

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2010 SEP 15 AM 9: 29
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

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DOCKET NO. RCRA-06-2010-0921

GREAT AMERICAN TREATING
13221 8TH ST.
OWENTOWN, TX 75708

FINDINGS OF FACT, AGREED
COMPLIANCE ORDER, AND AGREED
ORDER REQUIRING IMPLEMENTATION
OF PROPOSAL FOR SAMPLING,
ANALYSIS, MONITORING,
REMEDiation, AND REPORTING

ID # TXD981515547

Proceedings under §§ 3008 and 3013
of the Resource Conservation and
Recovery Act, 42 U.S.C. §§ 6928 and 6934

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Great American Treating, operating at 13221 8th St., Owentown, TX 75708 ("Respondent") in the above referenced action, have consented to the terms of this Consent Order ("Order").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Order.

**I.
PRELIMINARY STATEMENT**

- 1) This administrative action was instituted by EPA pursuant to Sections 3008 and 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928 and 6934, and is simultaneously commenced and concluded through the issuance of this Order under 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

- 2) The Complainant, by the authority delegated from the Administrator of the Environmental Protection Agency and the Regional Administrator of Region 6, having been presented with information concerning hazardous wastes that are being stored, treated, and disposed at the Respondent's facility described below, and with information concerning potential releases of hazardous wastes from this facility, and with information that this presents a substantial hazard to human health or the environment, issues the following Order pursuant to Sections 3008 and 3013 of RCRA [42 U.S.C. §§ 6928 and 6934].
- 3) Notice was given to the State of Texas prior to the issuance of this Order.
- 4) Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this Order. This Order states a claim upon which relief may be granted.
- 5) Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this Order, and waives all defenses which have been raised or could have been raised to the claims set forth in the Order.
- 6) This Order resolves only those violations which are alleged herein.
- 7) Respondent consents to the issuance of the Order hereinafter recited.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 8) Great American Treating ("Respondent") is a current owner and operator of the facility located at 13221 8th St., Owentown, TX 75708.
- 9) Respondent's operations, along with all contiguous land and structures, other appurtenances and improvements on the land, is a "facility" as the term is defined at 30 TAC § 335.1(59) [40 CFR § 260.10].
- 10) Respondent is a "person" as the term is defined at 30 TAC § 3.2 (25), Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15) [40 CFR § 260.10].

- 11) Respondent is an "operator" of the facility described, above, as those terms are defined at 30 TAC § 335.1(107) [40 CFR § 260.10].
- 12) Respondent's facility includes: 1) an office building; 2) a steel building housing a Chromated Copper Arsenate ("CCA") wood treatment cylinder; 3) a roof covered drip pad; 4) a treated wood storage area with three covered sheds; 5) 55-gallon drums for accumulating and storing wastes associated with the drip pad; and 6) a storm water pond.
- 13) Respondent does not have a RCRA Section 3005 Permit for the treatment, storage, or disposal of hazardous waste.
- 14) Pursuant to RCRA 3007(a), 42 U.S.C. § 6928, on January 6, 2009, representatives of EPA conducted a RCRA Compliance Evaluation Inspection ("Inspection") at Respondent's facility. Respondent engaged in written and oral exchanges of information with EPA on a voluntary basis thereafter relating to RCRA compliance issues at Respondent's facility. Respondent produced sampling data demonstrating that contamination of Respondent's facility occurred during the tenure of the previous owner.
- 15) During the Inspection, EPA Representatives observed: 1) cracks throughout portions of the Respondent's drip pad; 2) a portion of the curb around the perimeter of Respondent's drip pad had been broken and was missing; 3) Respondent had not inspected the drip pad on a weekly basis; and 4) Respondent had not obtained a written assessment of the drip pad certified by a professional engineer.
- 16) During routine production, CCA from the cylinder and the wood treating process accumulates on Respondent's drip pad.
- 17) Respondent's drip pad could not effectively contain all of the CCA due to the cracks and the incomplete berm around its perimeter.

