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REGIONAL HEARING CLERK
EPA REGION 6

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

IN THE MATTER OF:

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THE BOARD OF TRUSTEES OF THE
GALVESTON WHARVES

Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2024-1007

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 ("EPA" or "Complainant"), Region 6, and the Board of Trustees of the Galveston Wharves, (the "Respondent" or "Wharves") and concerns the Wharves' exclusive management and control of the property known as the Port of Galveston ("POG"), located in Galveston County, Texas, United States.

2. Notice of the commencement 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).¹

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program. 49 Fed. Reg 48,300 (Dec. 12, 1984). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated December 2015, incorporated by reference under 40 C.F.R. §

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

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO and, for purposes of this proceeding only, waives all defenses which have been raised or could have been raised to the claim set forth in the CAFO.

5. This CAFO resolves only the claim alleged herein, which relates to EPA's claim that on one (1) occasion, used oil was stored on a portion of Respondent's Properties² for more than thirty-five (35) days.

6. Most of Respondent's Properties are: (1) leased to tenants pursuant to a written lease agreement; (2) licensed to operate for their exclusive use during such times and under such conditions as are specified in a written operating agreement; or (3) used by other users of Respondent's properties under the terms and conditions set forth in Respondent's Tariff Circular No. 7.

7. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil

272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20,187, 20190 (Apr. 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas's published version. The corresponding C.F.R. citations are also provided.

² For purposes of this CAFO, the term "Respondent's Properties" refers to that property shown on Exhibit A attached hereto, located between Piers 10 and 41 along the Galveston Channel, and between Harborside Drive and the Galveston Channel. (Respondent manages and controls other property south of Harborside Drive that is not relevant to this CAFO.

Penalties," 40 Code of Federal Regulations ("C.F.R.") Part 22, EPA, Region 6 issues, and Respondent consents to the issuance of this CAFO.

8. The Respondent consents to the issuance of this CAFO, 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 time periods and requirements stated in Section V of this CAFO (said Section V being labeled "Compliance Order").

9. By their signatures to this CAFO, the EPA and Respondent (the "Parties") agree to the use of electronic signatures for this matter. The Parties further agree to electronic service of this CAFO, pursuant to 40 C.F.R. § 22.6, by email to the following addresses: EPA-
Murdock.russell@epa.gov, and for Respondent as follows: the Respondent
apbrown@mapalaw.com.

II. JURISDICTION

10. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded by the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

11. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6, to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions, absent any changes in law which would affect the validity or enforcement of this CAFO.

12. Section IV of this CAFO contains concise statements of the factual and legal basis for EPA's alleged violations of RCRA together with specific provisions of RCRA and the implementing regulations that Respondent is alleged by EPA to have violated.

III. STATUTORY AND REGULATORY BACKGROUND

13. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments ("HSWA") enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a "cradle-to-grave" program to be administered by the Administrator of EPA and authorized states to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 *et seq.*

14. RCRA's Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6939(g), known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA's RCRA hazardous waste program.

15. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to and consistent with the federal program.

16. Pursuant to its authority under Subtitle C of RCRA, 42 U.S.C. §§ 6922(a), 6923(a), and 6924, EPA has promulgated regulations applicable, respectively, to solid and hazardous waste generators at 40 C.F.R. Parts 261 and 262; to transporters at Part 263; to owners/operators of

hazardous waste facilities at 40 C.F.R. Parts 264 and 265; to land disposal of solid and hazardous waste at 40 C.F.R. Part 268; and to the management of used oil at 40 C.F.R. Part 279.

17. In connection with EPA's delegation of RCRA authority to the State of Texas, the Texas Commission on Environmental Quality ("TCEQ") codified the applicable RCRA authorized program, for owners and operators of facilities who store hazardous waste at 30 Texas Administrative Code ("TEX.ADMIN.CODE"), Chapter 335, Subchapter F, [40 C.F.R. Part 270]. And pursuant to 30 TEX.ADMIN.CODE, Chapter 324, the State of Texas has incorporated by reference the provisions of 40 C.F.R. Part 279 to be applicable to owners and operators of used oil transfer facilities who store used oil for more than thirty-five (35) days.

