

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION VI

IN THE MATTER OF:

Biogene Organics, Inc.
1544 Sawdust Road
Suite 303
The Woodlands, TX 77380

RESPONDENT

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Consent Agreement and Final Order

USEPA Docket No. RCRA-06-2016-0901

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, Biogene Organics, Inc. ("Biogene" or "Respondent"), and concerns the following facility:
 - a. Biogene- Located at 1544 Sawdust Road, Suite 303, The Woodlands, Texas 77380 ("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).
3. For the purpose of these proceedings, 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.

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4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
5. Full payment of the penalty as provided below shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.
6. 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 the EPA pursuant to Section 3008(a) of 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 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 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, authorized to do business in the State of Texas.

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10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODEⁱ § 3.2(25), [40 C.F.R. § 260.10].
11. Respondent owns and/or operates the facilities identified in Paragraph 1.
12. In May 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities ("TSDs") and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained information on Biogene Organics' hazardous wastes that it offered for transport and treatment ("Responses").
13. During the period of May 2015 through July 2015, EPA conducted a further RCRA investigation and record review ("Investigation") of Respondent's performance and operations as a generator of hazardous waste at the facility.
14. During the Investigation and review of the Responses, EPA discovered that Respondent generated, accumulated, and offered for transport and treatment the following hazardous waste, during 2010 through 2013:
 - i. Ignitable and corrosive, wastes with the hazardous waste codes, respectively D001 and D002;
 - ii. Toxicity wastes with the hazardous waste codes D007, D010, D018 respectively chromium, selenium, and benzene;
 - iii. Listed hazardous waste, with the hazardous waste codes, F003, F005, U035, U103, U105, U126, U162, U167, U169, U215, and U229 respectively spent halogenated solvents, spent non-halogenated solvents, sulfuric acid, benzene, glycidylaldehyde, methyl methacrylate, alpha-naphthylamine, nitrobenzene, carbonic acid, and trichlorofluoromethane.

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15. The waste streams identified in Paragraph 14 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33].
16. From the Investigation and review of the Responses, EPA determined that during the period of 2010 through 2015, Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount in some instances of 100 kg of hazardous waste per month which qualified the Respondent for the small quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite at the facility.
17. Respondent is a “generator” of “hazardous waste” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
18. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(e), [40 C.F.R. § 261.5(c)], are not applicable to Biogene.
19. The facility listed in Paragraph 1 above is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); and a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1 (59), [40 C.F.R. § 260.10].
20. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R Part 262].

Claim i. Notification Requirements

21. The allegations in Paragraphs 1-20 are realleged and incorporated herein by reference.
22. 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 the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person. See also [30 TEX.ADMIN.CODE § 335.6(c)] and [40 C.F.R. §262.12(b)].
23. Respondent did not file with the Administrator or the authorized State an adequate and subsequent notification of its hazardous waste activities at the facility during the periods in 2010 through 2015 to reflect its generation of hazardous waste triggering the small quantity threshold in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), see also [30 TEX.ADMIN.CODE § 335.6(c)] and [40 C.F.R. §262.12(b)].

Claim ii. Failure to Operate within Its Stated Generator Status

24. The allegations in Paragraphs 1-23 are realleged and incorporated herein by reference.
25. During the Investigation, EPA determined that Respondent operated as a small quantity generator ("SQG") for the relevant period of the CAFO.
26. During the period of 2010 through 2015, Respondent at its Facility exceeded the conditionally exempted small quantity generator status and for the months such hazardous waste remained onsite, and operated as a SQG in violation of one or more of the requirements for a small or large quantity generators under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

IV.

COMPLIANCE ORDER

27. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions for the Facility, and within One Hundred and Twenty (120) calendar days of the effective date of this Order, Respondent shall provide in writing the following to the EPA:

- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures “SOPs” to ensure that Biogene is operating 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 the manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification, and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOP as described in subparagraph A above.

28. 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 Biogene 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

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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. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-11C)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: William Mansfield

V.

TERMS OF SETTLEMENT

i. Penalty Provisions

29. 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 Ninety Thousand Six Hundred Fifty Six Dollars (\$90,656.00).
30. The penalty shall be paid within Thirty Eight Months (38) of the effective date of this CAFO, made payable to the Treasurer United States, and in the manner and prescribed time period set forth in Paragraph 53 below.

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31. Biogene shall pay the assessed penalty in six (6) equal payments of Fifteen Thousand Three Hundred and Seventy Nine Dollars and Twenty Three Cents (\$15,379.23). These payments include a One Percent (1%) interest rate. The first payment is due sixty (60) days after the effective date of this CAFO, with subsequent payments due 240 days after the effective date, 420 days after the effective date, 600 days after the effective date, 780 days after the effective date, and 960 days after the effective date.

Pmt No.	Date Due	Payment	Interest Accrued	Principal Balance
				\$90,656.00
1	60 Days After Effective Date	\$15,379.23	\$78.06	\$75,354.83
2	240 Days After Effective Date	\$15,379.23	\$383.05	\$60,358.65
3	420 Days After Effective Date	\$15,379.23	\$305.15	\$45,284.57
4	600 Days After Effective Date	\$15,379.23	\$230.20	\$30,135.54
5	780 Days After Effective Date	\$15,379.23	\$152.35	\$14,908.66
6	960 Days After Effective Date	\$14,984.45	\$75.79	\$0.00
TOTALS		\$91,880.60	\$1,224.60	

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32. The following are Respondent's options for transmitting the penalties:

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, MO 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

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

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 Biogene Organics, Inc.; Docket RCRA-06-2016-0901 shall be clearly documented on or within your chosen method of payment to ensure proper credit.

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33. 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, Texas 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-11)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: William Mansfield

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

34. 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 process 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 forty-five (45) 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 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

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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 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.

ii. Cost

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.

iii. 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 so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 49. 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.

iv. 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: 03/15/2016



Biogene Organics, Inc.

FOR THE COMPLAINANT:

Date: 3.22/16



John Blevins
Director
Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 3/24/2016



Thomas Rucki
Regional Judicial Officer

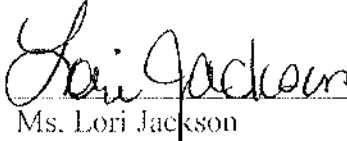
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 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 identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 70010360 0003 6674 4232

Biogene Organics, Inc.
1544 Sawdust Road
Suite 303
The Woodlands, TX 77380


Ms. Lori Jackson
Paralegal

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All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009, 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.