

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

City of San Antonio acting by
and through City Public Service Board

RESPONDENT

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Administrative Compliance Order on Consent
USEPA Docket No. RCRA-06-2020-0949

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (“ACOC”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, City of San Antonio acting by and through City Public Service Board, (“Respondent”), and concerns the Braunig Power Plant located at 15290 Streich Rd Elmendorf, TX 78112 (the “Facility”).
2. Notice of this action has been given to the state of Texas, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2)¹.
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and

¹ 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.

conclusions of law contained in this ACOC. This ACOC states a claim upon which relief may be granted.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this ACOC and for the purposes of this ACOC waives all defenses which have been raised or could have been raised to the claims set forth in the ACOC, while reserving rights to assert defenses in any other proceeding based on these allegations.
5. 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

6. 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).
7. 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

8. This ACOC provides for the resolution of EPA Region 6's investigation of Respondent's Facility.
9. 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

10. 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.
11. 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.
12. 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.

13. 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) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.
14. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or it is listed in 40 C.F.R. Part 261, Subpart D.
15. 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.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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

21. Respondent, a municipality operating a Texas municipal utility, owns the Facility. The municipal utility headquarters is located at 500 McCullough Avenue, San Antonio, TX 78215.

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22. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Texas Administrative Code (“TEX.ADMIN.CODE”) § 3.2(25), [40 C.F.R. § 260.10].
23. The Facility identified in Paragraph 1 of this ACOC is a “facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10].
24. Legal Notice to Respondent is appropriately directed to CPS Energy, Attn: General Counsel, P.O. Box 1771, San Antonio, Texas 78296, LegalNotices@cpsenergy.com.
25. The Facility is a natural gas fired power plant.
26. During the period of April 2020 EPA conducted a RCRA investigation and record review (“Investigation”) of the Facility’s performance as a generator of hazardous waste.
27. During the Investigation, EPA discovered that the Facility generated and disposed the following hazardous wastes during the Investigation period: D001 (Ignitability); D002 (Corrosivity); D007 (Chromium); D009 (Mercury); D011 (Silver); D018 (Benzene); F003; U133 (Hydrazine (R,T)); U154 (Methanol).
28. The waste stream identified in Paragraph 27 is “solid waste” and “hazardous waste” as defined in 30 TEX.ADMIN.CODE §§ 335.1 (138) and (69), [40 C.F.R. §§ 261.2 and 261.24].
29. From review of Respondent’s records, EPA concluded that during April 2016, the Respondent generated hazardous waste at the Facility that exceeded the threshold amount of 100 kilograms of hazardous waste per month, which qualified the Facility as a small quantity generator (“SQG”) status established under 30 TEX.ADMIN.CODE, Chapter 335,

Subchapter C, [40 C.F.R. Part 262], for the one month period that such waste remained onsite.

30. Respondent is a "generator" of "hazardous wastes" at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), 30 TEX.ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. Parts 260 and 261].
31. 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 at 30 TEX.ADMIN.CODE Chapter 335, Subchapter C, [40 C.F.R. Parts 262 and/or 270].
32. On 4/22/20, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials

Claims i. Notification Requirements

33. The allegations in Paragraphs 1-32 are realleged and incorporated herein by reference.
34. 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 the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes 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).
35. Respondent did not file with the authorized State an initial or subsequent notification to accurately state the general description of its hazardous waste activities and its generation

and management of hazardous waste during April 2016, specifically that it qualified as a SQG instead of a Conditionally Exempt Small Quantity Generator (“CESQG”) during that month, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claims ii. Failure to Operate within Its Stated Generator Status

36. The allegations in Paragraphs 1-32 are realleged and incorporated herein by reference.
37. During the Investigation, EPA determined that the Facility either operated as a CESQG and/or considered itself to be a CESQG.
38. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b), [40 C.F.R. § 261.5(b) (April 2016)], as long as a CESQG complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(e), (f), (g), and (j), [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, [40 C.F.R. Parts 262 through 268 and 270].
39. On one occasion in 2016, the Facility exceeded the CESQG status and, for the period such hazardous waste remained onsite, operated as a SQG in violation of one or more of the requirements for SQG under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262 through 268 and 270].

VI. COMPLIANCE ORDER

40. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) 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 its solid waste streams to determine accurate waste codes and to ensure that the Facility is operating in compliance with RCRA and the regulations promulgated thereunder;
 - B. Respondent shall certify that it is currently a CESQG consistent with its RCRA Section 3010 Notification to the authorized State; and
 - C. Respondent shall provide with its certification a copy of the Standard Operating Procedures that it has developed and implemented for (a) making hazardous waste determinations and (b) for tracking the volume of hazardous waste generation in each month and the total volume of hazardous waste stored on-site at any time relative to the generator status thresholds.
41. 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 Respondent 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 (ECDSR)
ATTN: Tripti Thapa
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email to AD Talton, at talton.adolphus@epa.gov.

VII. TERMS OF SETTLEMENT

i. Modification

42. 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.

ii. Indemnification

43. 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.

iii. Record Preservation

44. 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.

iv. Cost

45. 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.

v. Reservation of Rights

46. 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.
47. 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.
48. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, 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.
49. EPA reserves the right to initiate an action seeking civil penalties for the same violations and facts set forth herein; as a compliance order, this ACOC does not resolve any potential liability for Federal civil penalties.

vi. Termination and Satisfaction

50. 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 thirty (30) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.

51. 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:

AD Talton
talton.adolphus@epa.gov

Respondent:

Kim Stoker
krstoker@CPSEnergy.com

vii. Effective Date of Settlement

52. 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: April 9, 2021



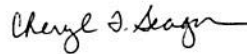
City of San Antonio acting by and
through City Public Service Board

Name: Curt D. Brockmann

Title: Interim VP, Compliance,
Ethics & Facility Master
Planning

FOR THE COMPLAINANT:

Date: _____



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Date: 2021.04.14 09:57:46 -0500

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: _____

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.04.19 09:21:09 -05'00'

Thomas Rucki
Regional Judicial Officer

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CPS Energy Braunig Power Plant

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:
talton.adolphus@epa.gov

Copy via Email to Respondent:
krstoker@CPSEnergy.com
paulina.williams@bakerbotts.com

**NATHAN
TAYLOR**

Digitally signed by NATHAN TAYLOR
DN: c=US, o=U.S. Government,
ou=Environmental Protection
Agency, cn=NATHAN TAYLOR,
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Nathan Taylor
Assistant Regional Counsel