

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

REGIONAL HEARING CLERK
EPA REGION 6

IN THE MATTER OF: §
§
§ Consent Agreement and Final Order
Gulf Copper & Manufacturing Corporation, § USEPA Docket No. RCRA-06-2024-0937
§
§
RESPONDENT §

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, Gulf Copper & Manufacturing Corporation ("Respondent" or "Gulf Copper") and concerns the facility located at 2920 Todd Road, Galveston, TX 77554 ("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)¹.
3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. This CAFO states a claim upon which relief may be granted.

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the 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. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 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' published version. The corresponding C.F.R. citations are also provided.

4. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally approved State of Texas's hazardous waste program.
5. Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO and waives all defenses which have been raised or could have been raised to the claim in the CAFO.
6. Full payment of the penalty set forth in this CAFO shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.
7. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.
8. By their signatures to this CAFO, the EPA and Gulf Copper (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, Taylor.Nathan@EPA.gov, and for Respondent, MHaughton@gulfcopper.com.

II. JURISDICTION

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

11. Respondent is a corporation authorized to do business in the State of Texas.
12. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code ("T.A.C.") § 3.2(25) [40 C.F.R. § 260.10].
13. Respondent owns and operates the Facility.
14. The Facility is a "facility" within the meaning of 30 T.A.C. § 335.1(60) [40 C.F.R. § 260.10].
15. On December 8, 2022, EPA conducted a RCRA inspection of the Facility's activities as a generator of hazardous waste, universal waste, and used oil ("the Inspection").
16. Evidence from the Inspection demonstrates that Respondent has generated multiple waste streams from its operations of the facility including, universal waste (paint and paint related wastes) as defined in 30 T.A.C. § 335.261 [40 C.F.R. §§ 273] and used oil and used oil contaminated materials as defined in 30 T.A.C. § 324 [40 C.F.R. §§ 279].
17. The wastes generated in the waste streams identified in Paragraph 16 include "hazardous wastes", "universal waste", and "used oil" as defined in 30 T.A.C. § 335.1(70) [40 C.F.R. § 261.10]; § 335.261 (b)(19) [40 C.F.R. § 273.9]; and § 324 [40 C.F.R. § 279.1], respectively.
18. Respondent accumulated universal waste in quantities below the threshold amount of 5,000 kilograms, corresponding to Small Quantity Handler of Universal Waste ("SQHUW") status under 30 T.A.C. § 335.261 [40 C.F.R. Part 273], for the periods that such wastes remained onsite.

19. Respondent generated used oil waste streams, corresponding to a Used Oil Generator status under 30 Texas Admin. Code, Chapter § 324.6 [40 C.F.R. § 279 Subpart C], for the periods that such wastes remained onsite.
20. As a SQHUW, Respondent is subject to 30 Texas Admin. Code, Chapter 335, Subchapter H Division 5 [40 C.F.R. Part 273], and as a Used Oil Generator, Respondent is subject to 30 T.A.C. § 324.6 [40 C.F.R. § 279 Subpart C].
21. EPA provided Respondent a Notice of Potential Violations and Opportunity to Confer on December 19th, 2023, and later conferred with the Respondent about this matter.

IV. ALLEGED VIOLATIONS

Claim 1: Universal Waste Containers

22. The allegations in Paragraphs 1-21 are realleged and incorporated by reference.
23. Pursuant to 30 T.A.C. § 335.262(c)(2)(B), a SQHUW managing Paint and Paint-Related Universal Waste ("PPRW") must ensure all containers are structurally sound, compatible with the waste, and lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
24. Pursuant to 30 T.A.C. § 335.262(c)(2)(F), a SQHUW managing PPRW must ensure all containers are labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes."
25. During the inspection EPA documented multiple drums of PPRW that either lacked the required labeling or were in poor condition.
26. Respondent's failure to ensure that all containers were in good condition and properly marked or labeled violated the rules applicable to SQHUW in 30 T.A.C. 335.262(c)(2)(B) and (F).

Claim 2: Used Oil Containers

27. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
28. Pursuant to 30 T.A.C. § 324.6 [40 C.F.R. § 279.22(c)(1)],² used oil generators must store used oil in containers and aboveground tanks that are labeled or marked clearly with the words "Used Oil."
29. Pursuant to 30 T.A.C. § 324.6 [40 C.F.R. § 279.22(b)], used oil generators must store used oil in containers and aboveground tanks that must be in good condition, without severe rusting, apparent structural defects, deterioration, or visible leaks.
30. During the Inspection, the EPA documented drums lacking the required marking and in poor conditions.
31. As a generator of used oil, Respondent's failure to store accumulated used oil in containers that were in good condition and appropriately marked was a violation of the Federal rules incorporated in 30 T.A.C. § 324.6, specifically 40 C.F.R. §§ 279.22(b) and (c)(1).

V. COMPLIANCE ORDER

32. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 30 calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Gulf Copper Facility in

² The Texas Administrative Code incorporates the Federal Standards for Used Oil Management in 40 C.F.R. § 279.

compliance with RCRA, and the regulations promulgated thereunder, including, but not limited to, procedures for managing used oil and universal wastes;

- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Gulf Copper Facility and within the prescribed time period;
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above;
- D. Respondent shall certify the cost of implementation of injunctive relief; and
- E. Respondent shall certify the environmental benefit (reduction of waste or reduction in the toxicity of waste).

33. 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 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."

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

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: Erin Young-Dahl

Where required, notice shall be sent electronically by email to Enforcement Officer Erin Young-Dahl at Young-Dahl.Erin@EPA.gov.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

34. 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 **seventeen thousand, seventy-three dollars (\$17,073)**.

35. 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.

36. The EPA web address, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, provides a list of options available for transmitting payment of penalties.

Options for payment include:

A. Electronic payments via Pay.gov. <https://www.pay.gov/public/form/start/11751879>

B. Remittance by 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 979078
St. Louis, Missouri 63197-9000

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

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

D. 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 Gulf Copper & Manufacturing Corporation, Docket No. RCRA-06-2024-0937**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: ECDSR

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

38. 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).

39. 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 (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). 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.

40. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Compliance Order and payment of the civil penalty are restitution, remediation, or required to come into compliance with the law.

B. Costs

41. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access

to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

42. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

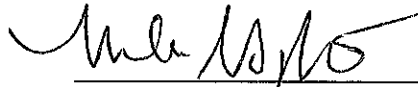
43. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Gulf Copper & Manufacturing Corporation
RCRA-06-2024-0937

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

FOR THE RESPONDENT:

Date: 4/11/2024

 HSE Manager
Gulf Copper & Manufacturing Corporation
<Title>

FOR THE COMPLAINANT:

Date: April 11, 2024

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's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant, EPA:

taylor.nathan@epa.gov

Copy via Email to Respondent:

mhaughton@gulfcopper.com

Regional Hearing Clerk
EPA Region 6