

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED

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LABORER & HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

CEMEX Construction Materials  
South, LLC

RESPONDENT

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Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2022-0944

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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" or "Complainant") and Respondent, CEMEX Construction Materials South, LLC ("Respondent" or "CEMEX") and concerns the facility located at 2580 Wald Road, New Braunfels, Texas 78132 (the "Facility").
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)<sup>1</sup>.

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<sup>1</sup> On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

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 violations resolved in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
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. At times relevant to this CAFO, Respondent owned and operated the Facility.
12. At times relevant to this CAFO, the facility operated a cement manufacturing business.
13. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(61), [40 C.F.R. § 260.10].
14. In May of 2021, EPA conducted a RCRA inspection of the Facility's activities as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder.
15. Respondent generated 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.
16. At times relevant to this CAFO, Respondent was a "generator" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 335.1(67) & (73), [40 C.F.R. § 260.10].
17. As a generator of hazardous waste, during time relevant to this CAFO, Respondent was 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].
18. EPA submitted to Respondent on May 16, 2021, a Notice of Potential Violation and Opportunity to Confer ("Notice"). In a conference call on June 3, 2021, EPA conferred with Respondent regarding the violations alleged therein and provided an opportunity for Respondent to submit additional information or materials.

#### IV. VIOLATIONS

##### **Claim 1. Notification Requirements**



19. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference.
20. 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).
21. Respondent did not file with EPA or the State of Texas, an authorized state, an adequate and timely notification of its hazardous waste activities at the Facility during 2019 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) and 30 Texas Admin. Code § 335.6(c).

**Claim 2. Failure to Operate within Stated Generator Status**

22. The allegations in Paragraphs 1-18 are realleged and incorporated herein by reference
23. During the Investigation, EPA determined that Respondent declared its generator status at the Facility as a very small quantity generator (VSQG).
24. During 2019, Respondent, as an entity generating waste in quantities sufficient to qualify as a Large Quantity Generator (LQG) and storing hazardous waste, was subject to the requirements of 40 C.F.R. Parts 265, Subparts C and D, all applicable requirements under 40 C.F.R Part 268, and Texas Admin. Code 335.113, as conditions to accumulating waste on-site for up to 90 days without a permit or interim status, as set forth in Texas Admin. Code § 335.69(a)(4), [40 C.F.R. § 262.34(a)(4)].
25. During 2019, the Facility generated hazardous waste and operated as a LQG in violation of one or more of the requirements for large quantity generators of hazardous waste under 30 Texas Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

## V. COMPLIANCE ORDER

26. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and **within 60 calendar days** of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams at the Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
  - B. Respondent shall certify that as of the date of such certification it has accurately and adequately complied with its RCRA Section 3010 notification for the Facility; and
  - C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
27. 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 this CAFO shall be sent to the following:

U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECAD)  
ATTN: Gabriel Salinas  
Dallas, Texas 75270-2102  
salinas.gabriel@epa.gov

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer Gabriel Salinas, respectively at salinas.gabriel@epa.gov or at 214-665-8483.

## VI. TERMS OF SETTLEMENT

### A. Penalty Provisions

28. 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 Nineteen Thousand Six Hundred Thirty-Three Dollars (\$19,633)**.
29. 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.
30. The EPA web address, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, provides a list of options available for transmitting payment of penalties.

Options for payment include:

- A. Electronic payments via Pay.gov. <https://www.pay.gov/public/form/start/11751879>
- B. Remittance by 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

C. Overnight Mail (non-U.S. Postal Service), the check 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, Missouri 63101  
314-418-1028

D. 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 CEMEX Construction Materials South, LLC, Docket No. RCRA-06-2022-0944**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

31. 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 (ECAD)  
ATTN: Gabriel Salinas  
Dallas, Texas 75270-2102  
salinas.gabriel@epa.gov

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

32. 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).
33. 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.
34. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Compliance Order and payment of the civil penalty are restitution, remediation, or required to come into compliance with the law.



**B. Costs**

35. 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**

36. 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 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**

37. 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:

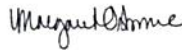
Date: 9/20/2022



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CEMEX Construction Materials South, LLC

FOR THE COMPLAINANT:



Digitally signed by  
MARGARET OSBOURNE  
Date: 2022.09.26  
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Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6

**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: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
one=THOMAS RUCKI,  
0.9.2342.19200300.100.1.1+6800100365804  
Date: 2022.09.26 12:41:45 -0400

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Thomas Rucki  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically 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:

[carter.courtney@epa.gov](mailto:carter.courtney@epa.gov)

Copy via Email to Respondent:

[audreyr.fulton@cemex.com](mailto:audreyr.fulton@cemex.com)

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Ms. Lori Jackson  
Paralegal