

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2015 APR 22 11:05:52

ALBERT L. ...
APR 22 2015

IN THE MATTER OF: §
CLEAN HARBORS DEER PARK, LLC §
LA PORTE, TEXAS § DOCKET NO. RCRA 06-2015-0907
ID NO. TXD055141378 §
RESPONDENT §

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Clean Harbors Deer Park, LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO, including the assessment of the civil penalty as provided in this CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. Respondent Clean Harbors was organized as a limited partnership under the laws of the State of Delaware in May 2002, and was converted to a limited liability corporation in December of 2009.

8. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

9. The Respondent is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

10. "Owner" is defined in 30 T.A.C. § 335.1(110) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

11. "Operator" is defined in 30 T.A.C. § 335.1(109) [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility".

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in 30 T.A.C. § 335.1(60) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

14. The Respondent owns and operates the Deer Park facility, a RCRA permitted Treatment Storage and Disposal Facility (TSDF) located at 2027 Independence Pkwy South, La Porte, Texas.

15. The TSDF identified in Paragraph 14 is a "facility" as that term is defined in 30 T.A.C. § 335.1(60) [40 C.F.R. § 260.10].

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in 30 TAC § 335.1(110) & (109) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

17. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), Respondent's predecessor initially notified EPA and TCEQ on November 28, 1988 that it is a Large Quantity Generator (LQ) and a TSDF. Respondent acquired the assets of said predecessor, and transferred said predecessor's permit to its current holder in 2002.

18. Respondent is required to comply with all terms and conditions of RCRA Permit No. 50089, issued by the Texas Commission on Environmental Quality.

19. On or about May 9-12, 2011, the Respondent's facility was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

COUNT I: FAILURE TO MARK CONTAINERS OF RESTRICTED WASTES TO IDENTIFY CONTENTS AND DATE OF ACCUMULATION IN VIOLATION OF TCEQ PERMIT 50089 SECTION IV.B.5. (30 TAC § 305.124; 30 TAC § 335.69) [40 CFR 268.50(a)(2); 40 CFR 262.34(a); 40 CFR 270.30(a)]

20. Pursuant to TCEQ Permit 50089 Section IV.B.5, the permittee may store restricted wastes for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment or disposal provided it meets the requirements of 40 CFR 268.50(a)(2) that containers are clearly marked to identify contents and the date each period of accumulation begins.

21. At the time of the May 2011 inspection, Respondent failed to label hazardous waste roll-offs with any identification of contents or accumulation date or the words "Hazardous Waste."

22. Therefore, Respondent violated TCEQ Permit 50089 Section IV.B.5 by not marking container contents according to the requirements of 40 CFR 268.50(a)(2).

COUNT II: FAILURE TO INITIATE CLEAN-UP PROCEDURES FOR REMOVAL OF SPILLED WASTE IN VIOLATION OF TCEQ PERMIT 50089 SECTION III.E (30 TAC § 305.124) [40 CFR 270.30(a)]

23. Pursuant to TCEQ Permit 50089 Section III.E, the permittee shall "immediately initiate clean-up procedures for removal of any spilled hazardous or industrial nonhazardous wastes and waste residues and shall take all steps necessary to prevent surface-water or groundwater contamination as a result of any spills."

24. At the time of the May 2011 inspection, Respondent failed to clean-up multiple waste spills in the Bulk Storage Area (i.e. spent catalyst, spent alumina with Pyridine (D038), and the containment area) and failed to clean-up a spill from a removed container. Wastes, waste residues or clean-up residues were visible on the ground near multiple containers.

25. Therefore, Respondent violated TCEQ Permit 50089 Section III.E by not initiating clean-up procedures to remove waste residues.

COUNT III: FAILURE TO COMPLY WITH SECONDARY CONTAINMENT REQUIREMENTS IN VIOLATION OF TCEQ PERMIT 50089 SECTION II.C.2, INCORPORATING 40 CFR PART 264, SUBPART J—Tank Systems (30 TAC § 305.124; 30 TAC § 335.152) [40 CFR § 270.30(a); 40 CFR § 264.193]

26. TCEQ Permit 50089 Section II.C.2 incorporates the requirements of 40 CFR Part 264, Subpart J—Tank Systems as provisions and conditions of the permit. 40 CFR § 264.193, found within Subpart J, requires that secondary containment systems be free of “cracks or gaps.”

