

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2015 SEP 30 11 28 AM  
EPA REGION 6 OFFICE  
DALLAS, TEXAS

IN THE MATTER OF: )  
)  
PERGAN MARSHALL LLC ) DOCKET NO. RCRA-06-2015-0904  
MARSHALL, TEXAS )  
)  
RESPONDENT )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

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

**I. PRELIMINARY STATEMENT**

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

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

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

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

5. Compliance with all the terms and conditions of this CAFO shall resolve only the Respondent's liability for civil penalties for those violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in the CAFO.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

7. Pergan Marshall LLC (Respondent) is a limited liability company incorporated under the laws of the State of Texas.

8. "Person" is defined in 30 T.A.C. § 3.2(25)<sup>1</sup> [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

9. The Respondent is a "person" as that term is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

11. "Operator" is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility."

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<sup>1</sup> 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.

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

13. "Facility" is defined in 30 T.A.C. § 335.1(59)(A) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

14. The Respondent owns and/or operates an organic peroxide manufacturing plant located at 710-B Bussey Road, Marshall, Texas.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59)(A) [40 C.F.R. § 260.10].

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in 30 T.A.C. § 335.1(107) - (108) [40 C.F.R. §§ 260.10] and 40 C.F.R. § 270.2].

17. The Respondent owns and operates Well WDW-243 at the facility identified in Paragraph 14.

18. "Injection well" is defined by 30 T.A.C. § 335.1(82) [40 C.F.R. § 260.10] as meaning "a well into which fluids are injected."

19. The Respondent injects wastewater into Well WDW-243.

20. Well WDW-243 is an "injection well" as that term is defined by 30 T.A.C. § 335.1(82) [40 C.F.R. § 260.10].

21. A "Class I" Injection Well is defined at 40 C.F.R. § 144.6(a) as meaning "wells used by generators of hazardous waste or owners or operators of hazardous waste management

facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.”

22. Injection Well WDW-243 is a “Class I injection well” as that term is defined by 40 C.F.R. § 144.6(a).

23. On November 5, 1991, EPA approved a no migration petition for a prior owner of the facility pursuant to 40 C.F.R. Part 148, allowing the land disposal through underground injection of certain restricted hazardous wastes [characteristic corrosive hazardous waste (D002) and methyl ethyl ketone toxicity (D035)] into Class I hazardous waste underground injection well WDW-243, as long as certain conditions were met.

24. Injection Well WDW-243 had been permitted by the Texas Commission on Environmental Quality (TCEQ) (Permit No. WDW243) to dispose of hazardous waste generated at the Respondent’s facility.

25. “Disposal” is defined in 30 T.A.C. § 335.1(44) [40 C.F.R. § 260.10] as “the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.”

26. The injection of the wastewater identified in Paragraph 19 into Injection Well WDW-243 constitutes “disposal”, as that term is defined by 30 T.A.C. § 335.1(44) [40 C.F.R. § 260.10].

27. “Solid waste” is defined in 30 T.A.C. § 335.1(138)(B) & (C) [40 C.F.R. § 261.2(a) & (b)] is any discarded material which is abandoned by being disposed of.

28. The wastewater injected into Injection Well WDW-243 was discarded material which was abandoned by being disposed of into Injection Well WDW-243.

29. The wastewater identified in Paragraph 19 is “solid waste” as that term is defined by 30 T.A.C. § 335.1(138)(B) & (C) [40 C.F.R. § 261.2(a) & (b)].

30. Prior to July 30, 2014, the wastewater identified in Paragraph 19 contained, among other things, methyl ethyl ketone waste.

31. “Hazardous waste” is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as “any solid waste identified or listed as a 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 Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 et seq.”

32. A solid waste that exhibits the characteristic of toxicity for methyl ethyl ketone has the EPA Hazardous Waste Number D035. 40 C.F.R. § 261.24, Table 1.

33. The wastewater identified in Paragraphs 19 and 30 exhibited the characteristic of toxicity for methyl ethyl ketone, EPA Hazardous Waste Code D035.

