

FILED

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX**

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

United States Department of
Air Force
Little Rock Air Force Base

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0960

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, United States Department of Air Force ("Respondent" or "Little Rock Air Force Base"), and concerns the facility located at 1255 Vandenberg Boulevard, Jacksonville, AR 72076 (the "LRAFB Facility").
2. Notice of this action has been given to the State of Arkansas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of this CAFO, where applicable, citations are made only to the Code of Federal Regulations ("C.F.R.") since the relevant Arkansas Administrative Code sections in the Arkansas Pollution Control Ecology Commission's Regulation No. 23 incorporate by reference 40 C.F.R. § 260, 261, 262, 270.
4. 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 claims upon which relief may be granted.

5. 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.
6. This CAFO resolves only those violations alleged in this document.
7. 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.
8. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

Trawick.mathew@epa.gov

To Respondent:

Mark.coon@us.af.mil

II. JURISDICTION

9. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, 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) 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 branch of the United States Department of Defense who operates a federal facility, Little Rock Air Force Base, located in the State of Arkansas
12. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10.
13. Respondent is operated by the United States Air Force.
14. The LRAFB Facility is an Air Force Base.
15. During the period from July 25-27, 2017, EPA conducted a RCRA inspection and record review of the Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
16. During the Inspection, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the:
 - a. Characteristic of D001 (Ignitability), D002 (Corrosivity), D003 (Reactivity); D005 (Barium), D006 (Cadmium), D007 (Chromium), D008 (Lead), D009 (Mercury), D011 (Silver), D035 (Methyl Ethyl Ketone); and
 - b. Listed wastes F003 (spent non-halogenated solvent), F005 (spent non-halogenated solvent), P001 (Warfarin, & salts, when > 0.3%), P042 (Epinephrine), and P075 (Nicotine, & salts).
17. The LRAFB Facility is a "facility" within the meaning of 40 C.F.R. § 260.10.

18. The waste streams identified in Paragraph 16 are “hazardous waste” as defined in 40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33.
19. During 2014 to 2017, Respondent reported to the Arkansas Department on Environmental Quality (“ADEQ”) as a large quantity generator (“LQG”) of hazardous waste, which is a facility that generates 1,000 kilograms or more of hazardous waste per month as defined in 40 C.F.R. § 260.10.
20. As an LQG, Respondent is subject to Sections 3002 and 3010 of RCRA and 40 C.F.R. Parts 262.
21. Respondent is a “generator” of “hazardous waste” as those terms are defined in 40 C.F.R. § 260.10.
22. 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 40 C.F.R. Part 262.
23. From the Inspection, EPA alleges that Respondent failed to comply with the manifest requirements pursuant to 40 C.F.R. 262.20.
24. From the Inspection, EPA alleges that Respondent generated the hazardous waste streams identified in Paragraph 16 and failed to meet the requirements of a large quantity generator as defined in C.F.R. 262 and 270.

Claim 1: Failure to Comply with the Manifest Requirements

25. The allegations in Paragraphs 1- 24 are re-alleged and incorporated by reference.
26. Pursuant to 40 C.F.R. § 262.20(a)(1) a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262.

27. EPA identified manifests prepared by Respondent from January 2016 through May 2017 that contained incorrect waste codes. Specifically manifests 002157044GBF (23 Jan 16) and 015718276JJK (26 Apr 17) from the Defense Logistics Agency.
28. Respondent, therefore, violated 40 C.F.R. § 262.20(a)(1).

Claim 2: Failure to make Adequate Hazardous Waste Determinations

29. The allegations in Paragraphs 1-28 are re-alleged and incorporated by reference.
30. Pursuant to 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2 must determine if the solid waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials and/or the processes used.
31. EPA reviewed Respondent's records for the period from January 2016 through May 2017 and determined that Respondent failed to make adequate hazardous waste determinations on some of Respondent's solid waste. Specifically, the hazardous waste determinations associated with manifests 002157044GBF (23 Jan 16) and 015718276JJK (26 Apr 17) from the Defense Logistics Agency are alleged to have caused the abovementioned errors on the manifests.
32. Respondent, therefore, violated the requirements of RCRA regulations at 40 C.F.R. § 262.11 by failing to make the requisite hazardous waste determination on solid waste.