- 18) EPA Representatives obtained and reviewed a "Limited Soil Assessment" dated January 8, 2007, which indicated that CCA constituents ("CCA Waste") were present in the soil adjacent to the drip pad. Data from the 2007 Limited Soil Assessment indicate that due to the presence of CCA Waste, the soil adjacent to the drip pad contained elevated levels of arsenic and chromium. Respondent had conducted the limited soil assessment pursuant to a lawsuit against the previous owner for failing to disclose contamination at the site; however, did not obtain site remediation through the lawsuit.
- 19) The CCA Waste is "discarded" as that term is defined at 30 TAC § 330.3(38) [40 C.F.R. 261.2] and "disposed" as that term is defined at 30 TAC § 335.1(44) [40 CFR 261.2].
- 20) The CCA Waste is a "solid waste" as that term is defined at 30 TAC § 335.1(138) [40 CFR 261.2].
- 21) The CCA Waste is a hazardous waste listed at 40 CFR § 261.31 as F035, which is defined as wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium, and is therefore a "hazardous waste" as that term is defined at 30 TAC § 335.1(69) [40 CFR 261.3].
- 22) Pursuant to the Land Disposal Restrictions at 30 TAC 335.431 [40 CFR § 268.40] and RCRA § 3004, untreated hazardous waste with the waste code F035 is prohibited from land disposal unless it meets the treatment standards listed in the TAC 335.431 [40 CFR § 268.40 & 268.48].
- 23) The CCA Waste does not meet the treatment standards at TAC 335.431 [40 CFR § 268.40 & 268.48].
- 24) Respondent failed to comply with the Land Disposal Restrictions listed in Paragraph 22, above.
- 25) Therefore, Respondent violated TAC 335.431 [40 CFR § 268.40], by land disposing untreated hazardous waste.

26) The practices and circumstances described in Paragraphs 12 through 25 for treating, storing, and disposing of the CCA Waste may present a substantial hazard to human health or the environment.

III.
COMPLIANCE ORDER

Section 3008 of RCRA

27) Pursuant to 42 U.S.C. § 6928, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:

- a) Respondent shall repair all cracks to Respondent's drip pad and repair the curb surrounding the perimeter of the drip pad. Respondent shall provide certified documentation of the repairs, including photographic evidence, within thirty (30) days of the effective date of this Order.
- b) Respondent shall obtain a certified written assessment of Respondent's drip pad by an independent qualified registered professional engineer. Respondent shall provide certified documentation within thirty (30) days of the effective date of this Order.
- c) Respondent shall conduct weekly inspections of Respondent's drip pad for one (1) year and keep written documentation of these inspections. Respondent's obligation to conduct weekly inspections and keep written documentation of these inspections shall begin upon the effective date of this Order.

28) In all instances in which this Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official:"

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a "responsible official" of Respondent means a person with the authority to bind Respondent as to the truth, accuracy, and completeness of all certified information.

29) All notices, demonstrations, and other documents required under this Order shall be sent to the following person(s) at the address(es) below:

Paul James (6EN-HC)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733

Section 3013 of RCRA

30) Pursuant to 42 U.S.C. § 6934, Respondent shall submit to EPA an Environmental Assessment Workplan ("Workplan") for field observation/testing, analytical sampling, and analysis to determine the presence, magnitude, horizontal and vertical extent, direction, and rate of movement of any hazardous waste, hazardous constituents, and/or constituents of concern ("COCs") at Respondent's facility, including but not limited to the hazardous wastes identified in Part II above. The Workplan shall document the procedures Respondent shall use to assess sampling and analysis data as well as the procedures Respondent shall use to conduct those activities necessary to: 1) characterize the source(s) of contamination; 2) characterize the potential pathways of contaminant migration; 3) define the degree and extent of contamination; and 4) identify actual or potential human and/or ecological receptors. Respondent may implement the work contained in the Workplan in a multi-phased approach. A specific schedule for implementation of all activities shall be included in the Workplan. Respondent's Workplan for assessment shall, as appropriate, include the following:

a) A soil sampling and analysis section to collect and analyze representative soil samples to determine the nature and extent of potential contamination, both vertically and horizontally

from Respondent's drip pad. The Workplan must define the number, location, and depth of the samples, and the parameters for analysis. The Respondent shall also conduct a program to characterize the geologic units above the water table in the vicinity of the contaminant release(s). Such characterization shall include but not be limited to, the following information:

- 1) USGS soil classification;
 - 2) Soil profile, including ASTM classification of soils:
 - (a) Directional relative permeability;
 - (b) Bulk density;
 - (c) Soil pH;
 - (d) Particle size distribution; and
 - (e) Moisture content;
 - 3) Analytical methods (Total Metals – in accordance with EPA SW846 method 6010b)
- b) A surface water and sediment (including runoff, surface body, and creek) sampling and analysis section to determine the nature and extent of any potential contamination from the drip pad. The surface water and sediment investigation must include the following to ensure adequate assessment of contaminants at or near the facility:
- 1) Samples of any ponded water bodies inside the facility boundary and immediately outside the Facility boundary;
 - 2) Samples from drainage ditches, culverts, etc., which accept water from the facility and drain to wetland areas;
 - 3) Samples from wetland area at or near the facility property boundaries;
 - 4) Analysis of samples for general water quality parameters, and should at minimum, include temperature, pH, dissolved oxygen ("DO"), conductivity, biochemical oxygen demand

