

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

23 MAY 10 AM 11:58
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Choctaw Defense Manufacturing, LLC

RESPONDENT

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Administrative Compliance Order on Consent
USEPA Docket No. RCRA-06-2023-0917

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (“ACOC”) is entered into voluntarily by the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Respondent, Choctaw Defense Manufacturing, LLC, (“Choctaw Defense,” or “Respondent”), and concerns the facility located at 1 Skyway Drive McAlester, OK 74501 (the “Facility”).
2. For the purpose of this ACOC, Respondent admits the “Jurisdictional Allegations” herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this ACOC. This ACOC states a claim upon which relief may be granted.
3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this ACOC and waives all defenses which have been raised or could have been raised to the claims set forth in the ACOC.

4. Respondent consents to the issuance of the ACOC hereinafter recited and consents to the specific stated Compliance Order, Section VI, of this ACOC.

II. JURISDICTION

5. This ACOC is issued by the EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this ACOC under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
6. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by the EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms or conditions.

III. STATEMENT OF PURPOSE

7. This ACOC provides for the resolution of EPA Region 6's investigation of Respondent's McAlester Facility.
8. In entering into this ACOC, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to ensure that the injunctive relief that Respondent will complete as described in the Section VI, Compliance Order, is protective of human health and/or the environment.

IV. STATUTORY AND REGULATORY BACKGROUND

9. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and the Hazardous and Solid Waste Amendments (“HSWA”) enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 et seq.
10. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.
11. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” They prohibit land disposal of certain hazardous wastes and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.
12. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded under 40 C.F.R. § 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military

munition. Materials are solid waste, as defined in 40 C.F.R. § 261.2, if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled)

13. Characteristic hazardous wastes are assigned “D” codes in 40 C.F.R. Part 261, Subpart C, depending on the specific hazardous characteristic that the waste exhibits.
14. An ignitable hazardous waste has a flash point of less than 60 degrees centigrade (140 degrees Fahrenheit) and is assigned the D001 hazardous waste code pursuant to 40 C.F.R. § 261.21.
15. A corrosive hazardous waste has a pH of less than or equal to 2.0 or greater than or equal to 12.5 and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22, and a reactive hazardous waste is assigned the D003 hazardous waste code pursuant to 40 C.F.R. § 261.23.
16. Listed wastes are assigned with “F”, “K”, “P”, and “U” codes in 40 C.F.R. Part 261, Subpart D, depending on the specific waste generated from a non-specific source, a specific source, or discarded commercial chemical products, off-specification species, container residues and spill residues therefrom.
17. 40 C.F.R. Parts 264 and/or 265 applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.
18. The relevant RCRA statutory and regulatory requirements to this ACOC require that generators of solid waste and hazardous waste must, among other things:
 - A. Determine whether their generated solid wastes are hazardous, pursuant to 40 C.F.R. § 262.11;

- B. Comply with the statutory notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930;
- C. Comply with the manifest requirements, pursuant to 40 C.F.R. § 262.20; and
- D. Determine its generator status by meeting the exemption conditions set forth at 40 C.F.R. § 262.34 or comply with the specific requirements set forth at 40 C.F.R. § 270.10.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 19. Respondent Choctaw Defense Manufacturing, LLC is an authorized tribal organization formed as a limited liability tribal corporation under Choctaw Nation Tribal Code Title 35 and is a wholly owned subsidiary of Choctaw Global, LLC.
- 20. Choctaw Global, LLC is an authorized tribal organization corporation formed under Choctaw Nation Tribal Code Title 35 and is wholly owned by The Choctaw Nation of Oklahoma.
- 21. The Choctaw Nation of Oklahoma is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25. U.S.C. §5131, and 88 Fed. Reg. 2112 (January 12, 2023).
- 22. The regulations implementing RCRA in areas of Indian country, including tribal lands held in trust, are found at 40 C.F.R. Parts 260-279.
- 23. Respondent is a “municipality” as defined in 42 U.S.C. § 6903(13), and therefore is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10, for federal enforcement purposes.

24. Choctaw Global, LLC is a “municipality” as defined in 42 U.S.C. § 6903(13), and therefore is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10, for federal enforcement purposes.
25. The Choctaw Nation of Oklahoma is a “municipality” as defined in 42 U.S.C. § 6903(13), and therefore is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10, for federal enforcement purposes.
26. Respondent’s Registered Agent for service in the State of Oklahoma is a Corporation Service Company, who is located at 1 Skyway Drive McAlester, OK 74501.
27. Respondent operates the Choctaw Defense Manufacturing, LLC, McAlester Facility, which is located in Indian country, as defined by 18 U.S.C. § 1151, on the Choctaw Nation Reservation at 1 Skyway Drive McAlester, OK 74501.
28. The McAlester Facility is located on land held in trust by the United States for the Choctaw Nation.
29. Choctaw Defense Manufacturing, LLC operates the McAlester Facility that manufactures aviation components, fuel and water systems, military ground support systems, ordinance shipping containers, and tactical trailers. Services range from metal fabrication and forming, welding, computer numerical control machining, mechanical and electric assembly, and painting to chemical finishing.
30. Respondents own and operate the McAlester Facility for treating, storing, or disposing of hazardous waste. Therefore, the McAlester Facility is a “facility” as defined at 40 C.F.R. § 260.10.
31. The facility operates with the assigned EPA ID Number OKD982289647.

