



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

AUG 09 2016

VIA: OVERNIGHT MAIL

Gerad L. Danos II
DIXIE IRON WORKS
300 W. Main Street
Alice, TX 75302-4553

Re: DIXIE IRON WORKS; RCRA 3008 Consent Agreement and Final Order USEPA Docket
No. RCRA-06-2016-0920

Dear Mr. Danos:

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) 665-7343 or by email: Moncrieffe.marcia@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Moncrieffe", with a long horizontal flourish extending to the right.

Marcia E. Moncrieffe, Esq.
Assistant Regional Counsel

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2016 AUG -9 AM 11: 00
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

DIXIE IRON WORKS

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2016-0920

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, Dixie Iron Works, (“DIW” or “Respondent”), and concerns two (2) facilities, each with different levels of noncompliance and for different periods that will be specified in the claims for the respective facility. The facilities that are covered by this CAFO are:
 - A. The facility located at 400 Commerce Rd, Alice, Texas 78332 (the “Commerce Facility”); and
 - B. The facility located at 300 Main Street, Alice, Texas 78332 (the “Main Street 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.

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. The CAFO resolves only those violations which are 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.
7. This CAFO resolves the claims set forth in Section III, Factual Allegations and Conclusions of Law, and Respondent, and its officers, directors, employees and affiliated entities, are released from civil liabilities as provided in 40 Code of Federal Regulations (“C.F.R.”) §§ 22.18(c) and 22.31 upon the termination of the CAFO.

II. JURISDICTION

8. 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 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
9. 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.
FACTUAL ALEGATIONS AND CONCLUSIONS OF LAW

10. Respondent is a Texas Limited Partnership authorized to do business in Texas and is located at 300 W. Main Street, Alice, Texas 78322.
11. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 3.2(25), [40 C.F.R. § 260.10].
12. DIW owns and operates the Facilities at the respective locations identified in Paragraph 1 above and at each Facility operates as a manufacturer of oil field equipment.
13. 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 DIW’s hazardous wastes that it offered for transport and treatment (“Responses”).
14. During the period of January 2015 through June 2015, EPA conducted further RCRA investigation and record review (“Investigation”) of DIW’s performance as a generator of hazardous waste.
15. During the Investigation and review of the Responses, EPA discovered that DIW operated the Commerce Facility without an EPA identification number.
16. During the Investigation and review of the Responses, EPA discovered that DIW has the EPA identification number TXD988057501 for the Main Facility.
17. During the Investigation and review of the Responses, EPA discovered that DIW signed manifests indicating that DIW generated and offered for transport and treatment, without an EPA identification number, the following hazardous waste, during 2012 through 2015 from the Commerce Facility:

- a. Corrosive characteristic wastes with the hazardous waste code, D002;
- b. Toxicity wastes with the hazardous waste codes D006, D007, D008, and D018, respectively cadmium, chromium, lead, and benzene; and
- c. Listed hazardous waste, with the hazardous waste code U080, methylene chloride.

18. During the Investigation and review of the Responses, EPA discovered that DIW signed manifests indicating that DIW generated and offered for transport and treatment, the following hazardous waste, during 2011 through 2014 from the Main Facility:

- a. Ignitable and corrosive characteristic wastes with the hazardous waste codes, respectively D001, and D002; and
- b. Toxicity wastes with the hazardous waste codes D004, D005, D006, D007, D008, and D018, respectively arsenic, barium, cadmium, chromium, lead, and benzene.

19. The waste streams identified in Paragraph 17 and 18 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21, 261.22, and 261.24].

20. From the Investigation and review of the Responses, EPA determined that during the period of 2011 through 2014 and 2012 through 2015, respectively for the Main and Commerce Facilities, the hazardous waste streams identified in Paragraphs 17 and 18 were in quantities that exceeded 100 kg of hazardous waste per month, which qualified DIW as a small quantity generator under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

21. DIW is a “generator” of “hazardous wastes” as those terms are defined in Sections 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

22. During the Investigation and review of the Responses, EPA determined that DIW has not and does not operate as a conditionally exempt small quantity generator (“CESQG”) at either location listed in Paragraph 1 above.