("BOD"), chemical oxygen demand ("COD"), total suspended solids ("TSS"), total dissolved solids ("TDS"), total organic carbon ("TOC"), and nutrients; and

- 5) Analysis of samples for Total Metals - EPA SW846 6010b.
- c) A groundwater sampling and analysis section to characterize the groundwater quality and the extent of any groundwater contamination both vertically and horizontally, which may be migrating at and from Respondent's facility. The Workplan shall define the number, location, and depth of proposed monitoring well locations to collect necessary information for groundwater characterization and assessment. The Workplan shall define proposed well construction(s), surface completion(s), well development, well survey with top of casing elevation, groundwater elevation measurements/calculations, field parameters, and sample methodology. If groundwater contamination is present, the investigation shall at a minimum provide the following information:
- 1) A description of the horizontal and vertical extent of any plume(s) originating from the facility;
 - 2) The horizontal and vertical direction of contamination movement;
 - 3) The gradient and velocity of groundwater;
 - 4) The horizontal and vertical concentration profiles of contamination in the groundwater;
 - 5) Two complete groundwater sample events, 3 months apart, that shall include at minimum field measurements (groundwater elevation, pH, conductivity, and temperature), and analytical results including total metals - in accordance with SW846 method 6010B;
 - 6) An evaluation of factors influencing the plume movement; and
 - 7) An extrapolation of future contaminant movement.
- d) A Quality Assurance/Quality Control Plan. The Respondent shall prepare a plan to document all monitoring procedures: sampling, field measurements and sample analysis performed

during the investigation to characterize the environmental setting, source, and contamination, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented. In addition, a Data Collection Quality Assurance Plan shall be submitted specifying the following:

1) Chain-of-custody procedures, including:

- (a) Identification of a responsible party to act as sample custodian at the laboratory facility authorized to sign for incoming field samples, obtain documents of shipment, and verify the data entered onto the sample custody records;
- (b) Provision for a laboratory sample custody log consisting of serially numbered standard lab-tracking report sheets; and
- (c) Specification of laboratory sample custody procedures for sample handling, storage, and disbursement for analysis.

2) Sample storage procedures and holding times;

3) Sample preparation methods;

4) Analytical procedures, including:

- (a) Scope and application of the procedure;
- (b) Sample matrix;
- (c) Potential interferences;
- (d) Precision and accuracy of the methodology;
- (e) Method detection limits;
- (f) Calibration procedures and frequency;
- (g) Data reduction, validation and reporting; and
- (h) Internal quality control checks, laboratory performance and systems audits and frequency.

- e) A timeline for work detailed above and a schedule for the submission of progress reports, including a draft Environmental Assessment Report, and a final Environmental Assessment Report.
- 31) Respondent shall submit the Workplan to EPA within ninety (90) days of the effective date of this Order for review and comment. Pursuant to the requirements of RCRA Section 3013(c), 42 U.S.C. § 6934(c), Respondent may request an opportunity to confer with EPA regarding the proposed Workplan.
- 32) If EPA does not provide comments to the Workplan within ten (10) business days of receiving Respondent's submission, Respondent shall proceed with the Workplan as submitted.
- 33) Following completion of the activities identified in the Workplan, Respondent shall submit to EPA an Environmental Assessment Report which details the results of the work conducted, identifies concerns as determined under the Texas Risk Reduction Program, and outlines corrective action/remediation options for addressing those concerns.
- 34) Upon request by EPA, Respondent shall submit a Corrective Action Plan (CAP). This CAP shall document the procedures Respondent shall use to remediate contamination/concerns identified in the Environmental Assessment Report. Respondent may implement the work contained in the CAP in a multi-phased approach. Respondent's CAP for remediation shall include a timeline for work detailed in the CAP and a schedule for submission of progress reports, including a draft Remediation Completion Report, and a final Remediation Completion Report.
- 35) If EPA determines that Respondent is not able to conduct the activities required by this Order pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, in a satisfactory manner, or if actions carried out are deemed unsatisfactory, then EPA may conduct such actions deemed reasonable by EPA to ascertain the nature and extent of the hazard at the facility. Respondent may be ordered to

reimburse EPA for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d).