34. The wastewater identified in Paragraphs 19, 30, and 33 is hazardous waste, EPA Hazardous Waste Number D035.

35. The Permit identified in Paragraph 24 expired on May 18, 2014.

36. The Respondent did not file an application for permit renewal prior to the expiration of Permit No. WDW243 on May 18, 2014.

37. On or about September 22, 2014, EPA sent an information request letter to the Respondent under the authority of Section 3007 of RCRA, 42 U.S.C. § 6927.

38. On or about October 13, 2014, the Respondent submitted its response to the information request letter.

**B. VIOLATIONS**

**Count One – Disposal of Hazardous Waste into an Underground Injection Well Without a RCRA Permit**

39. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a permit is required for the processing (treatment), storage, or disposal of hazardous waste.

40. 30 T.A.C. § 335.47 [40 C.F.R. § 270.60] provides that the owner or operator of an injection well used to dispose of hazardous waste is eligible for a permit by rule under 40 C.F.R. § 270.60.

41. 40 C.F.R. § 270.60 requires that the owner or operator have a permit for underground injection issued under a state UIC program approved pursuant to 40 C.F.R. Part 144 or 145.

42. The Permit for underground injection identified in Paragraph 24 was issued under a state UIC program approved pursuant to 40 C.F.R. Part 145.<sup>2</sup>

43. The Respondent disposed of D035 hazardous waste into Injection Well WDW-243 on thirty-four (34) separate days between May 28, 2014 and July 30, 2014. Injection ceased on July 30, 2014.

44. From May 19, 2014 through July 30, 2014, the Respondent did not have a permit for underground injection issued under a state UIC program approved pursuant to 40 C.F.R. Part 145.

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<sup>2</sup> EPA approved Texas' UIC program on January 6, 1982. 47 Fed. Reg. 618. At this time, 40 C.F.R. Part 123 governed the state UIC program approval process. On April 1, 1983, EPA reorganized its permitting regulations, and the provisions of 40 C.F.R. Part 123 became 40 C.F.R. Part 145. 48 Fed. Reg. 14146, 14151. Texas' UIC program for Class I wells is codified at 40 C.F.R. § 147.2200.

45. From May 19, 2014 through July 30, 2014; the Respondent did not have a RCRA permit to dispose of hazardous waste into Injection Well WDW-243 because it did not have a permit for the underground injection of hazardous waste issued under a state UIC program approved pursuant to 40 C.F.R. Part 145.

46. Therefore, the Respondent violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], and 30 T.A.C. § 335.47 [40 C.F.R. § 270.60] by disposing of D035 hazardous waste into Injection Well WDW-243 on thirty-four (34) separate days between May 28, 2014 and July 30, 2014 without a RCRA permit.

**Count Two – Failure to Meet Land Disposal Restrictions**

47. Pursuant to 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.38(a) & (d)], D035 hazardous waste is prohibited from land disposal unless the D035 hazardous waste (a) is managed in a system whose discharge is regulated under the Clean Water Act, (b) the person is a zero discharger engaged in CWA-equivalent treatment before ultimate land disposal, (c) the D035 hazardous waste is injected into a Class I deep well regulated under the Safe Drinking Water Act, or (d) the D035 hazardous waste is treated in accordance with the treatment standards set forth at 40 C.F.R. Part 268, Subpart D.

48. “Land disposal” is defined in 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.2(c)] as meaning “placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.”

49. The Respondent disposed of D035 hazardous waste into Injection Well WDW-243 on thirty-four (34) separate days between May 28, 2014 and July 30, 2014.

50. The placement of D035 hazardous waste into Injection Well WDW-243 constitutes “land disposal” as that term is defined by 30 T.A.C. § 335.431(c)(1) [40 C.F.R. §268.2(c)].

51. During the period from May 18, 2014 through October 7, 2014, Injection Well WDW-243 was not regulated under the Safe Drinking Water Act because its underground injection control permit expired May 18, 2014.