18. Although EPA has granted the State of Texas authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

19. As the authorized provisions of Texas's hazardous waste program operate in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized Texas program; however, for ease of reference, the federal citations will follow in brackets.³

20. 30 TEX.ADMIN.CODE § 335.1(138), [40 C.F.R. § 261.2], defines a "solid waste" as any discarded material that is not otherwise excluded under § 335.1(138)(A)(i-iv), [40 C.F.R. § 261.4(a)], or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munition. Materials are solid waste,

³ The State of Texas has not taken any action against Respondent concerning the alleged violation addressed in this CAFO.

as defined in 30 TEX.ADMIN.CODE § 335.1(138)(C), [40 C.F.R. § 261.2(b)], if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

21. 30 TEX.ADMIN.CODE § 335.1(69) defines a “hazardous waste” as any waste identified or listed as hazardous waste by the Administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act, 42 United States Code, §§ 6901 et seq. EPA defines a “hazardous waste” as a solid waste that is: (1) not excluded from regulation and (2) exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or (3) is listed in Part 261, Subpart D, [40 C.F.R. § 261.3].

22. Respectively, 30 TEX.ADMIN.CODE § 335.1(127) and (126), [40 C.F.R. § 260.10], define an “owner” as the person who owns a facility or part of a facility and an “operator” as the person responsible for the overall operation of a facility.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

23. Respondent’s property consists of approximately 840 and is shown on Exhibit A attached to hereto.⁴

⁴ In 1940, the City of Galveston acquired the waterfront property generally known as the Port of Galveston from private owners. Pursuant to the City Charter of the City of Galveston and as authorized by Texas state law, exclusive management and control of this property, and the revenues derived therefrom, was placed in the Board of Trustees of the Galveston Wharves. Since 1940, additional property on Pelican Island was placed under the Board of Trustees’ exclusive management and control, and the Board itself has acquired additional parcels of land on Galveston Island. While this property totals approximately 840 acres, the property is non-contiguous. Approximately 570 acres is located in several discrete parcels on Pelican Island, north of the Galveston Channel, and approximately 270 acres is located in non-contiguous parcels on Galveston Island, on the south side of the Galveston Channel. Most operations taking place on this property are conducted by tenants under leases, and operators under operating Agreements. Additionally, others use Port property subject to the terms and conditions set out in the Port’s Tariff Circular No. 7.

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

25. Pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, on December 6 through December 8, 2022, EPA conducted a RCRA inspection at Respondent's Property and observed and documented twelve (12) tenants, which included one (1) of POG's three (3) tenants on Pelican Island, ten (10) of its terminals, twenty-six (26) of its docks, and over 14,000 feet of berth on Galveston and Pelican islands (the "Inspection").

26. During the Inspection, EPA identified and photographed several areas of a property managed and controlled by Respondent where wastes, paints, and used oil were being stored. In one location, EPA identified nine (9) 55-gallon blue drums at the POG that had no labels or markings identifying the generator and/or owner of the drums and the content thereof. Seven (7) of the drums contained material and two were empty. These drums were located in the vicinity of one of POG's cruise ship terminals, which are operated by cruise lines conducting home port operations. During the inspection, POG represented that (1) it did not own the barrels, (2) it did not place the barrels or their contents at the location, (3) it did not know who had done so, and (4) the placement and abandonment of the barrels in the location where they were found would be in violation of Respondent's operating agreements and Respondent's Tariff Circular No. 7. Four (4) of the drums contained oily water, and the other three (3) contained used oil, in an estimated collective amount of fifty-five (55) gallons.

