

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

IN THE MATTER OF	§	
FORMOSA PLASTICS CORPORATION, TEXAS,	§	CONSENT AGREEMENT AND FINAL ORDER
RESPONDENT.	§	
	§	
	§	EPA Docket No. RCRA-06-2020-0905

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**CONSENT AGREEMENT AND FINAL ORDER**

1. The U.S. Environmental Protection Agency, Region 6 (EPA or Complainant), and Formosa Plastics Corporation, Texas, (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2), by entering into this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

2. For the purposes of these proceedings, Respondent admits to the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained herein.

3. Respondent waives its right to contest the allegations and its rights to appeal the proposed final order contained in this CAFO.

4. This CAFO resolves only those violations which are alleged herein.

5. Respondent consents to the issuance of this CAFO, consents to the assessment and payment of the civil penalty stated herein, and consents to any specific compliance order in

this CAFO.

## **II. JURISDICTION**

6. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the state of Texas received authorization to administer and enforce a hazardous waste program (49 FR 48300).<sup>1</sup> Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA to enforce the provisions of an authorized state program and the regulations promulgated thereunder. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the state of Texas has been notified of this action.

## **III. PARTIES**

8. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 6, is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6.

9. Respondent is a Delaware corporation conducting business in the state of Texas.

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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 order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 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.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

10. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

11. Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6940, commonly referred to as “Subtitle C” (Hazardous Waste Management), required the Administrator to establish a “cradle-to-grave” federal hazardous waste program that includes criteria for defining hazardous waste and regulating the activities of facilities that generate, transport, treat, store, or dispose of hazardous waste.

12. Pursuant to the authority provided in Section 3001 of RCRA, 42 U.S.C. § 6921, the EPA promulgated criteria for identifying the characteristics of hazardous waste, and listed hazardous wastes, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

13. Pursuant to the regulatory authorities provided in Subtitle C, the EPA promulgated the regulations found at 40 C.F.R. Parts 260 – 279. Generally, these regulations prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status,” and provide detailed requirements governing the activities of generators and transporters of hazardous waste, and of treatment, storage, and disposal facilities.

14. The equivalent and federally authorized Texas state hazardous waste regulatory program is found at Title 30, Chapter 335 of the Texas Administrative Code (T.A.C.).

15. Pursuant to the regulations found at 30 T.A.C. § 335.2 [40 C.F.R. § 270], owners and operators of facilities that treat, store, or dispose of hazardous waste must have a RCRA

permit, and must comply with the standard set forth in 30 T.A.C. § 335.152 [40 C.F.R. Part 264], unless otherwise exempt.

16. Pursuant to the generator standards found at 30 T.A.C. § 335, Subchapter C [40 C.F.R. Part 262], generators may accumulate (store) hazardous waste without a RCRA permit, provided the generator complies with the applicable conditions set forth in 30 T.A.C. § 335.69(a)(1) – (4) [40 C.F.F. 262.34(a)(1) – (4)]. If at any time a generator does not meet the exemption conditions, the generator must apply for and receive a RCRA permit and adhere to the standards set forth in 30 T.A.C. § 335.152 [40 C.F.R. Part 264].

17. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes a civil penalty of not more than \$25,000 per day for violations of Subtitle C of RCRA. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$101,439 for violations that occur after November 2, 2015, and are assessed after January 13, 2020.

#### **V. EPA FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

18. Respondent is a company, legal entity, and “person” as that term is defined by 30 T.A.C. § 3.2(25) [40 C.F.R. § 260.10].

19. Respondent is the owner and operator of a “facility,” as defined by 30 T.A.C. § 335.1(60) [40 C.F.R. § 260.10], located at: 201 Formosa Dr., Point Comfort, Texas 77978, STEERS physical location FM 1593, .5 Mi S of Hwy 35 (the Shore Tank Farm Facility), RCRA ID No. TX0000888164, which is operated in conjunction with the Formosa Plastics Point Comfort Plant, located at the same address, RCRA ID No. TXT490011293.

20. During the period of July 2019 through December 2019, the EPA conducted a review of information relevant to Respondent's compliance with RCRA and the implementing regulations at the Shore Tank Farm Facility (the EPA Investigation).

21. On December 17, 2019, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

22. From the EPA Investigation, the EPA determined that Respondent is generating and storing waste streams, including toluene (D001 characteristic ignitable) and benzene (D018 characteristic toxic), which are "solid wastes" as defined by 30 T.A.C. § 335.1(140) [40 C.F.R. § 260.10], and characteristic "hazardous wastes" as defined by 30 T.A.C. § 335.1(70) [40 C.F.R. § 261.3].

