

**FILED**

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

Asbury Louisiana Inc. dba  
Southwestern Graphite, Inc.

RESPONDENT

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Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2023-0938

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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, Asbury Louisiana Inc. dba Southwestern Graphite, Inc. (“Respondent”) and concerns the facility located at 2564 Highway 12, Dequincy, LA 70633 (“the Facility”).
2. Notice of this action has been given to the State of Louisiana, 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 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 Final Order contained in this CAFO and waives all defenses that have been raised or could have been raised to the claim set forth 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. Respondent is a corporation authorized to do business in the State of Louisiana.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code ("LAC") LAC 33: V.109 11, [40 C.F.R. § 260.10].

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<sup>1</sup> On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this Order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272.951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the

11. Respondent owns and operates the Facility.
12. During the period from November 14, 2022, through May 30, 2023, EPA conducted a RCRA record review of the Respondent's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
13. During the Investigation, EPA discovered the Respondent, at a minimum, generated and offered for transport and treatment, "hazardous waste" as defined in LAC 33: V.4901.B &F, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
14. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33, V.109 (40 C.F.R. § 260.10).
15. During the Investigation, EPA determined that Respondent declared its generator status as a very small quantity generator (VSQG) of hazardous waste but generated the hazardous waste streams in quantities that exceeded the VSQG threshold amount of 100 kilograms per month provided in LAC 33: V.108, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
16. EPA submitted to Respondent on November 14, 2022, a Notice of Potential Violation and Opportunity to Confer ("Notice"). In a conference call on December 1, 2022, EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondents to submit additional information or materials. Respondent timely expressed interest in settlement and cooperated in all material respects with EPA's Investigation.

#### **IV. ALLEGED VIOLATIONS**

##### **Claim 1: Notification**

17. The allegations in Paragraphs 1-16 are re-alleged and incorporated herein by reference.

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Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.



18. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and the regulations at LAC 33:

V.105.A.1. and 2., 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) and LAC 33: V.105.A.1. and 2.

19. Respondent did not file with EPA or Louisiana an accurate and timely notification of its hazardous waste activities at the Facility from 2019 through 2022 in alleged violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Claim 2: Generator Requirements**

20. The allegations in Paragraphs 1-16 are realleged and incorporated herein by reference.

21. During the Investigation, EPA determined that the Respondent declared its generator status as a Very Small Quantity Generator.

22. Pursuant to 40 C.F.R. § 261.5(b) and LAC 33:V.108, as long as a Very Small Quantity Generator "VSQG" complies with the applicable requirement under 40 C.F.R. §§ 261.5 (e), (f), (g) and (j), and LAC 33:V.108, the generator's hazardous waste is not subject to regulation under 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 and LAC 33:V.105.A.1. and 2.

23. During portions of 2019 through 2022, the Respondent exceeded its declared VSQG status and operated in some instances as an LQG in alleged violation of one or more of the requirements for small and/or large quantity generators under 40 C.F.R. § 262.34 and LAC 33: V.108.

**COMPLIANCE ORDER**

24. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 60 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 at the Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Facility in compliance with RCRA and the regulations promulgated thereunder and alleged to have been violated in this matter: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; and (d) preparing its manifests.
- B. Respondent shall certify that it complies with its RCRA Section 3010 notification obligations at the Facility at the time said certification is delivered; and 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. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECDSR)  
ATTN: Adolphus Talton  
Dallas, Texas 75270-2102

Asbury Louisiana Inc. dba Southwestern Graphite, Inc.  
RCRA-06-2023-0938

Where possible, notice shall be sent electronically by email or facsimile to Enforcement Officer Adolphus Talton, respectively at talton.adolphus@epa.gov or at 214-665-6651.

#### TERMS OF SETTLEMENT

##### A. Penalty Provisions

25. 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 **fifty-three thousand, one hundred and twelve dollars (\$53,112.00)**.
26. The penalty shall be paid within 60 calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
27. The following are Respondent's options for transmitting the penalty: 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 979078  
St. Louis, Missouri 63197-9000

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

U.S. Bank  
Government Lockbox 979078  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028



Asbury Louisiana Inc. dba Southwestern Graphite, Inc.  
RCRA-06-2023-0938

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 Asbury Louisiana Inc. dba Southwestern Graphite, Inc., Docket No. RCRA-06-2023-0938) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECDSR)  
ATTN: Adolphus Talton  
Dallas, Texas 75270-2102

Lorena S. Vaughn  
Regional Hearing Clerk (ORC)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2101

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

29. 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).
30. 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.

#### **B. Costs**

31. 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**

32. 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 24. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is deemed legally satisfied and terminated on the basis of Respondent's certification.

#### **D. Effective Date of Settlement**

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



Asbury Louisiana Inc. dba Southwestern Graphite, Inc.  
RCRA-06-2023-0938

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

FOR THE RESPONDENT:

Date: JULY 18, 2023

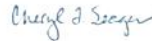


Asbury Louisiana Inc. dba Southwestern Graphite,  
Inc.

(ERIC R. WALMET  
SR. V.P. OPERATIONS)

FOR THE COMPLAINANT:

Date: July 18, 2023



Digitally signed by CHERYL  
SEAGER  
Date: 2023.07.18 14:42:24  
-05'00'

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

**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: \_\_\_\_\_

**THOMAS RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=THOMAS RUCKI,  
0.9.2342.19200300.100.1.1=68001003655804  
Date: 2023.07.18 20:02:04 -0400

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Thomas Rucki  
Regional Judicial Officer

Asbury Louisiana Inc. dba Southwestern Graphite, Inc.  
RCRA-06-2023-0938

**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, 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 Email to Complainant:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

nicole.josko@faegredrinker.com

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Signed  
Office of Regional Counsel  
U.S. EPA, Region 6