52. The D035 hazardous waste land disposed of by the Respondent during the period following the expiration of the permit was not managed in a system whose discharge is regulated under the Clean Water Act, the Respondent did not engage in CWA-equivalent treatment of the D035 hazardous waste before land disposal, or was not injected into a Class I deep well regulated under the Safe Drinking Water Act, or was not treated in accordance with the treatment standards set forth at 40 C.F.R. Part 268, Subpart D.

53. Therefore, the Respondent violated 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.38(a) & (d)] by land disposing of D035 hazardous waste into an injection well that was no longer regulated under the Safe Drinking Water Act and without meeting the applicable treatment standard.

### **III. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

54. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondent’s good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent be assessed a civil penalty of **Four Hundred Fifty Thousand Dollars**



(\$450,000). The Respondent shall pay the assessed civil penalty according to the schedule set below. The first payment is due within thirty (30) days of the effective date of this CAFO, and each subsequent payment is due one month later until the penalty is paid in full.

Payment No.	Due Date (from the effective date of CAFO)	Payment	Interest Accrued	Principal Balance	Total Owed
				\$ 450,000.00	\$450,000.00
1	30 days	\$9,570.43	\$ -	\$ 440,429.57	\$440,429.57
2	2 months	\$9,570.43	\$ 367.02	\$ 431,226.16	\$431,226.16
3	3 months	\$9,570.43	\$ 371.33	\$ 422,027.06	\$422,027.06
4	4 months	\$9,570.43	\$ 351.69	\$ 412,808.32	\$412,808.32
5	5 months	\$9,570.43	\$ 355.47	\$ 403,593.36	\$403,593.36
6	6 months	\$9,570.43	\$ 347.54	\$ 394,370.47	\$394,370.47
7	7 months	\$9,570.43	\$ 328.64	\$ 385,128.68	\$385,128.68
8	8 months	\$9,570.43	\$ 331.64	\$ 375,889.89	\$375,889.89
9	9 months	\$9,570.43	\$ 313.24	\$ 366,632.70	\$366,632.70
10	10 months	\$9,570.43	\$ 315.71	\$ 357,377.98	\$357,377.98
11	11 months	\$9,570.43	\$ 307.74	\$ 348,115.29	\$348,115.29
12	1 year	\$9,570.43	\$ 280.43	\$ 338,825.29	\$338,825.29
13	13 months	\$9,570.43	\$ 291.77	\$ 329,546.63	\$329,546.63
14	14 months	\$9,570.43	\$ 274.62	\$ 320,250.82	\$320,250.82
15	15 months	\$9,570.43	\$ 275.77	\$ 310,956.16	\$310,956.16
16	16 months	\$9,570.43	\$ 259.13	\$ 301,644.86	\$301,644.86
17	17 months	\$9,570.43	\$ 259.75	\$ 292,334.18	\$292,334.18
18	18 months	\$9,570.43	\$ 251.73	\$ 283,015.48	\$283,015.48
19	19 months	\$9,570.43	\$ 235.85	\$ 273,680.90	\$273,680.90
20	20 months	\$9,570.43	\$ 235.67	\$ 264,346.14	\$264,346.14
21	21 months	\$9,570.43	\$ 220.29	\$ 254,996.00	\$254,996.00
22	22 months	\$9,570.43	\$ 219.58	\$ 245,645.15	\$245,645.15
23	23 months	\$9,570.43	\$ 211.53	\$ 236,286.25	\$236,286.25
24	2 years	\$9,570.43	\$ 183.78	\$ 226,899.60	\$226,899.60
25	25 months	\$9,570.43	\$ 195.39	\$ 217,524.56	\$217,524.56
26	26 months	\$9,570.43	\$ 181.27	\$ 208,135.40	\$208,135.40
27	27 months	\$9,570.43	\$ 179.23	\$ 198,744.20	\$198,744.20
28	28 months	\$9,570.43	\$ 165.62	\$ 189,339.39	\$189,339.39
29	29 months	\$9,570.43	\$ 163.04	\$ 179,932.00	\$179,932.00
30	30 months	\$9,570.43	\$ 154.94	\$ 170,516.51	\$170,516.51
31	31 months	\$9,570.43	\$ 142.10	\$ 161,088.18	\$161,088.18
32	32 months	\$9,570.43	\$ 138.71	\$ 151,656.46	\$151,656.46
33	33 months	\$9,570.43	\$ 126.38	\$ 142,212.41	\$142,212.41
34	34 months	\$9,570.43	\$ 122.46	\$ 132,764.44	\$132,764.44
35	35 months	\$9,570.43	\$ 114.32	\$ 123,308.33	\$123,308.33