27. In addition to the Inspection, EPA obtained additional information from the Respondent, which described Respondent's operations generally as implementing the Port's Tariff, entering into and managing property leases and operating agreements, maintaining the infrastructure,

managing vessel arrivals and departures, managing Respondent's parking operations that service cruise passengers, managing the design and construction of significant capital projects needed to improve Respondent's cruise and cargo operations, and serving as liaison and coordinator for emergency preparation and response.

28. Between December 2022 and August 2024, (the "Relevant Period of this Investigation") EPA gained further information about Respondent's role concerning the property it manages and controls, and the arrangements made with its lessees and operators.

29. During the Relevant Period of this Investigation, EPA determined that Respondent:

- a. Took control and custody of the nine (9) 55-gallon drums identified in Paragraph 26 above, and (1) conducted an unsuccessful investigation in order to identify the party(ies) who placed the drums on its property without its knowledge or consent, (2) engaged a third-party testing laboratory to test and identify the contents of the drums containing material; and (3) shipped the drums on January 23, 2023, following the analysis and determination of their content, using a transportation company authorized to transport and dispose of used oil;
- b. In February 2024, the Respondent reported to EPA that three of the drums contained "used oil;" and
- c. As such, EPA determined further that the Respondent stored the used oil at Respondent's cruise terminal no. 2 facility for approximately 41 days, during which time Respondent sought to identify the party(ies) who placed the drums on its property and had the contents tested to identify what those contents were.

30. Respondent is therefore subject to Sections 3005, 3010, and 3014 of RCRA, 24 U.S.C. §§ 6922, 6930, and 3014 and 30 TEX.ADMIN.CODE, Chapter 335, Subchapter F, [40 C.F.R. Part 270], and 30 TEX.ADMIN.CODE, Chapters 324, which incorporates 40 C.F.R. Part 279].

Claim Failure to Comply with RCRA 3010 Notification

31. The allegations in Paragraphs 1-30 are realleged and incorporated herein by reference.

Owner/Operator of a Used Oil Transfer Facility

32. EPA has determined that Respondent's Cruise Terminal no. 28 is a "used oil transfer facility" within the meaning of 30 TEX.ADMIN.CODE, Chapter 324, which incorporates by reference 40 C.F.R. Part 279.⁵

33. Pursuant to 40 C.F.R. § 279.1, a used oil transfer facility that stores used oil for more than thirty-five (35) days is subject to regulations under 40 C.F.R. Part 279, Subpart E.

34. For the Relevant Period of this Investigation, EPA has determined that Respondent stored used oil for more than thirty-five (35) days while it conducted an unsuccessful investigation to ascertain the identity of the party(ies) who placed the used oil at its Cruise Terminal 28 facility and has therefore not complied with 40 C.F.R. Part 279, Subpart E. Specifically, Respondent is in violation of 40 C.F.R. § 279.42 for not notifying EPA or the State of Texas of this used oil activity.

35. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$27,500, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, requiring compliance

⁵ 30 TEX.ADMIN.CODE, Chapter 324 incorporates by reference 40 C.F.R. Part 279.

immediately or within a specific time period, or both.

V. COMPLIANCE ORDER

36. Respondent is hereby ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C § 6928(a) and within the specific time period set forth in each Subparagraph below.

- a. Within thirty (30) days of the Effective Date of this CAFO, Respondent shall comply with Section 3010 of RCRA, 42 U.S.C. § 6930, by filing a notification with EPA and the State of Texas to obtain an EPA identification number as a used oil transfer facility pursuant to 40 C.F.R § 279.42.
- b. Within sixty (60) days of the Effective Date of this CAFO Respondent will make all its tenants, operators and others using⁶ any of its facilities aware of EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," commonly referred to as EPA "Audit Policy."⁷
- c. By their signatures to this CAFO, the EPA and Respondent (the "Parties") acknowledge and agree that if any of the Respondent's tenant's lease should terminate for any reason and a tenant abandons hazardous waste and/or other RCRA

⁶ For purposes of this provision the term "others using" shall not include cruise ship passengers or persons entering Port facilities to park, pickup or drop off cruise passengers relating to Respondent's cruise terminal operations. Additionally, there are occasional users of Respondent's facilities, with whom Respondent does not have written agreements, such as a vessel making a one-time call at the Port. Respondent will make these occasional users aware of these matters by setting them out in Respondent's Tariff and Ground Transportation Manual, to which all users of Respondent's facilities are subject.