36) All notices, demonstrations and other documents required under this Order shall be sent to the following person(s) at the address(es) below:

Paul James (6EN-HC)
 Hazardous Waste Enforcement Branch
 U.S. EPA Region 6, Suite 1200
 1445 Ross Ave.
 Dallas, TX 75202-2733

IV. TERMS OF SETTLEMENT

PARTIES BOUND

37) The provisions of this Order 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 Order 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 Order and to execute and to legally bind that party to it.

STIPULATED PENALTIES

38) In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any provision of this Order, Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 250.00
16th through 30th day	\$ 500.00
31st day and beyond	\$ 1000.00

39) Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

40) The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within thirty (30) days of receipt of a demand letter for payment to the following address:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

41) The case name and docket number (In the Matter of Great American Treating, Docket No. RCRA-06-2010-0921) shall be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the cashier's check or certified check to the following:

Lorena S. Vaughn (6RC-D)
Regional Hearing Clerk
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

David Edelstein (6RC-FR)
RCRA Legal Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to these procedures will ensure proper credit when payments are received.

DISPUTE RESOLUTION

42) If Respondent objects to any decision or directive of EPA in regard to compliance with this Order, Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

David Edelstein (6RC-ER)
RCRA Legal Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- 43) The Associate Director for Hazardous Waste Enforcement or his designee, and Respondent shall then have an additional thirty (30) calendar days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute informally. If an agreement is reached between the Associate Director for Hazardous Waste Enforcement or his designee, and Respondent, the agreement shall be reduced to writing and signed by the Associate Director for Hazardous Waste Enforcement or his designee, and Respondent and incorporated by reference into this Order.
- 44) If no agreement is reached between the Associate Director for Hazardous Waste Enforcement or his designee and Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee ("Division Director") for formal dispute resolution. The Division Director and Respondent shall then have a 15-day period to resolve the dispute. If an agreement is reached between the Division Director and Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this Order. If the Division Director and Respondent are unable to reach agreement within this 15-day period, the Division Director shall provide a written statement of EPA's decision to Respondent, which shall be binding upon Respondent and incorporated by reference into the Order.
- 45) If the Dispute Resolution process results in a modification of this Order, the modified Order must be approved by the Regional Judicial Officer and filed pursuant to the Modification Section.

FORCE MAJEURE

- 46) Respondent shall perform all requirements under this Order with the time limits established under this Order, unless the performance is delayed or made impossible by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the anticipation or control of the Respondent, including but not limited to acts of nature and acts of people. Force majeure and impossibility do not include financial inability to complete the work required under this Order or increased cost of performance or any changes in Respondents' business or economic circumstances. Force majeure does include inability to perform caused by a permit authority's delay in permit approval, or authorization necessary to performance when Respondent has timely and completely applied for or sought a permit, approval, or authorization to which it is entitled.
- 47) If any event occurs or has occurred that may delay or make impossible the performance of any obligation under this Order, whether or not caused by a force majeure event, the affected Respondent shall notify EPA within seventy-two (72) hours (phone, email, or written correspondence) of when the Respondent knew or should have known that the event might cause a delay or impossibility of performance. Such notice shall: identify the event causing the delay or impossibility, or anticipated to cause delay or impossibility, and, if delay, the anticipated duration of the delay; provide Respondent's rationale for attributing such delay or impossibility to a force majeure event; state the measures taken or to be taken to prevent or minimize the delay or impossibility; estimate the timetable for implementation of those measures; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay or impossibility. Failure to comply with the notice provision of this action shall waive

any claim of force majeure by the Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

- 48) If EPA determines that a delay in performance or anticipated delay of a requirement under this Order is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA and stipulated penalties shall not be assessed for any such delay. If EPA determines that impossibility of performance of a requirement under this Order is or was attributable to a force majeure, then the deadline for that requirement shall be waived, and the time periods for any other requirements that are directly affected by the impossibility of performance shall be extended as deemed necessary by EPA, and stipulated penalties shall not be assessed for any waived or extended requirements. If EPA determines that the delay or impossibility, or anticipated delay or impossibility, has been or will be caused by a force majeure, then EPA will notify Respondents, in writing, of the length of the extension or waivers, if any, for performance of such obligations affected by the force majeure. Any such extensions or waivers shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.
- 49) If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution section. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or impossibility, or anticipated delay or impossibility, has been or will be caused by a force majeure, that the duration of the delay or the extension or waiver sought was or will be warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay or impossibility. If Respondent satisfies this burden, then the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation as determined by

EPA, or waived if performance is impossible, and no stipulated penalties shall be assessed for any such delay, extension, or waiver.

