

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

20 FILED  
MAY 11 2020  
DALLAS, TEXAS

IN THE MATTER OF:

KEL-TECH, INC.  
9500 S Service Rd  
Coahoma, Texas 79511

RESPONDENT

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§ Consent Agreement and Final Order  
§ USEPA Docket No. RCRA-06-2020-0901  
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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, KEL-TECH, INC. ("Respondent" or "Kel-Tech, Inc."), and concerns the facility located at 9500 S Service Rd, Coahoma, Texas ("the Kel-Tech Facility" or "the Coahoma 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)<sup>1</sup>.
3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and

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<sup>1</sup> 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 CAFO are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2014, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on February 26, 2016. 80 Fed. Reg. 80672 (December 28, 2015); 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.

conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. 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 claims in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. 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.

## **II.** **JURISDICTION**

7. 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 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. 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**

9. For all relevant times in this CAFO, Respondent was a corporation authorized to do business in the state of Texas.
10. For all relevant times in this CAFO, Respondent was a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 TEX. ADMIN. CODE § 3.2(25), [40 C.F.R. § 260.10].
11. For all relevant times in this CAFO, Respondent owned or operated the Kel-Tech Facility.
12. The Kel-Tech Facility is a chemical distribution facility that serves the oil and gas industry.
13. During the period from May 2019 through July 2019, EPA conducted a RCRA record review of the Kel-Tech Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent.
14. During investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the:
  - a. Characteristic of D001 (Ignitability);
  - b. D002 (Corrosivity);
  - c. D024 (m-Cresol);
  - d. D025 (p-Cresol); and
  - e. U154 (Methanol (I))
15. The Kel-Tech Facility is a "facility" within the meaning of 30 TEX. ADMIN. CODE § 335.1(60), [40 C.F.R. § 260.10].
16. The waste streams identified in Paragraph 14 are "hazardous waste" as defined in 30 TEX. ADMIN. CODE § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].

17. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 TEX. ADMIN. CODE §§ 335.1(66) & (70), [40 C.F.R. § 260.10].
18. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 TEX. ADMIN. CODE Chapter 335, Subchapter C, [40 C.F.R Part 262].
19. Respondent notified the State of Texas that it was operating as a large quantity generator of hazardous waste in October 2017 and as a small quantity generator in July 2018.
20. Based on its investigation, EPA determined that Respondent did not meet one or more of the requirements of large quantity generators found in 30 TEX. ADMIN. CODE § 335(C) and/or (E) (40 C.F.R. §§ 262 and/or 265).

**Claim 1: Failure to Meet the Requirements of a Large Quantity Generator**

21. The allegations in Paragraphs 1-20 are realleged and incorporated herein by reference.
22. A large quantity 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, and/or 270).
23. Respondent operated as a large quantity generator of hazardous waste for portions of 2017 and 2018, not exceeding a twelve-month span.
24. While operating as a large quantity generator, Respondent failed to comply with one or more of the requirements for large quantity generators under 30 TEX. ADMIN. CODE § 335(C) and/or (E) (40 C.F.R. §§ 262 and/or 265).

**IV.**  
**COMPLIANCE ORDER**

25. 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 assessed the Coahoma Facility to determine that its current stated generator status is appropriate.
- b. Respondent shall certify that it has assessed the Coahoma Facility to determine its compliance with the requirements of its current generator status and has developed and implemented standard operating procedures ("SOPs"), training modules, and any other necessary or required procedures to ensure that Respondent is operating the Coahoma Facility in compliance with RCRA and the regulations promulgated thereunder.
- c. Respondent shall provide, with its certification, a copy of Respondent's SOPs or other updated documents as described in subparagraph "b" above.
- d. Respondent shall provide the cost of implementing the requirements of this paragraph.
- e. Respondent shall provide the average amount (pounds) of hazardous waste that is properly managed per year at the Coahoma Facility.

26. 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. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Compliance Enforcement Section (ECDSR)  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
Attn: Tripti Thapa

Where required, notice shall be sent electronically by email or facsimile to Tripti Thapa, at [thapa.tripti@epa.gov](mailto:thapa.tripti@epa.gov) or at 214-665-7563.

V.  
**TERMS OF SETTLEMENT**

A. Penalty Provisions

27. 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 thirteen thousand forty eight dollars (\$13,048)..
28. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.
29. 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  
US 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 KEL-TECH, INC, Docket No. RCRA-06-2020-0901 shall be clearly documented on or within the chosen method of payment to ensure proper credit.

30. 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

Mark Potts, Chief  
Waste Enforcement Branch (ECDSR)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
Attention: Tripti Thapa

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



31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (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.
32. The Parties agree that the term "Respondent" is defined in this CAFO to include Clariant Corporation.

#### **B. Costs**

33. 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**

34. 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). Unless the EPA, Region 6 objects in writing within sixty (30) 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**

35. 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: 1/13/2020

  
CLARIANT CORP.

FOR THE COMPLAINANT:


Date: 1-14-2020

  
Cheryl Seager, Director  
Enforcement and  
Compliance Assurance 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: 1-21-2020


  
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Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of January, 2019, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent to the following by the method below:

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED 700938202001828432466

KEL-TECH, INC  
9500 S Service Rd  
Coahoma, Texas 79511

  
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Ms. Lori Jackson  
Paralegal