27. At the time of the May 2011 inspection, Respondent’s secondary containment systems in the Permitted Hazardous Waste Tank Farm Area contained several cracks and degraded repairs.

28. Therefore, Respondent violated TCEQ Permit 50089 Section II.C.2, incorporating 40 CFR Part 264, Subpart J—Tank Systems by not complying with secondary containment requirements.

COUNT IV: FAILURE TO PROVIDE AISLE SPACE IN VIOLATION OF TCEQ PERMIT 50089 SECTION II.C.2, INCORPORATING 40 CFR PART 264, SUBPART C—PREPAREDNESS AND PREVENTION (30 TAC § 305.124; 30 TAC § 335.152) [40 CFR § 270.30(a); 40 CFR § 264.35]

29. TCEQ Permit 50089 Section II.C.2 incorporates the requirements of 40 CFR Part 264, Subpart C—Preparedness and Prevision. 40 CFR § 264.35, found within Subpart C, requires the owner or operator to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Regional Administrator that aisle space is not needed for any of these purposes. Table V.B of the permit also requires that at least 2 feet (and up to four feet per NFPA code) of aisle space be maintained in container storage areas.

30. At the time of the inspection, the required aisle spacing was not maintained in the container storage warehouse and a drum handling storage area.

31. Therefore, Respondent violated TCEQ Permit 50089 Section II.C.2 by not providing the required aisle space.

III. COMPLIANCE

32. Respondent certifies that as of the date of its execution of this CAFO, all of the violations set forth in this CAFO have been corrected.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

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 Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondent's good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent be assessed a civil penalty of **TWENTY-TWO THOUSAND, FOUR HUNDRED DOLLARS (\$22,400)**. The Respondent shall pay the assessed civil penalty within thirty (30) days of the effective date of this CAFO.

34. The Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

Clean Harbors Deer Park, LLC

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment 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
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number RCRA- 06-2015-0907 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

35. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

36. 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 costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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. *See* 40 C.F.R. § 13.11(b).

37. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that 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 which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

38. The provisions of this CAFO 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 CAFO 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 CAFO and to execute and to legally bind that party to it.

C. NOTIFICATION

39. Unless otherwise specified elsewhere in this CAFO, 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 action specified 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:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent:

Clean Harbors Deer Park, LLC
42 Longwater Drive
Norwell, MA 02061
Attn: General Counsel

D. MODIFICATION

40. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written

agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

41. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

42. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA 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 the Respondent's facility. Furthermore, nothing in this CAFO shall be construed or 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.

43. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

44. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

F. INDEMNIFICATION OF EPA

45. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

G. COSTS

46. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

H. TERMINATION

47. This CAFO shall terminate when the payment of the civil penalty required to be paid by this CAFO has been delivered to EPA, as provided under this CAFO.

I. EFFECTIVE DATE

48. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

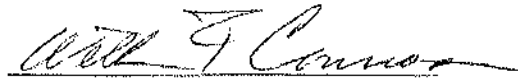
Clean Harbors Deer Park, LLC

Docket No. DOCKET NO. RCRA 06-2015-0907

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

FOR THE RESPONDENT:

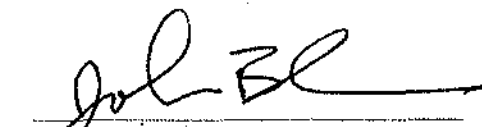
Date: April 6, 2015


Clean Harbors Deer Park, LLC

Clean Harbors Deer Park, LLC
Docket No. DOCKET NO. RCRA 06-2015-0907

FOR THE COMPLAINANT:

Date: 4.16.15

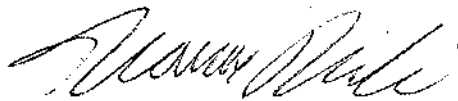


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or their 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. The Respondent is ordered to comply with the terms of settlement 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: 4/20/15



Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) concerning Clean Harbors Deer Park, LLC, Docket. No. RCRA 06-2015-0907 was filed with 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 placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 22 day of April, 2015, addressed as follows:

For Respondent

Attn: Ms. Timmery Fitzpatrick
Senior Environmental Attorney
Clean Harbors Deer Park, LLC
42 Longwater Drive
Norwell, MA 02061