36	3 years	\$9,570.43	\$ 95.91	\$ 113,833.81	\$113,833.81
37	37 months	\$9,570.43	\$ 98.02	\$ 104,361.40	\$104,361.40
38	38 months	\$9,570.43	\$ 86.97	\$ 94,877.94	\$ 94,877.94
39	39 months	\$9,570.43	\$ 81.70	\$ 85,389.21	\$ 85,389.21
40	40 months	\$9,570.43	\$ 71.16	\$ 75,889.94	\$ 75,889.94
41	41 months	\$9,570.43	\$ 65.35	\$ 66,384.86	\$ 66,384.86
42	42 months	\$9,570.43	\$ 57.16	\$ 56,871.59	\$ 56,871.59
43	43 months	\$9,570.43	\$ 47.39	\$ 47,348.55	\$ 47,348.55
44	44 months	\$9,570.43	\$ 40.77	\$ 37,818.89	\$ 37,818.89
45	45 months	\$9,570.43	\$ 31.52	\$ 28,279.98	\$ 28,279.98
46	46 months	\$9,570.43	\$ 24.35	\$ 18,733.90	\$ 18,733.90
47	47 months	\$9,570.43	\$ 16.13	\$ 9,179.60	\$ 9,179.60
48	4 years	\$9,186.74	\$ 7.14	\$ -	\$ -

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

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

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

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

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number RCRA-06-2015-0904 shall be clearly typed on the respective checks to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

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

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

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

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

57. If the Respondent fails to submit payment of the civil penalty according to the schedule set forth above, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties, as set forth below.

58. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

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

**B. PARTIES BOUND**

60. The provisions of this CAFO shall apply to and be binding upon the parties to this action and their successors and assigns. The Respondent shall advise its officers and directors and those employees and agents involved in carrying out the obligations under this CAFO of the terms of this CAFO. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

**C. RETENTION OF ENFORCEMENT RIGHTS**

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

62. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

63. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under

RCRA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

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

65. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

66. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this

CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

**D. COSTS**

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

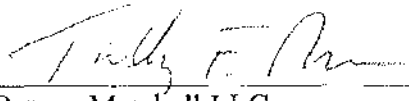
**E. EFFECTIVE DATE**

68. This CAFO, and any subsequent modifications, 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:**

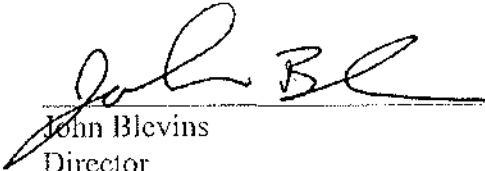
Date: 9/21/15

  
Tully F. Pagan  
Pergan Marshall LLC



**FOR THE COMPLAINANT:**

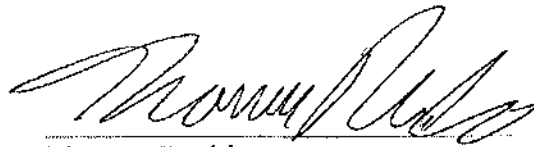
Date: 9.21.15

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the 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 as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 9/23/15



Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of September, 2015, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) 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 were placed in the United States Mail, certified mail, return receipt requested 7006 0810 0005 9535 9325, addressed to the following:

Christopher D. Smith  
Thompson & Knight LLP  
98 San Jacinto Boulevard  
Suite 1900  
Austin, Texas 78701

  
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