23. From the EPA Investigation, the EPA determined that Respondent did not meet the generator exemption conditions set forth in 30 T.A.C. § 335.69 [40 C.F.R. 262.34]. Specifically, during time periods in 2018 and 2019 that Respondent was generating over 1,000 kg of hazardous waste in a calendar month, Respondent's training program did not meet the requirements found at 30 T.A.C. § 335.112(a) [40 C.F.R. 265.16] and Respondent's contingency plan did not meet the requirements found at 30 T.A.C. § 335.112(a)(3) [40 C.F.R. Part 265, subpart D], as set forth in 30 T.A.C. § 335.69(a)(4) [40 C.F.R. § 262.34(a)(4)].

24. Because Respondent was not otherwise exempt during the time periods in 2018 and 2019 that Respondent was generating over 1,000 kg of hazardous waste in a calendar month, and was storing hazardous waste, Respondent was required to have a RCRA permit pursuant to 30 T.A.C. § 335.2 [40 C.F.R. 270.1(b)] and comply with the standards set forth in § 335.152 [40 C.F.R. Part 264].

## **VI. EPA ALLEGED VIOLATIONS**

25. Complainant hereby states and alleges that Respondent has violated RCRA and the federal and state regulations promulgated thereunder, as follows:

### **Count 1**

26. The facts stated in paragraphs 18 through 24 above are herein incorporated.

27. Pursuant to the regulations found at 30 T.A.C. § 335.2 [40 C.F.R. § 270], owners and operators of facilities that treat, store, or dispose of hazardous waste must have a RCRA permit, and must comply with the standard set forth in 30 T.A.C. § 335.152 [40 C.F.R. Part 264], unless otherwise exempt.

28. From the time Respondent first stored hazardous waste at the Shore Tank Farm Facility and was not otherwise exempt, Respondent was required to have a RCRA permit pursuant to 30 T.A.C. § 335.2 [40 C.F.R. § 270] and comply with the standards set forth in 30 T.A.C. § 335.152 [40 C.F.R. Part 264].

29. At the time of the EPA Investigation, and at all times referred to herein, Respondent did not have a RCRA permit or interim status.

30. Pursuant to 30 T.A.C. § 335.152(a) [40 C.F.R. § 264.16(a)(3)], the owner or operator must establish an emergency response training program that includes the requirements set forth at 40 C.F.R. § 264.16(a)(3)(i)-(vi), or ensure that facility employees receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 C.F.R. § 1910.120(p)(8) and 1910.120(q), otherwise known as HAZWOPER, pursuant to 40 C.F.R. § 264.16(a)(4). From the EPA Investigation, the EPA determined that Respondent's emergency response training program did not meet the requirements set forth at 40 C.F.R. § 264.16(a)(3)(i)-(vi), nor did Respondent ensure that Shore Tank Farm Facility employees received HAZWOPER training, pursuant to 40 C.F.R. § 264.16(a)(4).

31. Pursuant to 30 T.A.C. § 335.152(a) [40 C.F.R. § 264.51(a)] each owner and operator must have a contingency plan for his facility. The plan must contain, at a minimum, the elements set forth in 40 C.F.R. § 264.52(a)–(e), including but not limited to, names of emergency coordinators and a list of emergency equipment. From the EPA Investigation, the EPA determined that Respondent failed to have a contingency plan specific to the Shore Tank Farm Facility and failed to designate emergency responders and emergency equipment specific to the Shore Tank Farm Facility.

#### *Violations*

32. Respondent's failure to have a permit for the Shore Tank Farm Facility during the time periods during 2018 and 2019 that Respondent was generating over 1,000 kilograms of hazardous waste, and storing hazardous waste, is a violation of 30 T.A.C. § 335.2 [40 C.F.R. 270.1(b)].

33. Respondent's failure to have an emergency response training program for the Shore Tank Farm Facility meeting the requirements set forth in 40 C.F.R. § 264.16(a)(3)(i)-(vi), or ensure that Shore Tank Farm Facility employees received HAZWOPER training, pursuant to 40 C.F.R. § 264.16(a)(4), is a violation of 30 T.A.C. § 335.152 [40 C.F.R. § 264.16(a)].