NOTIFICATION

50) Unless otherwise specified elsewhere in this Order, 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 other notices required 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:

EPA: Ragan Broyles (6EN-H)
Associate Director, Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
Broyles.ragan@epa.gov

Respondent: Kyle Gillin, Vice President
Great American Treating
P.O. Box 234
Winona, TX 75792

MODIFICATION

- 51) The terms, conditions, and compliance requirements of this Order may not be modified or amended except upon the written agreement of both parties, and such modification or amendment being filed with the Regional Hearing Clerk. Where a modification agreed upon by both parties constitutes a material change to any term of this Order, it shall be effective upon approval by a Regional Judicial Officer.
- 52) Any reports, plans, specifications, schedules, and other submissions required by this Order are, upon written approval by EPA, incorporated into this Order. Any non-compliance with such

incorporated documents shall be considered a violation of this Order and shall subject Respondent to the stipulated penalty provisions in Paragraphs 40 through 43.

RETENTION OF ENFORCEMENT RIGHTS

- 53) EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.
- 54) If Respondent fails to comply with the terms and provisions of this Order, EPA may commence a civil action to require compliance with such provisions and to assess a civil penalty for each day during which such failure occurs.
- 55) Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA, Texas, 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 Respondent's facility. Furthermore, nothing in this Order shall be construed 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.
- 56) Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for abatement of any imminent and substantial endangerment to the public health, welfare, or the environment posed by this facility.

INDEMNIFICATION OF EPA

- 57) Neither EPA, Texas, nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this Order, nor shall EPA, Texas, or the United States Government be held

out as a party to any contract entered into by Respondent in carrying out the activities required by this Order.

RECORD PRESERVATION

- 58) Respondent shall preserve, during the pendency of this Order, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which are required to be prepared pursuant to this Order regardless of any document retention policy to the contrary.

COSTS

- 59) 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, 5 U.S.C. § 801 *et. seq.*, and any regulations promulgated pursuant to those Acts.

TERMINATION

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

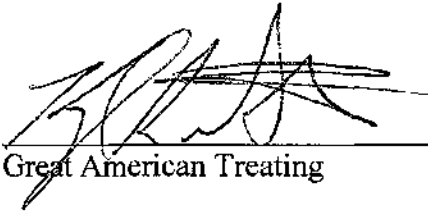
EFFECTIVE DATE

- 61) This Order, and any subsequent modifications, becomes effective upon filing with the Regional Hearing Clerk.

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

FOR RESPONDENT:

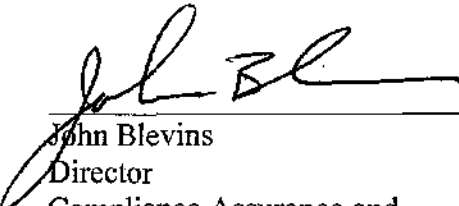
Date: 9-3-10



Great American Treating

FOR THE COMPLAINANT:

Date: 9/10/10



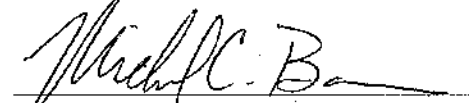
John Blevins
Director
Compliance Assurance and
Enforcement Division
U.S. EPA, Region 6

FINAL ORDER

The foregoing Consent Agreement includes provisions resolving alleged violations of RCRA, a compliance order issued pursuant to section 3008 of RCRA, and an order issued pursuant to section 3013 of RCRA. The requirements of the order under section 3013 of RCRA appear to be beyond the scope of 40 C.F.R. Part 22 and self-executing. Therefore, this Final Order addresses only the terms of the consent agreement related to the alleged violations of RCRA and the compliance order issued pursuant to section 3008 of RCRA.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the provisions of the foregoing Consent Agreement related to the alleged violations of RCRA and the issuance of the compliance order pursuant to section 3008 of RCRA are 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 pursuant to section 3008 of RCRA 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 instructions related to section 3008 of RCRA 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: September 14, 2010



MICHAEL C. BARRA
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of September, 2010, the original of the foregoing Consent Agreement and Final Order ("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 Order was sent to the following by the method identified below:

Kyle Gillin, Vice President
Great American Treating
P.O. Box 234
Winona, TX 75792

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7008015000304115467

Seri Jackson