



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

SEP 6 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7004 0750 0002 9030 4508

Oiltanking Port Neches, LLC
ATTN: Kim M. Ivy
General Manager – Accounting, IT and Administration
333 Clay Street, Suite 2400
Houston, Texas 77002

Re: Oiltanking Port Neches, LLC: 3008 Consent Agreement and Final Order USEPA Docket No. RCRA-06-2016-0942

Dear Mr. Ivy:

Enclosed is a fully executed Administrative Consent Agreement and Final Order (“CAFO”) approved in the settlement for the above referenced CAFO. As you are aware, the CAFO includes an assessment of a civil penalty and compliance order pursuant to Section 3008 of the Resource Conservation and Recovery Act.

The U.S. Environmental Protection Agency, Region 6, appreciates your cooperation throughout this process. If you have questions, please do not hesitate to contact me at (214) 665-8142 or by email: Trawick.Matthew@epa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew K. Trawick".

Matthew K. Trawick
Assistant Regional Counsel

Enclosure

cc: Kelly D. Brown
Attorney for Respondent
Crain, Caton & James, P.C.
1401 McKinney Street, Suite 1700
Houston, Texas 77010

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 SEP 26 PM 2:12
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: §
Oil tanking Port Neches, LLC § Consent Agreement and Final Order
Houston, Texas § Docket No. RCRA-06-2016-0942
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 and Oil tanking Port Neches, LLC (“Respondent” or “Oil tanking”), and concerns the facility located at 100 E. Port Neches Avenue, Port Neches, Texas, 77651 (the “Facility”).

2. Notice of this action has been given to the State of Texas, under Resource Conservation and Recovery Act (“RCRA”) § 3008(a)(2), 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 and its right 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 the CAFO.

5. This CAFO resolves only those causes of action alleged herein.

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 RCRA § 3008(a), 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) and 22.18(b)(2)-(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 limited liability company formed under the laws of the State of Texas, which owned and operated a crude oil storage facility located at 100 East Port Neches Avenue, Port Neches, Texas, 77651.

10. Respondent is a “person” within the meaning of RCRA § 1004(15), 42 U.S.C. § 6903(15); and 30 TEX. ADMIN. CODE § 3.2(25) (40 C.F.R. § 260.10).

11. The Facility is a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1(59) (40 C.F.R. § 260.10).

12. The primary business at the Facility is storage and transportation of crude oil.

13. From December 2015 through April 2016, EPA conducted an investigation and record review of Respondent's performance as a generator of hazardous waste (the "Investigation").

14. The Investigation found that Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 261, 262, and 270 by failing to (i) comply with the RCRA notification requirements, (ii) meet the requirements of its generator status, and (iii) file the required number of Biennial Reports with TCEQ and/or EPA.

15. 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).

16. 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), (F) (40 C.F.R. §§ 262 and/or 270).

Claim 1: Failure to file an adequate or accurate initial or subsequent notification pursuant to Section 3010 (a) of RCRA, 42 U.S.C. 6930(a).

17. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

18. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed waste shall file with the Administrator or authorized state a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

19. At times during 2011-2015 (the "Review Period"), Respondent declared its generator status as a conditionally exempt small quantity generator ("CESQG").

20. At times during the Review Period, Respondent generated hazardous wastes exceeding the SQG and/or LQG threshold established in 30 TEX. ADMIN. CODE §335.78 and therefore operated as a SQG and/or LQG.

21. While operating as a SQG and/or LQG at times during the Review Period, Respondent did not file with the Administrator or with the authorized state adequate notification of its hazardous waste activities to reflect its generation of hazardous waste exceeding the SQG and/or LQG threshold in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: Failure to meet the requirements of a Small Quantity and/or Large Quantity Generator

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.

23. A generator of hazardous waste is subject to the requirements of 30 TEX. ADMIN. CODE § 335(C)-(H), (O) (40 C.F.R. §§ 124, 262-68, 270).

24. At times during the Review Period, Respondent declared its generator status as a CESQG.

25. At times during the Review Period, Respondent generated hazardous wastes exceeding the SQG and/or LQG threshold established in 30 TEX. ADMIN. CODE §335.78 and therefore operated as a SQG and/or LQG.

26. While operating as a SQG and/or LQG at times during the Review Period, Respondent failed to comply with one or more of the requirements for SQGs and/or LQGs under 30 TEX. ADMIN. CODE § 335(C) and/or (F) (40 C.F.R. § 262 and/or 270), such requirements include, but are not limited to: (i) maintaining adequate training records and (ii) submitting a contingency plan to local emergency responders.

Claim 3: Failure to file Biennial Reports

27. The allegations in Paragraphs 1-26 are realleged and incorporated herein by reference.

28. Pursuant to 30 TEX. ADMIN. CODE §335.71 [40 C.F.R. § 262.41] a generator who ships any hazardous waste off-site for treatment, storage and/or disposal must prepare and submit a Biennial Report to EPA's Regional Administrator, and to the TCEQ, by March 1 of each even-numbered year as required by 30 TEX. ADMIN. CODE § 335.71 [40 C.F.R. § 262.41].

29. At times during the Review Period, the EPA and/or the TCEQ did not receive the requisite number of Biennial Reports that Oiltanking was required to file in violation of 30 TEX. ADMIN. CODE § 335.71, [40 C.F.R. § 262.41].

IV. COMPLIANCE ORDER

30. Pursuant to RCRA § 3008(a), 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 CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to:
- i. making hazardous waste determinations;
 - ii. managing hazardous wastes; and
 - iii. reporting, transporting, and disposing of hazardous waste.

31. 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."

32. Copies of all documents required by the CAFO shall be sent to the following:

Fred Deppe
Waste Compliance II Section (6EN-H2)
U.S. Environmental Protection Agency Region 6
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
1445 Ross Avenue
Dallas, Texas 75202-2733

V. TERMS OF SETTLEMENT

A. Penalty Provisions

33. 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 five thousand dollars (\$65,000)**.

34. 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.

35. 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 Oiltanking Port Neches, LLC, Docket No. RCRA-06-2016-0942**) shall be documented on or within your chosen method of payment to ensure proper credit.

36. 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
Dallas, TX 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Fred Deppe

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

37. 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

38. 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

39. 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 28. 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

40. 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:

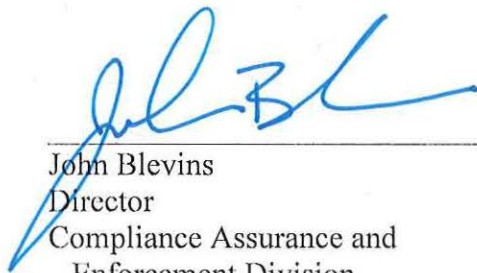
Date: 9/12/2016



Kim M. Ivy
General Manager – Accounting, IT, and
Administration
Oiltanking Port Neches, LLC

FOR THE COMPLAINANT:

Date: 9.26.16



John Blevins
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:

9/26/16



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 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:

CERTIFIED MAIL – RETURN RECEIPT

REQUESTED 70140152000024548447

Kelly D. Brown
Crain, Caton & James, P.C.
1401 McKinney St., Suite 1700
Houston, Texas 77010

for Sandra Hardy
Ms. Lori Jackson
Paralegal