32. During the period of August 8 through August 11, 2022, EPA conducted a RCRA investigation of Choctaw Defense's performance as a generator of hazardous waste.
33. During the Investigation, EPA discovered that Choctaw Defense, at a minimum, generated the following waste:
 - A. Characteristic for multiple toxicity waste: D001, D002, D006, D007, D010, F003 and F005.
34. The waste streams identified in Paragraph 33 are hazardous waste as defined in 40 C.F.R. § 261.24.
35. The Choctaw Defense McAlester Facility notified as a large quantity generator of hazardous waste in 2003 as established under 40 C.F.R. §260.10. The facility generated hazardous waste in the amount of a large quantity generator for the years 2018 through 2022.
36. Choctaw Defense is a "generator" of "hazardous wastes" at the "Facility" identified in Paragraph 1 of this ACOC as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and [40 C.F.R. §§ 260 and 261].
37. As a generator of hazardous waste, Choctaw Defense is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 40 C.F.R. Parts 262 and/or 270.
38. On November 30, 2022, EPA conferred with Respondent regarding the violations alleged herein and provided the opportunity for Respondent to submit additional information.

Claim i. Failure to Comply with Applicable Generator Requirements

39. The allegations in Paragraphs 1-38 are realleged and incorporated herein by reference.

40. From the investigation of the Respondent's operation and specifically during the period of 2018 through 2022, EPA determined that the Respondent generated in excess of 1000 kilograms ("kg") of hazardous waste at the McAlester Facility.
41. From the investigation of the Respondent's operation and specifically during the period 2018 through 2022, EPA determined that the Respondent generated at a minimum of the following waste streams from the McAlester Facility: D001, D002, and D007.
42. For the relevant periods of this ACOC, EPA determined that for the period of 2018 through 2022 the Facility identified in Paragraph 1, Respondent operated as a large quantity generator ("LQG").
43. From the investigation and a review of documents EPA determined that for the periods that Respondent operated as a LQG, Respondent failed to maintain adequate training for its employees, maintain adequate emergency preparedness, and provide for a complete contingency plan, in violation of the pertinent requirements of 40 C.F.R. § 262.

VI. COMPLIANCE ORDER

44. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of the settlement agreement, Respondent shall provide in writing the following:
 - A. Respondent shall certify that it has assessed all of its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures ("SOP") to ensure that the Choctaw Defense McAlester Facility are operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing

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hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing hazardous waste manifests; and (e) meeting the requirements of the land disposal restrictions;

B. Respondent shall certify that the Facility has accurately and adequately complied with their RCRA Section 3010 Notifications: and

C. Respondent shall provide EPA, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

45. In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Choctaw Defense McAlester Facility and shall include the following certification:

"I certify under the penalty of law that this document and all of 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 ACOC shall be sent to the following:

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

Where possible, notice shall be sent electronically by email to Angela Hays, at hays.angela@epa.gov.

VII. TERMS OF SETTLEMENT

A. Modification

46. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

B. Indemnification

47. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this ACOC, nor shall EPA or the United States Government be held out as a party to any contract entered into by Respondent in carrying out the activities required by this ACOC.

C. Record Preservation

48. Respondent shall preserve, during the pendency of this ACOC, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors, which in any way relate to this ACOC regardless of any document retention policy to the contrary.

D. Cost

49. 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.

E. Reservation of Rights

50. Notwithstanding any other provisions of this ACOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
51. EPA reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this ACOC.
52. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claim, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States. Further, this ACOC does not resolve Respondent's liability for Federal civil penalties for the violations and facts set forth herein.

F. Termination and Satisfaction

53. When Respondent believes that it has complied with all the requirements of this ACOC, including compliance with the Compliance Order, Respondent shall so certify in writing and in accordance with the certification language set forth in Section VI (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.

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54. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Administrative Compliance Order on Consent, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

Complainant:

Angela Hays
hays.angela@epa.gov

Respondent:

Kevin Martin
kmartin@choctawdefense.com

G. Effective Date of Settlement

55. This ACOC shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:**

FOR THE RESPONDENT:

Date: 05-02-2023

Kevin F. Martin

Kevin Martin
Environmental Health and Safety
Manager

FOR THE COMPLAINANT:

Date: 05/09/2023

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2023.05.09 16:20:06
-05'00'

Cheryl T. 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 ACOC is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate civil penalties, injunctive or other equitable relief or criminal sanctions for any violations of law, including those violations alleged herein. 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. The Respondent is ordered to comply with the Compliance Order, Section VI, and the Terms of Settlement, Section VII, as set forth in this ACOC. 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: cn=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI
0.9.2342.19200300.100.1.1=68001003655804
Date: 2023.05.10 11:40:23 -0400

Thomas Rucki
Regional Judicial Officer

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Choctaw Defense Manufacturing, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent 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 email addresses:

Copy via Email to Complainant:
hays.angela@epa.gov

Copy via Email to Respondent:
kmartin@choctawdefense.com

**LORI
JACKSON**

Digitally signed by LORI JACKSON
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=LORI JACKSON,
0.9.2342.19200300.100.1.1+68001003655539
Date: 2023.05.10 15:44:09 -0500

**Ms. Lori Jackson
Paralegal**