

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 JUN 23 PM 2: 14
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

TLMI Corporation

Austin, Texas

RESPONDENT

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Consent Agreement and Final Order
Docket No. RCRA-06-2016-0916

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 and Respondent, TLMI Corporation, and concerns the facility located at 2111 West Braker Lane #500, Austin, Texas 78758.

2. Notice of this action has been given to the State of Texas, under Resource Conservation and Recovery Act (RCRA) § 3008(a)(2), 42 U.S.C. § 6928(a)(2).

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the 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. Respondent explicitly waives any right to contest the allegations or to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. This CAFO resolves only those violations alleged in this document.

6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to RCRA § 3008(a), 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 40 C.F.R. §§ 22.13(b), 22.18(b)(2), (3).

8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation formed under the laws of the State of Texas and owns and operates the facility located at 2111 West Braker Lane #500, Austin, Texas 78758.

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

11. The Braker Lane facility is a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1(59) (40 C.F.R. § 260.10).

12. The primary business at the facility is electroplating components for the technology industry.

13. Respondent's Registered Agent for service in this matter is Don Prusha, at 2111 West Braker Lane #500, Austin, Texas 78758.

14. From October 2015 through January 2016, EPA conducted an investigation and record review of Respondent's performance as a generator of hazardous waste.

15. EPA's investigation found that Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 261, 262, and 270 by failing to comply with the RCRA notification requirements, failing to operate within its stated generator status, managing waste without an EPA ID number, failing to comply with Land Disposal Restrictions, and failing to perform adequate hazardous waste determination.

16. TLMI is a "generator" of "hazardous wastes" at the facility, as those terms are defined in RCRA §§ 1004(5), (6), 42 U.S.C. §§ 6903(5), (6), and 30 TEX. ADMIN. CODE § 335.1(65), (69) (40 C.F.R. § 260.10).

17. As a generator of hazardous waste, TLMI is subject to RCRA §§ 3002 and 3010, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX. ADMIN. CODE § 335(C), (F) (40 C.F.R. §§ 262 and/or 270).

Claim 1: Failure to file an adequate or accurate initial or subsequent Section 3010 (a) of RCRA, 42 U.S.C. 6930 (a)

18. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

19. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed waste shall file with the Administrator or authorized state a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

20. Pursuant to 30 TEX. ADMIN. CODE § 335.78(a), (b) (40 C.F.R. § 261.5(a), (b)), a generator is a conditionally exempt small quantity generator (CESQG) if he generates no more than 100 kg of hazardous waste in a calendar month and complies with 30 TEX. ADMIN. CODE §§ 335.78(f), (g), (j) (40 C.F.R. §§ 261.5 (f), (g), (j)). A CESQG may be exempt from the notification requirements of RCRA § 3010(a).

21. From 2013 to 2015 TLMI generated hazardous waste in amounts exceeding CESQG criteria and the exemptions in 40 C.F.R. § 261.5 were not applicable.

22. At the time of the investigation, TLMI had not filed with the Administrator or with the authorized state an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: Failure to meet the requirements of a Small Quantity Generator

23. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

24. A generator of hazardous waste is subject to the requirements of 30 TEX. ADMIN. CODE § 335(C)-(H), (O) (40 C.F.R. §§ 124, 262-68, 270).

25. A CESQG that complies with the applicable requirements of 30 TEX. ADMIN. CODE § 335.78 (40 C.F.R. § 261.5) may be exempt from regulation under 30 TEX. ADMIN. CODE § 335.

26. From 2011 to 2015 TLMI declared its generator status as a CESQG.

27. From 2013 to 2015 TLMI generated hazardous wastes exceeding the CESQG threshold established in 30 TEX. ADMIN. CODE § 335.78 and therefore operated as a small quantity generator.

28. While operating as a small quantity generator in 2013 to 2015, TLMI failed to comply with one or more of the requirements for small quantity generators under 30 TEX. ADMIN. CODE § 335(C) and/or (F) (40 C.F.R. § 262 and/or 270).

Claim 3: Managing Hazardous Waste without an EPA ID

29. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

30. 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 receiving an EPA identification number from the Administrator.

31. From 2013 to 2015, TLMI treated, stored, disposed of, and/or offered for transportation hazardous waste without having received an EPA identification number from the Administrator, in violation of 30 TEX. ADMIN. CODE § 335.63(a), (40 C.F.R. § 262.12(a)).

Claim 4: Failure to fully comply with the Land Disposal Restrictions

32. The allegations in Paragraphs 1-17 are realleged and incorporated herein by reference.

33. Pursuant to 30 Tex. Admin. Code § 335.431 (40 C.F.R. § 268)), certain land disposal restrictions apply to persons that generate hazardous waste.

34. From 2013 to 2015, TLMI generated hazardous waste but failed to comply with the land disposal restrictions found in 40 CFR § 268.

Claim 5: Failure to perform an adequate hazardous waste determination pursuant to 40 CFR 262.11

35. The allegations in paragraphs 1-25 are realleged and incorporated herein by reference.

36. 30 Tex. Admin. Code § 335.62 (40 C.F.R. § 262.11) requires all persons generating solid waste to determine if that waste is hazardous according to the methods described therein.

37. From 2013 to 2015, Respondent failed to make adequate hazardous waste determinations of its waste streams from electroplating containing wastes coded D001, D002, D008, and F003.

38. Respondent violated RCRA and its promulgated regulations by failing to make the requisite hazardous waste determination regarding its waste stream according to the method prescribed by 30 TEX.ADMIN.CODE § 335.62.

IV. COMPLIANCE ORDER

39. Pursuant to RCRA § 3008(a), 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 CAFO, Respondent shall provide in writing the following:

A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures (SOP) to ensure that TLMI is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (i) making hazardous waste determinations; (ii) managing hazardous wastes; and (iii) reporting, transporting, and disposing of hazardous waste.

B. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

40. 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 TLMI 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 the 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: Fred Deppe

V. TERMS OF SETTLEMENT

A. Penalty Provisions

41. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation. **However, based on EPA’s analysis of Respondent’s ability to pay, EPA calculates an adjusted penalty of \$15,000.** 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 **\$15,000.**

42. The penalty shall be paid in twenty four (24) monthly installments of \$625 beginning within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

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

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express

Mail should be remitted to:

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

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

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

Wire Transfers 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

The case name and docket number (**In the Matter of TLMI Corporation, Docket No. RCRA-06-2016-0916**) shall be documented on or within your chosen method of payment to ensure proper credit.

44. 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, TX 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Fred Deppe

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

45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, 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 of 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 that 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

46. 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

47. 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 IV (Compliance Order), Paragraph 23. 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

48. 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:

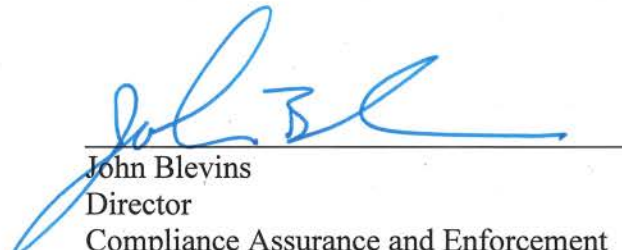
Date: 06/13/16



Don Prusha
President
TLMI Corporation

FOR THE COMPLAINANT:

Date: 6.21.16



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 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: JUN 23 2016



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of June, 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 below:

CERTIFIED MAIL – RETURN RECEIPT

REQUESTED 9008 2150 700 30412 3688

Don Prusha
President
TLMI Corporation
2111 West Braker Lane #500
Austin, TX 78758

Lori Jackson
Ms. Lori Jackson
Paralegal