

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

20 MAR -5 PM 2:24
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Fairbanks Morse, LLC.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0913

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, Fairbanks Morse, LLC. ("Respondent" or "Fairbank Morse") and concerns the facility located at 12253 FM 529 RD, Houston, Texas ("Fairbanks Morse 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).
3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, 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. The 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, 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. Respondent is a foreign for-profit corporation authorized to do business in the State of Texas.
10. Respondent is 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. Respondent leases and operates the Fairbank Morse Facility.
12. The Fairbank Morse Facility is a service center for the maintenance and repair of engines and power generation for marine, naval, nuclear standby, and commercial power applications.

13. During the period from May to October 2018, EPA conducted a RCRA record review of the Fairbank Morse Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
14. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the:
 - a. Characteristic hazardous wastes of D002 (Corrosivity), D007 (Chromium), and D008 (Lead)
15. The Fairbank Morse 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. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of very small quantity generator of hazardous waste under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
18. Respondent is or was 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].
19. 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].

Claim 1: Notification Requirements

20. The allegations in Paragraphs 1-19 are re-alleged and incorporated herein by reference.

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
22. Respondent did not file with EPA or the authorized state, Texas, an adequate and timely notification of its hazardous waste activities at the Fairbank Morse facility during 2015 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: Failure to File Biennial Reports

23. The allegations in Paragraphs 1-19 are realleged and incorporated by reference.
24. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41] a generator who is a large quantity generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA and to the Texas Commission on Environmental Quality ("TCEQ"), by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9.
25. For the year 2015, neither the EPA nor the TCEQ received Biennial Reports that Respondent was required to file in violation of 30 TEX.ADMIN.CODE §§ 335.9 and 335.71, [40 C.F.R. § 262.41].

Claim 3: Failure to make Adequate Hazardous Waste Determinations

26. The allegations in Paragraphs 1-19 are realleged and incorporated by reference.

27. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [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 or the processes used.
28. EPA reviewed Respondent's records for the period from 2015 and determined that Respondent failed to make adequate hazardous waste determinations on all of Respondent's solid waste streams at the Facility.
29. Respondent violated the requirements of RCRA, and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11] by failing to make the requisite hazardous waste determination on all solid waste streams generated by Respondent at the Fairbank Morse Facility during the period from 2015.

Claim 4: Failure to Operate Within Declared Generator Status

30. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
31. During the Investigation, EPA determined that the Fairbank Morse Facility declared its generator status as a conditionally exempt small quantity generator ("CESQG").
32. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b), [40 C.F.R. § 261.5(b)], as long as a CESQG complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(e), (f), (g) and (j) and 40 C.F.R. §§ 261.5 (e), (f), (g) and (j), the generator's hazardous waste is not subject to regulation under 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C-H and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.

33. During portions of 2015, the Fairbank Morse Facility exceeded their declared CESQG status and operated in some instances as a Large Quantity Generator of hazardous waste in violation of one or more of the requirements for small quantity generators under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

IV.
COMPLIANCE ORDER

34. Pursuant to RCRA § 3008(a), 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 all of its solid waste streams at the Fairbank Morse Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Fairbank Morse Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal restrictions.
- b. Respondent shall certify that it has accurately and adequately complied with the RCRA Section 3010 notification requirements for the Fairbank Morse Facility.
- c. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph "a" above.
- d. Respondent shall provide the cost of implementing the requirements under paragraph 34a above.

- e. Respondent shall provide the average amount (pounds) of hazardous waste that is properly managed per year at the Fairbank Morse.

35. 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 (6ECDSR)
1201 Elm Street
Dallas, TX 75270- 2102
Attn: Enforcement Officer Tripti Thapa

Where required, notice shall be sent electronically by email or facsimile to Enforcement Officer Tripti Thapa, at thapa.tripti@epa.gov or at 214-665-7563.

V.
TERMS OF SETTLEMENT

A. Penalty Provisions

36. 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 **\$33,990**.

37. 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.

38. 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 Fairbanks Morse, LLC., Docket No. RCRA-06-2020-0913 shall be clearly documented on or within the chosen method of payment to ensure proper credit.

39. 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

1201 Elm Street
Dallas, Texas 75270-2102

Mark Potts, Chief
Waste Enforcement Branch (6ECDSR)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1201 Elm Street
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.

40. 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

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 IV (Compliance Order), Paragraph 38. 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.

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

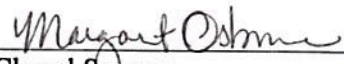
FOR THE RESPONDENT:

Date: 5-2-2020


Fairbanks Morse, LLC.

FOR THE COMPLAINANT:

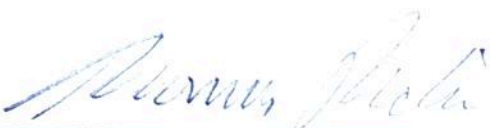
Date: 3-3-2020

for 
Cheryl Seager
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: 3-5-2020



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2020, 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 7009282000082843259

Fairbanks Morse, LLC.


Lori Jackson, paralegal