

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

22 MAY 16 AM 11:02
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
Triumph Aerostructures, LLC	§	Consent Agreement and Final Order
	§	USEPA Docket No. RCRA-
	§	06-2022-0920
	§	
RESPONDENT	§	

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, Triumph Aerostructures, LLC ("Respondent") and concerns the facilities located at 1601 W Marshall Drive, Grand Prairie, TX 75051 ("Triumph-Grand Prairie") and 300 Austin Boulevard, Red Oak, TX 75154 ("Triumph-Red Oak") (together, "Facilities").
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2)¹.

¹ On December 12, 1984, EPA granted final authorization to the State of Texas to operate its hazardous waste management program. 49 Fed. Reg. 48900 (Dec. 12, 1984). Authorization became effective on December 26, 1984. *Id.* Subsequent state-initiated changes to Texas' hazardous waste regulations have been authorized and incorporated by reference in the Code of Federal Regulations ("C.F.R.") under the Resource Conservation and Recovery Act. *See* 85 Fed. Reg. 20190 (April 10, 2020); *see also* 40 C.F.R. 272.2201 (Texas State-administered Program: Final Authorization). Additional revisions to Texas' hazardous and industrial waste regulations took effect on February 3, 2022. (47 Tex. Reg. 318). The 2022 revisions are not authorized by EPA at this time and, therefore, are not part of the federally enforceable program. Except as otherwise provided, all citations in this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program," which was authorized and effective at the time of the violations alleged herein. *See* 85 Fed. Reg. 20190. The corresponding C.F.R. citations in effect at the time of the alleged violations are also provided. References to these earlier C.F.R. and Texas Administrative Code citations, however, are not intended to limit the scope of the resolution of the alleged violations where a different citation may now apply to same alleged violation.

3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, 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. Respondent 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 in the CAFO.
5. The CAFO resolves any and all civil RCRA claims relating to or arising from the facts of only those violations that are alleged herein, including any and all civil RCRA claims relating to, or arising from, state-initiated changes to Texas' hazardous waste regulations authorized by EPA that become part of the federally enforceable hazardous waste management program and regulations adopted under RCRA regardless of whether the regulatory citation to the requirement has changed from the time of the alleged violations to the date of this CAFO.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 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 EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of 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 a limited liability company authorized to do business in the State of Texas.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 3.2(25), [40 C.F.R. § 260.10].
11. During the period from August 16, 2012 to May 6, 2021, Respondent was registered as the owner/operator of Triumph-Red Oak (EPA Identification Number: TXR000081252).
12. During the period from June 14, 2010 to, at least, December 31, 2021, Respondent was registered as the owner/operator of Triumph-Grand Prairie (EPA Identification Number: TXR000080184).
13. The Triumph-Red Oak is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
14. The Triumph-Grand Prairie is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
15. Beginning in 2019, EPA conducted a RCRA record review of the facilities' activities as a generator of hazardous waste.
16. EPA discovered that Respondent generated, and offered for transport and treatment, hazardous wastes as defined in 30 Texas Admin. Code § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].

17. Based on its review, EPA determined that Respondent generated the hazardous waste streams in quantities that exceeded the threshold amount of 1,000 kilograms of non-acute hazardous waste in a month, corresponding to Large Quantity Generator (LQG) status under 30 Texas Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
18. Respondent is a "generator" of "hazardous waste" at the Facilities as those terms are defined in 30 Texas Admin. Code §§ 335.1(66) & (70) [40 C.F.R. § 260.10].
19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 Texas Admin. Code Chapter 335, Subchapter C, [40 C.F.R Part 262].
20. Beginning in August of 2019 and continuing through February 2022, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.
21. In February 2019, Respondent notified the State of Texas that it no longer operated Triumph-Grand Prairie as a Large Quantity Generator (LQG), but instead operated as a Small Quantity Generator (SQG).
22. In 2019, Respondent notified the State of Texas that several hazardous waste streams at Triumph-Grand Prairie were no longer active and, thereafter, Respondent would manage those waste streams as Universal Waste under the "Standards for Management of Paint and Paint-Related Waste" set forth in 30 Texas Admin. Code § 335.262.
23. During all relevant times, Respondent reported Triumph-Red Oak as an SQG.

IV. ALLEGED VIOLATIONS

Inadequate Notification of Hazardous Waste Activities at Triumph-Red Oak

24. The allegations in Paragraphs 1-23 are re-alleged and incorporated herein by reference.
25. 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 EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
26. On two occasions, once in 2017 and once in 2018, Respondent generated hazardous waste in quantities qualifying them as an LQG.
27. Respondent did not file with the EPA an adequate and timely notification of its changed generator status at Triumph-Red Oak during 2017 and 2018 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) and did not file written notification with the State of Texas pursuant to its authorized program at the time under 30 Texas Admin. Code § 335.6(c).

Inadequate Notification of Hazardous Waste Activities at Triumph-Grand Prairie

28. The allegations in Paragraphs 1-27 are re-alleged and incorporated herein by reference.
29. 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 EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

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30. During 2019, 2020, and 2021, the deactivated waste streams described in Paragraph 22 included hazardous materials that were not eligible for handling as universal wastes and therefore subject to notification and reporting requirements.
31. By failing to report the deactivated waste streams as hazardous wastes, Respondent did not file with the EPA an adequate and timely notification of its hazardous waste activities at Triumph-Grand Prairie during 2019 through 2021 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) and by failing to properly classify these declassified wastes with the State of Texas in violation of 30 Texas Admin. Code § 335.6(c).

