a New Source Review (NSR) permit, multiple permits by rule, and a standard permit.

17. The facility identified in Paragraph 11 has the potential to emit 25 tons per year or more of any combination of hazardous air pollutants.

18. On July 17, 2012, the Respondent USET filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend its NSR Permit to limit the facility’s potential to emit to less than 25 tons per year of any combination of hazardous air pollutants.

19. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

20. 40 C.F.R. § 61.340(b) provides that the provisions of 40 C.F.R. Part 61, Subpart FF applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. The waste streams at hazardous waste treatment, storage, and disposal facilities are the benzene containing hazardous waste from chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. A hazardous waste treatment, storage, and disposal facility is a facility that must obtain a hazardous waste management permit under subtitle C of the Solid Waste Disposal Act.

21. On various dates after June 15, 2008, the Respondent USET received benzene-containing hazardous wastes subject to the requirements of 40 C.F.R. Part 61, Subpart FF from off-site generators.

22. The benzene-containing hazardous wastes are transferred to the Respondent TD*X by the Respondent USET.

23. The facility identified in Paragraph 11 is subject to the requirements of 40 C.F.R. Part 61, Subpart FF.

24. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927, and Section 114 of the CAA, 42 U.S.C. § 7414.

B. VIOLATIONS

Count One – Failure to Obtain Operating Permit

25. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.1(b) provides that it is unlawful for any person to operate a major source except in compliance with an operating permit issued by a EPA approved state operating permit authority.

26. From on or about June 15, 2008 to the present, the facility has the potential to emit 25 tons or more of any combination of hazardous air pollutants.

27. From June 15, 2008 to the present, the Respondent USET failed to obtain an operating permit issued by an EPA approved state operating permit authority.

28. Therefore, the Respondent USET violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.1(b) by failing to obtain an operating permit issued by an EPA approved state operating permit authority.

Count Two – Failing to Control Emissions from Tanks With a Closed Vent System and Control Device

29. 40 C.F.R. § 61.343(a)(1) provides that the owner or operator shall, for each tank in which benzene-containing hazardous waste is placed, install, operate, and maintain a fixed-roof and closed-vent system that routes all organic vapors vented from the tank to a control device.

30. The tanks identified in Paragraph 12 are subject to the requirements of 40 C.F.R. § 61.343.

31. From on or about June 15, 2008 to February 2012, the Respondents failed to operate a control device at all times that benzene-containing hazardous waste was placed in the tanks identified in Paragraph 12.

32. Therefore, the Respondents violated 40 C.F.R. § 61.343(a)(1) by failing to operate a control device at all times that benzene-containing hazardous waste was placed in tanks.

Count Three – Failure to Maintain a Cover on Containers that Handle, Transfer, or Store Benzene-Containing Hazardous Waste

33. 40 C.F.R. § 61.345(a)(1)(ii) provides that the owner or operator shall install, operate, and maintain a cover on each container used to handle, transfer, or store waste. Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasket and latched) at all times that waste is in the container except when necessary to use the opening for waste loading, removal, inspection, or sampling.

34. The containers identified in Paragraph 12 did not have covers.

35. From on or about June 15, 2008 to April 2, 2013, the Respondents failed to install, operate, and maintain covers on the containers identified in Paragraph 12 at all times that waste was in the containers.

36. Therefore, the Respondents violated 40 C.F.R. § 61.345(a)(1)(ii) by failing to install, operate, and maintain covers on the containers at all times that waste was in the containers.

Count Four – Failure to Properly Monitor Temperature of TDU

37. 40 C.F.R. § 61.354(c)(4) provides that the owner or operator subject to the requirements of 40 C.F.R. § 61.349 (closed-vent container and control device) shall install, calibrate, maintain, and operate a temperature sensor, which is to be installed in at a representative location in the combustion chamber.

38. From on or about June 15, 2008 through March 2012, the Respondents used the fire box of TDU as a control device while treating benzene-containing hazardous waste.