23. During the Investigation and review of the Responses, EPA concluded that DIW, at a

minimum, operated as a small quantity generator (“SQG”) at the Commerce and Main Facilities.

24. Each of the Facilities 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].

25. As a generator of hazardous waste, DIW 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].

CLAIMS

The Main Facility

Claim i. Notification Requirements

26. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.

27. Pursuant to 30 TEX. ADMIN. CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a CESQG in a calendar month if he generates no more than 100 kg of hazardous waste and complies with 30 TEX. ADMIN. CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5 (f), (g), and (j)].

28. The exemptions set forth at 30 TEX. ADMIN. CODE § 335.78(c), [40 C.F.R. § 261.5(c)], are not applicable to DIW.

29. 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. 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).

30. DIW did not file with the Administrator or the authorized State an adequate notification of its hazardous waste activities for the Main Facility for the period of 2011 through 2014 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

The Commerce Facility

Claim ii. Managing Hazardous Waste without a Generator Identification Number

31. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.
32. Pursuant to 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)], a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.
33. During the Investigation and review of the Responses, EPA determined that DIW did not apply to the Administrator and receive an EPA identification number for the Commerce Facility.
34. At all relevant times to the CAFO, DIW treated, stored, disposed of, or offered for transportation its identified hazardous waste generated at the Commerce Facility without having receiving an EPA identification number from the Administrator in violation of 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)].

The Main Facility

Claim iii. Failure to Comply with the Manifest Requirements

35. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.
36. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)]

a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.

37. At all times relevant to this CAFO, Respondent did not prepare all of its manifests as is required by the regulations and therefore operated in violation of 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)].

The Main and Commerce Facilities

Claim iv. Failure to Make Adequate Hazardous Waste Determination

38. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.
39. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2], must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
40. For the relevant periods of this CAFO, Respondent failed to make adequate hazardous waste determinations on all of its waste streams for the Facilities identified in Paragraph 1 above.
41. Respondent violated the requirements of RCRA and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)] by failing to make the requisite hazardous waste determination on all of its solid waste streams.

IV. COMPLIANCE ORDER

42. Pursuant to Section 3008(a) of RCRA, 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 Order, Respondent shall provide in writing the following to the EPA:

- A. Respondent shall certify that it has assessed all of its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOP”) to ensure that DIW 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; (e) preparing and keeping the records; and (f) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with the RCRA Section 3010 Notification requirement, including, where applicable, obtaining EPA identification number(s) from the State of Texas; and
- C. Respondent shall provide, with its certification, a copy of Respondent’s SOPs as described in subparagraph A above.

43. 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 DIW, 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. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.

TERMS OF SETTLEMENT

i. Penalty Provisions

44. 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 Factual Allegations and Conclusions of Law, which are hereby adopted and made a part hereof, 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 One Hundred and Twenty-One Thousand Eight Hundred and Ninety-Six Dollars (\$121,896.00).
45. 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.
46. 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 Dixie Iron Works, Docket No. RCRA-06-2016-0920) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

47. 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, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

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

48. 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). 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 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

49. 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

50. 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 43. 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.

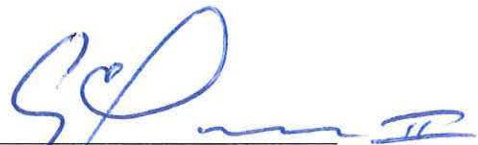
iv Effective Date of Settlement

51. 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: 7/22/16


Gerard L. Danos II
Dixie Iron Works

FOR THE COMPLAINANT:

Date: 8.3.16


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 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: 8/8/16



Thomas Rucki
Regional Judicial Officer

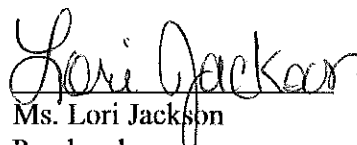
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of Aug., 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 1007 3020 00001532 8113

Dixie Iron Works
Gerard L. Danos II
Dixie Iron Works
300 W. Main Street
Alice, TX 78302-4553
Phone: 512-664-5656

Ali Abazari
Ben Rhem
Jackson Walker LLP
100 Congress Avenue
Suite 1100
Austin, TX 78701
Phone: 512-236-2239
Phone: 512-236-2012


Ms. Lori Jackson
Paralegal