⁷ Guidance regarding interpretation and application of the Audit Policy is available on the Internet at <https://www.epa.gov/compliance/epas-audit-policy>. Also, information about the regional contact can be found on the same site along with EPA's frequent questions and answers related to EPA's Audit Policy, the EPA New Owner Policy, <https://www.epa.gov/compliance/epas-interim-approach-applying-audit-policy-new-owners>, and the EPA Small Business Policy, <https://www.epa.gov/compliance/small-business-compliance>.

regulated materials on Respondent's Properties, Respondent would be responsible to address the management and disposal of said regulated waste and/or material, in accordance with RCRA."

37. 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's designee of the 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.

38. Copies of all documents required by this CAFO shall be sent to following:

U.S. EPA, Region 6 Fred Deppe via email at Deppe.Fred@epa.gov.

VI. TERMS OF SETTLEMENT

i. Penalty Provisions

39. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and upon consideration of the entire record herein, including the above referenced Factual Allegations and Alleged Violations, 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, which includes Respondent's cooperation throughout the negotiation and information provided to EPA, Region 6 during the Relevant Period of this Investigation, it is ordered that Respondent be assessed a civil penalty of Fifty-Three Thousand Dollars

(\$53,000.00) that shall be paid by Respondent within thirty (30) days of the Effective Date of this CAFO.

40. Payments shall be made by the Port of Galveston by one of the following methods:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks must use a United States Bank to send wire transfer to the US EPA

- c. By signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.) a bank check, cashier's check, or certified check payable to: Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 1-314-418-1028

- d. By Automatic clearing house (ACH) payment through Vendor Express using:

US Treasury REX/Cashlink Receiver
ABA: 051036706
Account number 310006 Environmental Protection Agency
CTX Format Transaction Code 22 -checking
Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

e. Through www.pay.gov using a credit or debit card (Visa, MasterCard, American Express, and Discovery) or checking accounting information.

"In the matter of the Board of Trustees of Galveston Wharves Docket No. RCRA-06-2024-1007" shall be clearly marked on the check or other remittance, to ensure proper credit. Respondent's adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

41. The Respondent shall send a simultaneous notice of such payment to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75202-2733
Vaughn.Lorena@epa.gov

Jeff Yurk, Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

42. 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 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 fifteen dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30)-day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) 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).

43. 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. Stipulated Penalties

44. In addition to any other remedies or sanctions available to EPA, Region 6, if the Respondent fails or refuses to comply with any provision of this CAFO and within the agreed upon time period, then the 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	\$1,500.00
16th through 30th day	\$2,000.00
31st day and beyond	\$5,000.00

45. Penalties shall accrue from the date of the noncompliance until the date the Violation is corrected and/or compliance is achieved, as determined by EPA, Region 6. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection VI.i. (Penalty Provision) of this CAFO.

46. The Respondent shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

Jeff Yurk, Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Manager, RCRA Legal Branch (ORC-R)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Russell Murdock
Murdock.Russell@epa.gov

47. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section VI, concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

48. If Respondent disputes the basis for imposition of stipulated penalties, then the

Issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

iii. Dispute Resolution

49. If Respondent objects to any decision or directive of EPA, Region 6 regarding Section V (Compliance Order) or Subsection VI.ii. (Stipulated Penalties), then 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:

Jeff Yurk, Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov.

Manager, RCRA Legal Branch (ORC-R)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Russell Murdock
Murdock.Russell@epa.gov.