34. Respondent's failure to have a contingency plan specific to the Shore Tank Farm Facility and failure to designate emergency responders and emergency equipment specific to the Shore Tank Farm Facility are violations of 30 T.A.C. § 335.152 [40 C.F.R. § 264.52].

#### **VII. COMPLIANCE ORDER**

35. Respondent is hereby ORDERED and agrees to comply with the requirements of RCRA, and the regulations promulgated thereunder. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered, and agrees, to undertake the following compliance actions as expeditiously as possible, but in no event later than one hundred and



twenty (120) days from the Effective Date, as a condition of settlement:

- a. Respondent shall establish a personnel training program for the Shore Tank Farm Facility consistent with the requirements set forth in 40 C.F.R. § 265.16, including but not limited to specifically:
  - i. Ensure that facility personnel are able to respond effectively to emergencies consistent with 40 C.F.R. § 265.16(a)(3), including where applicable to the employed position, the training requirements listed in 40 C.F.R. § 265.16(a)(3)(i)-(vi) or (4).
  - ii. Develop a written job description for each position at the Shore Tank Farm that specifies the requisite skill, education, or other qualifications, and duties for each position consistent with 40 C.F.R. § 265.16(d)(2);
  - iii. Develop a written description of the type of training, both introductory and continuing, specific to job description and position required by Paragraph 35(a)(ii), consistent with 40 C.F.R. § 265.16(d)(3);
  - iv. Develop records that document that the training required under 40 C.F.R. §§ 265.16(a), (b), and (c) has been given and completed consistent with 40 C.F.R. § 265.16(d)(4).
- b. Respondent shall create a contingency plan that is specific to the Shore Tank Farm Facility, or revise the Formosa Plastics Point Comfort Plant, RCRA ID No. TXT490011293, contingency plan to include provisions specific to the Shore Tank Farm Facility.

#### **Certification and Submissions**

36. Within one hundred fifty (150) days of the Effective date, Respondent shall certify to the completion of the above compliance actions, provide documentation demonstrating



completion to the EPA, including at minimum a description of the training program (i.e. standard operating procedure), and certify that Respondent is operating in compliance with RCRA, the regulations promulgated thereunder, and the Texas Administrative Code.

37. All submissions to the EPA required by this Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

38. All submissions to the EPA required by this Order shall be sent to:

Fred Deppe  
Enforcement and Compliance Assurance Division  
Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDSR)  
Dallas, Texas 75270-2101  
deppe.fred@epa.gov

### **VIII. CONSENT AGREEMENT**

39. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein and alleged violations;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and

h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

40. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

41. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

42. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing.

43. Respondent and EPA agree to bear their respective costs and attorneys' fees. Respondent 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 thereunder.

#### **Penalty Payment**

44. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirteen Thousand Five Hundred Thirty-Two Dollars (\$13,532), as set forth below.

45. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

46. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102; and

Fred Deppe  
Enforcement and Compliance Assurance Division  
Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDSR)  
Dallas, Texas 75270-2101  
deppe.fred@epa.gov

47. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

48. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

49. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

50. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder. In any action by EPA or the United States to enforce the terms herein, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this Consent Agreement and Final Order and agrees not to contest the validity of this Consent Agreement and Final Order or its terms or conditions.

51. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

52. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

53. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

#### **General Provisions**

54. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

55. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

56. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

57. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

58. The EPA and Respondent agree to electronic service and the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *mills.clarissa@epa.gov*

To Respondent: *bob.stewart@kellyhart.com; and rickc@fpc.fpcusa.com*

59. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.



**RESPONDENT:  
FORMOSA PLASTICS CORPORATION, TEXAS**

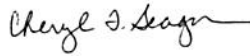
11/18/20  
Date

  
Signature

Rick Crabtree  
Printed Name

VP/IGM  
Title

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
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Date: 2020.11.19 16:50:13 -06'00'

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6

**FINAL ORDER**

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. 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.

IT IS SO ORDERED.

Rucki,  
Thomas

Digitally signed by Rucki,  
Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2020.11.20 11:30:16  
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Thomas Rucki  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was 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 was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

mills.clarissa@epa.gov

Copy via Email to Respondent:

bob.stewart@kellyhart.com  
rickc@ftpc.fpcusa.com

**CLARISSA MILLS**

Digitally signed by CLARISSA MILLS  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CLARISSA MILLS,  
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Signed  
Office of Regional Counsel  
U.S. EPA, Region 6