

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

FILED  
2017 FEB -7 PM 2:10  
REGIONAL HEARING CLERK  
EPA REGION VI

<b>IN THE MATTER OF:</b>	§	
	§	
<b>San Antonio Testing Laboratory, Inc.</b>	§	<b>Consent Agreement and Final Order</b>
	§	<b>Docket No. RCRA-06-2017-0903</b>
<b>San Antonio, Texas</b>	§	
	§	
<b>RESPONDENT</b>	§	

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**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” and “Complainant”) and San Antonio Testing Laboratory, Inc. (“SATL” or “Respondent”), and concerns the facility located at 1610 Laredo Street, San Antonio, Texas 78207.
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).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. Respondent explicitly waives any right to contest the allegations or to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in this CAFO.
5. This CAFO resolves only those violations alleged in this document.

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 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 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. Respondent is a corporation formed under the laws of the State of Texas.
10. Respondent owns and operates an environmental testing laboratory located at 1610 Laredo Street, San Antonio, Texas 78207 ("Facility").
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX. ADMIN. CODE § 3.2(25), [40 C.F.R. § 260.10].
12. The Facility is a "facility" within the meaning of 30 TEX. ADMIN. CODE § 335.1(59), [40 C.F.R. § 260.10].

13. Respondent is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 TEX. ADMIN. CODE § 335.1(65), (69), [40 C.F.R. § 260.10].
14. As a generator of hazardous waste, Respondent is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX. ADMIN. CODE §§ 335(C) and (F) (40 C.F.R. §§ 262 and/or 270).
15. From December 2015 through March 2016, EPA conducted an investigation and records review of Respondent’s performance as a generator of hazardous waste in Texas, including a review of information voluntarily provided to EPA by Respondent (the “Investigation”).
16. Respondent generates several waste streams, including waste from soil sample analysis (“Solid Waste Stream” or “SWS”) and the liquid sample ICP metals and pH analysis (“Liquid Waste Stream” or “LWS”).
17. Soil samples in jars are shipped to Respondent’s facility from a variety of sources and stored in glass jars before and after analysis.
18. The soil samples are tested for the presence of metals, volatile organic compounds, semi-volatile organic compounds, pesticides, total petroleum hydrocarbons, and benzene, toluene, ethylbenzene, and xylene (“BTEX”).
19. After a set time period after analysis, Respondent disposes of the jars containing soil samples for analysis by crushing the jars in a glass crusher that deposits the crushed jar and soil into a 55-gallon drum.
20. On occasion, if a sample displays an atypical consistency or odor, Respondent sends that sample back to the customer.

21. The SWS consists of the crushed and discarded soil samples analyzed by Respondent.
22. A representative sample of the SWS is collected by the Respondent and undergoes the following analysis: TCLP metals, BTEX, general chemistry (which includes such characteristics as flash point, pH, and reactivity), and total petroleum hydrocarbons.

**Claim 1: Failure to make an Adequate Hazardous Waste Determination.**

23. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
24. 30 Tex. Admin. Code § 335.62, [40 C.F.R. § 262.11] requires all persons generating solid waste to determine if that waste is a hazardous waste.
25. The waste streams identified in Paragraph 16 are not excluded from regulation under 40 C.F.R. § 261.4.
26. The waste streams identified in Paragraph 16 of this CAFO are not a listed hazardous waste found in 40 C.F.R. Part 261, subpart D.
27. Pursuant to 40 C.F.R Part 261, Subpart C, Respondent must determine whether the waste streams identified in Paragraph 16 are identified in subpart C of 40 C.F.R. Part 261 by either testing the waste or applying knowledge of the hazard characteristic of the waste in light of the materials or the process used.
28. The sample collected from the SWS is not sampled for volatiles organic compounds, semi-volatile compounds, pesticides, nor several other compounds listed in Table 1 of 40 C.F.R. § 261.24, as required by 30 TEX. ADMIN. CODE § 335.504 [40 C.F.R. § 261.24(a)].