Claim 3: Failure to Meet Contingency Plan Requirements

33. The allegations in Paragraphs 1-32 are re-alleged and incorporated herein by reference.
34. Pursuant to 40 C.F.R. § 262.261, a large quantity generator must have a contingency plan that contains emergency response actions, spill prevention, arrangements with local

emergency response, contact information for emergency response personnel, listed emergency equipment, and evacuation plan.

35. In 2017, the LRAFB Facility failed to update emergency response personnel contact information and make appropriate arrangements with local response agencies.

IV. COMPLIANCE ORDER

36. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 90 calendar days of the effective date of this CAFO,

Respondent shall provide in writing the following:

- a. Respondent shall certify it has assessed all the relevant waste streams in accordance with 40 C.F.R. § 261; that it has ensured accurate waste codes associated with Claims 1 and 2; and that it has met the contingency plan requirements of RCRA for the preparation of standard operating procedures (“SOPs”) that include emergency response personnel contact information and a description of arrangements with local response agencies.

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 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.

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

U.S. Environmental Protection Agency

U.S. Department of Air Force
RCRA-06-2020-0960

Enforcement and Compliance Assurance Division
Waste Enforcement Branch ECD-SR
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Attn: Angela Hays

Where required, notice shall be sent electronically by email to Enforcement Officer Angela Hays: Hays.Angela@epa.gov

V. TERMS OF SETTLEMENT

A. Penalty Provisions

38. 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 \$35,229.60.

39. The penalty shall be paid within 90 calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

40. The following are Respondent's options for transmitting the penalties: 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 979077
St. Louis, MO 63197-9000

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

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL

U.S. Department of Air Force
RCRA-06-2020-0960

St. Louis, MO 63101
314-418-1028

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 United States Department of Air Force Little Rock Air Force Base, Docket No. RCRA-06-2020-0960**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional Hearing Clerk (R06-ORC)
U.S. EPA, Region 6
1201 Elm Street Ste. 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division
Waste Enforcement Branch ECD-SR
1201 Elm Street, Ste. 500
Dallas, Texas 75270-2102
Attention: Angela Hays

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

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 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 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.

B. Costs

43. 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

45. 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 37) unless the EPA, Region 6 objects in

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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

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

U.S. Department of Air Force
RCRA-06-2020-0960

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

FOR THE RESPONDENT:

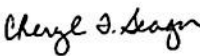
Date: 7 Aug 2020



John M. Schutte, Colonel, USAF
Little Rock AFB Installation Commander
United States Department of Air Force

FOR THE COMPLAINANT:

Date: _____



Cheryl S. Seager, Director
Enforcement and
Compliance Assurance Division

Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Date: 2020.08.17 12:04:44 -0500

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: 8/17/2020

**Rucki,
Thomas**

Digitally signed by Rucki,
Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
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Date: 2020.08.17 13:50:18
-05'00'

Thomas Rucki

Regional Judicial Officer

U.S. Department of Air Force
RCRA-06-2020-0960

CERTIFICATE OF SERVICE

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

Copy via electronic mail to Complainant:

Trawick.mathew@epa.gov

Copy via electronic mail to Respondent:

Mark.coon@us.af.mil

Copy via electronic mail to EPA, Region 6, Regional hearing Clerk:

vaughn.loreana@epa.gov

Dated this _____ day of _____, _____.

**MATTHEW
TRAWICK**

EPA Region 6

Digitally signed by MATTHEW TRAWICK
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=MATTHEW TRAWICK,
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Date: 2020.08.17 15:53:09 -05'00'