39. The fire box did not have a temperature sensor installed in a representative location in the combustion chamber.

40. Therefore, the Respondents violated 40 C.F.R. § 61.354(c)(4) by failing to have a temperature sensor installed in a representative location in the combustion chamber.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

41. For the reasons set forth above, the Respondents has agreed to pay a civil penalty as follows: Respondent U.S. Ecology Texas, Inc. is assessed a civil penalty of **ONE HUNDRED THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$137,500)**, and the Respondent TD*X Associates L.P. is assessed a civil penalty of **ONE HUNDRED THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$137,500)**. The Respondent USET shall pay the assessed civil penalty within thirty (30) days of the effective date of this CAFO. The Respondent TD*X Associates L.P. shall pay the assessed civil penalty in four payments as follows:

Payment No. 1: \$34,897.36 within thirty (30) days of the effective date of this CAFO.

Payment No. 2: \$34,897.36 (\$33,857.08 civil penalty plus interest of \$1,040.28) within one year of the effective date of this CAFO.

Payment No. 3: \$34,897.36 (\$34,198.45 civil penalty plus interest of \$698.91) within two years of the effective date of this CAFO.

Payment No. 4: \$34,897.38 (\$34,547.11 civil penalty plus interest of \$350.27) within three years of the effective date of this CAFO.

42. The 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(s) 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(s) 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 No. 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 numbers CAA-06-2013-3336 (Respondent USET) and CAA-06-2013-3337 (Respondent TD*X) 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 Respondents 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:

Chief, Toxics Enforcement Section (6EN-AT)
Air 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

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

43. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

44. 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).

45. 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 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.

B. PARTIES BOUND

46. 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. NOTIFICATION

47. 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:

Complainant:

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

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis Lochridge
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Michael De La Cruz, Manager
Air Enforcement Section
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

D. MODIFICATION

48. The terms and conditions of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

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

50. Except as herein provided, 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 the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment.

Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

51. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

52. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

53. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this

CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

F. COSTS

54. Each party shall bear its own costs and attorney's fees. Furthermore, each 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.

G. TERMINATION

55. At such time as each Respondent believes that it has completed all of the requirements of this CAFO that are applicable to them, they may request that EPA concur that they have satisfied all of the relevant requirements of this CAFO. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the applicable terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate as to that Respondent when all actions required to be taken by that Respondent have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated as to that Respondent.

H. EFFECTIVE DATE

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

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

FOR THE RESPONDENT:

Date: Jan 23, 2015



US Ecology Texas, Inc.

EVP Operations

Simon Bell

FOR THE RESPONDENT:

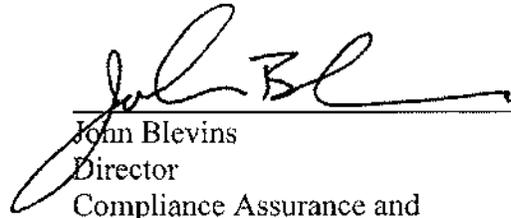
Date: January 20, 2015

Carl R. Palmer

TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: 1/26/15

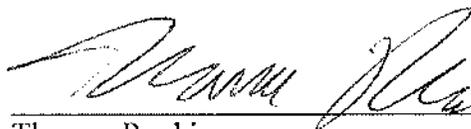


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, 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 relief or other equitable relief for 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 the Respondents' (or their 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 Respondents are ordered to comply with the 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: 1/28/15


Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2015, the original and one copy of the foregoing 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 true and correct copies of the CAFO were sent to the following by the method indicated below:

For US Ecology Texas, Inc.

Certified Mail – Return Receipt Requested – 7006 0810 0005 9535 8663

Mary Reagan
McGinnis Lochridge
600 Congress Avenue, Suite 2100
Austin, Texas 78701

For TD*X Associates LP

Certified Mail – Return Receipt Requested – 7007 0710 0002 1385 1651

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701