*Liquid Waste Stream (LWS)*

29. Analytical data provided by Respondent showed that from August 8, 2012 to December 15, 2014, Respondent shipped wastes identified as Hazardous Waste Liquid NOS, which contained hazardous levels of cadmium and chromium, and also displayed the characteristic of corrosivity.
30. Respondent failed to identify the Hazardous Waste Liquid NOS hazardous waste stream as corrosive (D002) on its hazardous waste manifests during this period, in violation of 30 TEX. ADMIN. CODE § 335.62, [40 C.F.R. § 262.11].
31. Respondent violated the requirements of RCRA and the regulations promulgated at 30 TEX. ADMIN. CODE § 335.62, [40 C.F.R. § 262.11] by failing to make the requisite hazardous waste determination on the solid waste streams identified in Paragraph 16 during the period from 2012 through 2014.

**Claim 2: Impermissible Dilution by Mixture**

32. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
33. 30 TEX. ADMIN. CODE § 335.431 adopts by reference 40 C.F.R. § 268.3.
34. 40 C.F.R. § 268.3(a) prohibits dilution of restricted wastes as a substitute for treatment.
35. After analytical testing of soil samples shipped to Respondent, Respondent knows that some of its samples contain levels of various toxic chemicals that would require the samples to be characterized as hazardous when disposed as a waste. In other samples such levels of toxic chemicals may not be detected.

36. At the time of disposal, the sample jars of known hazardous levels and non-hazardous levels are removed from cold storage and sent to the crusher as described in paragraph 19. The contents of the SWS drum are homogenized by mixing with a shovel or other mechanical means. A composite sample of the mixed drum contents is collected and analyzed for waste characterization as described in paragraph 22.
37. The mixture of wastes known to contain hazardous levels with wastes not known to contain hazardous levels constitutes impermissible dilution.
38. Respondent violated the requirements of RCRA and the regulations promulgated at 30 TEX. ADMIN. CODE § 335.431, adopting 40 C.F.R. § 268.3, which prohibits dilution by mixing hazardous and solid wastes.

#### **IV. COMPLIANCE ORDER**

39. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this Order, provide in writing the following with regard to the Facility:

- A. Respondent shall certify that it has assessed all of its solid waste streams at the Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOP") to ensure that SATL is operating in compliance with RCRA and the regulations promulgated thereunder. This shall include, but is not limited to, procedures for: (a) making hazardous waste determinations of liquid and non-liquid waste streams; (b) managing hazardous wastes referred

to as "solid waste stream (SWS)" such that impermissible dilution, as defined in 40 C.F.R. § 268.3, is not occurring; (c) meeting the requirements of the land disposal requirements; (d) reporting, transporting, and disposal of hazardous waste; (e) preparing its manifests.

B. Respondent shall provide in its written certification, as described in subparagraph A above, that the facility has returned to compliance for each of the cited violations and has implemented either administrative or engineering controls to prevent recurrence of each cited violation.

40. 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 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 the CAFO shall be sent to the following:

U.S. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Waste Compliance Section 2 (6EN-H2)  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Debra Pandak

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

41. 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 **Ten Thousand Seven Hundred Sixty-Eight dollars (\$10,768)**.
42. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.
43. The following are Respondent's options for transmitting the penalties:

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

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

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

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



Wire Transfers 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

The case name and docket number (**In the Matter of San Antonio Testing Labs, Inc., Docket No. RCRA-06-2017-0903**) shall be documented on or within your chosen method of payment to ensure proper credit.

44. 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, Suite 1200  
Dallas, TX 75202-2733

U.S. EPA, Region 6  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch (6EN-H)  
Waste Compliance Section 2 (6EN-H2)  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attn: Debra Pandak

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

45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, 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).

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.

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 that 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. Costs**

46. 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**

47. 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 IV (Compliance Order), Paragraph 36.

Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

**D. Effective Date of Settlement**

48. This CAFO shall 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: 01-19-2017



\_\_\_\_\_  
Marcela Hawk  
President  
San Antonio Testing Laboratory, Inc.

FOR THE COMPLAINANT:

Date: 2-1-17



\_\_\_\_\_  
Stacey B. Dwyer, P.E.  
Acting Director  
Compliance Assurance and  
Enforcement Division

**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.

Date: 2/7/17




Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of February, 2016, 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 below:

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED:** 7001 0360000366749794

Marcela Hawk  
President  
San Antonio Testing Laboratory  
1610 South Laredo St.  
San Antonio, Texas 78207

  
Ms. Lori Jackson  
Paralegal