50. The Waste and Chemical Enforcement Branch Manager ("Branch Manager") or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA, Region 6's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Manager and the Respondent, the agreement shall be reduced to writing and signed by the Branch Manager and the Respondent

and incorporated by reference into this CAFO.

51. If no agreement is reached between the Branch Manager and the Respondent within that time, then the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division ("Division Director") or his/her designee. The Division Director and the Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, then the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second fifteen (15)-day period, then the Division Director shall provide a written statement of EPA, Region 6's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

52. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Subsection on Modification, below.

iv. Notification

53. Unless otherwise specified elsewhere in this CAFO, whenever written 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 email 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 party that another individual has been designated to receive the communication:

EPA: Jeff Yurk, Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Respondent: Board of Trustees of the Galveston Wharves
123 Rosenberg Street, Eighth Floor
Galveston, TX 77550
Attn: Port Director/CEO

Copies to: Anthony P. Brown
McLeod, Alexander, Powel & Apffel, P.C.
802 Rosenberg St.
Galveston, TX 77550

v. Modification

54. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

vi. Retention of Enforcement Rights

55. EPA, Region 6 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.

56. Except as specifically provided in this CAFO, nothing herein 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 Respondent's Facility. Furthermore, nothing in this CAFO 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.

vii. Indemnification

57. 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, its 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 a Respondent in carrying out the activities required by this CAFO.

viii. Record Preservation

58. Respondent shall preserve, during the pendency of this CAFO, all records in its possession or in the possession of its, employees, agents, contractors, or successors, which relates to Respondent's completion of the requirements of Section V (Compliance Order) of this CAFO regardless of any document retention policy to the contrary.

ix. Cost

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 (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

x. Tax Reporting

60. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the **Effective Date of this Order per Paragraph 63** and
- ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email.

xi. Termination and Satisfaction

61. When Respondent believes that it has complied with all the requirements of this CAFO, including payment of the Subsection VI.i. (Civil Penalty), Respondent shall certify in writing and in accordance with the certification language set forth in Section V (Compliance Order), Paragraph 36 of this CAFO. Unless EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, this CAFO will be terminated based on EPA's receipt of Respondent's certification.

62. This CAFO resolves all claims and violations as set forth in Section IV, Factual Allegations and Alleged Violations. Further, Respondent is released from all liabilities for federal civil penalties for the violations alleged in this CAFO that relate to its operations and management of the facility identified in this CAFO, as provided in 40 C.F.R. § 22.18(c).

xii. Effective Date of Settlement


63. This CAFO 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 THE RESPONDENT:
The BOARD OF TRUSTEE
OF THE GALVESTON WHARVES

Date: _____


Signature

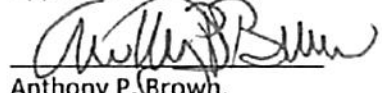
Rodger E. Rees

Name

Port Director/CEO

Title

Approved as to Form:


Anthony P. Brown,
Legal Counsel to the Board of Trustees
of the Galveston Wharves

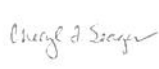
THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND

FINAL ORDER (cont.):

FOR THE COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: August 4, 2025

 Digitally signed by
CHERYL SEAGER
Date: 2025.08.04
10:59:22 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

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 (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 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

THOMAS
RUCKI

Digitally signed by
THOMAS RUCKI
Date: 2025.08.05
15:25:35 -04'00'

Regional Judicial Officer
Thomas Rucki

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RCRA Consent Agreement and Final Order, Docket No. RCRA-06-2024-1007 was filed with me, the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in following manner to the email addresses below:

Copy via Email to Complainant, EPA:

Murdock.Russell@epa.gov

Copy via Email to Respondent:

Board of Trustee of Galveston Wharves
123 25th St. 8th Floor
Galveston, TX 77550
apbrown@mapalaw.com

**LORENA
VAUGHN**

Digitally signed by
LORENA VAUGHN
Date: 2025.08.06
13:27:17 -05'00'

Lorena Vaughn
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2102

EXHIBIT A