Failure to Notify of Universal Waste Handling Activity

32. The allegations in Paragraphs 1-31 are realleged and incorporated herein by reference.
33. Pursuant to 40 C.F.R. § 273.32(a)(1), incorporated by reference in 30 Texas Admin. Code § 335.261(a), Respondent, as a large quantity handler of universal waste at Triumph-Grand Prairie during the period from 2019-2021, was required to send written notification of universal waste management and have received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit, subject to the exemptions in 40 C.F.R. § 273.32(a)(2) and (a)(3).
34. Because Respondent had not previously notified of its universal waste handling activities, it was not eligible for the exemption in 40 C.F.R. § 273.32(a)(2).
35. Respondent's failure to notify of universal waste handling activities at Triumph-Grand Prairie prior to handling universal waste qualifying it as a large quantity handler of universal waste was a violation of 40 C.F.R. § 273.32(a)(1), incorporated at the time by reference in 30 Texas Admin. Code § 335.261(a).

Failure to Meet Requirements for Large Quantity Generators

36. The allegations in Paragraphs 1-35 are realleged and incorporated herein by reference.
37. In the years 2019 through 2021, Respondent accumulated waste generated at Triumph-Grand Prairie and Triumph-Red Oak prior to transport, constituting short term “storage” as defined in 30 Texas Admin. Code § 335.2(152). [40 C.F.R. § 260.10].
38. In the years 2019-2021, Triumph-Grand Prairie and Triumph-Red Oak did not have a RCRA permit for storage of waste.
39. In the years 2019 through 2021, Respondent generated waste at Triumph-Grand Prairie and Triumph-Red Oak in quantities sufficient to qualify as a Large Quantity Generator (LQG). Pursuant to 30 Texas Admin. Code § 335.69 and 40 C.F.R. §§ 262.34(a) and (b), a generator of 1000 kilograms or greater of hazardous waste in a calendar month or greater than one (1) kilogram of acute hazardous waste in a calendar month, may accumulate hazardous waste or acute hazardous waste on-site for 90 days or less without a permit or without having interim status provided that certain conditions are met.
40. During portions of 2019, 2020, and 2021, Respondent failed to meet the standards for LQGs at both Triumph-Grand Prairie and Triumph-Red Oak, in violation of one or more of the requirements for large quantity generators storing waste pursuant to 30 Texas Admin. Code § 335.69(a) [40 C.F.R. § 262.34 (as in effect at the time, including the referenced 40 C.F.R. Part 265 Subpart C – Preparedness and Prevention, 40 C.F.R. Part 265 Subpart D – Contingency Plan and Emergency Procedures, and 40 C.F.R. 265.16 – Personnel training)].

V. COMPLIANCE ORDER

41. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for each facility, Respondent is hereby ordered to take either of the following actions, as appropriate, within 30 calendar days of the effective date of this CAFO:

- A. Certify that it no longer generates hazardous waste (including universal waste) at the Facilities; or
- B. Certify that it has assessed all solid waste streams generated by the Facilities, determined whether the waste qualifies as universal waste under 30 Texas Admin. Code § 335.262(b), and has developed and implemented standard operating procedures ("SOPs") to ensure that the Facilities are operated in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) managing hazardous waste (including universal waste), (b) accurate counting of generated waste; and (c) reporting hazardous waste.
 - i. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph B above.

42. 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 the Respondent 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:

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U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Fred Deppe
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer Fred Deppe at Deppe.Fred@epa.gov and 214-665-7591.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

43. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of sixty thousand dollars (\$60,000).
44. 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.
45. 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, Missouri 63197-9000

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

U.S. Bank
Government Lockbox 979077

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U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 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 Triumph Aerostructures, LLC, Docket No. RCRA-06-2022-0920**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

46. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Vaughn.Lorena@epa.gov

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Fred Deppe
Dallas, Texas 75270-2102
Deppe.Fred@epa.gov

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

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

penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

48. 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 (6%) 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.

B. Costs

49. 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.

C. Termination and Satisfaction

50. 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 also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60)

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days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

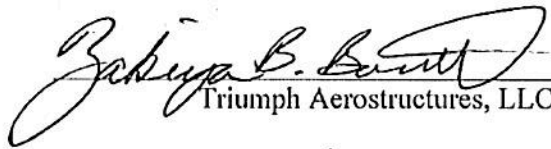
51. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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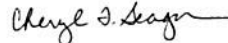
**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 5/11/2022


Triumph Aerostructures, LLC

FOR THE COMPLAINANT:


Digitally signed by CHERYL
SEAGER
Date: 2022.05.12 16:45:01
-05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Triumph Aerostructures, LLC
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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1-68001003655804
Date: 2022.05.16 10:21:45 -0400

Thomas Rucki
Regional Judicial Officer

Triumph Aerostructures, LLC
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the email addresses:

Copy via Email to Complainant:

Deppe.Fred@epa.gov

Copy via Email to Respondent:

christopher.mcauliffe@morganlewis.com

**ELIZABETH
GEORGE**

Digitally signed by
ELIZABETH GEORGE
Date: 2022.05.12 17:03:03
-05'00'

RCRA and Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA, Region 6