

Re: Clariant Corporation
RCRA-06-2015-0911

6. For purposes of this CAFO, the relevant New Mexico Administrative Code, Title 20, Chapter 4, Part 1 has incorporated by reference 40 Code of Federal Regulations (“CFR”) Parts 260, 262, and 270.
7. 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.
8. This CAFO states a claim upon which relief may be granted.
9. The Respondent explicitly 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 set forth in the CAFO.
10. The CAFO resolves only those violations which are alleged herein.
11. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II. JURISDICTION

12. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) 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).

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13. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

14. Respondent is an authorized corporation in the State of Delaware and has been authorized on January 7, 1998 to do business in the State of New Mexico and at is located on 101 Christine Drive, Belen, New Mexico 87002.
15. Respondent is a specialty chemical manufacturing company that services a wide range of industries, with operations including the manufacture of desiccant canisters and paper packets. The manufacture of desiccant includes the printing of information on the canisters and paper packets and the cleaning of ink screens used in the printing.
16. Respondent 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.
17. During the period of January 2014 through April 2014, EPA conducted a RCRA investigation and record reviews ("Investigation") of Clariant's performance as a generator of hazardous waste.

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18. In May 2014, EPA conducted site visits at several Treatment Storage and Disposal Facilities (“TSDs”) and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained additional information on Clariant’s hazardous wastes that it offered for transport and treatment (“Responses”).

19. During the Investigation and review of Responses, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment the following waste, during 2010 through 2014:

- i. D001, ignitable hazardous waste;
- ii. Hazardous wastes that exhibit the toxicity characteristic for mercury and chlorobenzene, respectively with the hazardous waste codes, D009 and D021.
- iii. At least one (1) listed hazardous waste stream described as spent non-halogenated solvent with the waste code F003.

20. The waste streams identified in Paragraph 19 are “hazardous waste” as defined in 40 C.F.R. §§ 261.21, 261.24, and 261.31.

21. From the Investigation, EPA determined that during the period of 2011 through 2014, Respondent generated the hazardous waste streams identified in Paragraph 19 and in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, which qualified Respondent for the large quantity generator status as established under 40 C.F.R. § 262.34.

22. Respondent is a “generator” of “hazardous wastes” as the term is defined in 40 C.F.R. § 260.10.

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23. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 40 C.F.R. § 260.10; includes a “hazardous waste management unit” within the meaning of 40 C.F.R. § 260.10.
24. 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 40 C.F.R Parts 262 and/or 270.

Claim i. Notification Requirements

25. The allegations in Paragraphs 1-24 are realleged and incorporated herein by reference.
26. Within the meaning of 40 C.F.R. § 260.10 Respondent is a “generator” of hazardous waste.
27. 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 or listed hazardous wastes handled by such person.
28. At the time of the Investigation, Respondent did not file a timely and adequate subsequent RCRA 3010 Notification of hazardous waste activities with the Administrator or with the authorized State, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Failure to Operate within Its Stated Generator Status

29. The allegations in Paragraphs 1-28 are realleged and incorporated herein by reference.
30. During the Investigation, EPA determined that Clariant for the relevant periods of this CAFO initially declared its generator status as a small quantity generator (“SQG”) and subsequently as a conditionally exempt small quantity generator (“CESQG”) on September 8, 2014.

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31. Pursuant to 40 C.F.R. § 262.34(d), as long as the SQG complies with the requirements set forth therein, the SQG can operate without a permit or interim status.
32. Further, 40 C.F.R. §§ 262.34(d)&(f), require that the quantity of waste accumulated on-site by a SQG must never exceed 6,000 kilograms
33. Pursuant to 40 C.F.R. § 261.5(b), as long as a CESQG complies with the applicable requirement under 40 C.F.R. §§ 261.5 (e), (f), (g) and (j) 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.
34. During the period of 2011 through 2014, Clariant exceeded its declared SQG and CESQG status and for the months such hazardous waste remained onsite, operated as a large quantity generator in violation of one or more of the requirements for large quantity generators under 40 C.F.R. § 262.34.

Claim iii. Failure to file Biennial Reports

35. The allegations in Paragraphs 1-34 are realleged and incorporated herein by reference.
36. Pursuant to 40 C.F.R. § 262.41 a generator who ships any hazardous waste off-site for treatment, storage and/or disposal must prepare and submit a biennial Report to EPA's Regional Administrator, and to the New Mexico Environment Department, by March 1 of each even-numbered year as is required by 40 C.F.R. § 262.41.
37. For 2011, the EPA and/or the New Mexico Environment Department did not receive the requisite 2012 biennial Report that Respondent was required to file in violation of 40 C.F.R. § 262.41.

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Claim iv. Failure to Keep Required Records

38. The allegations in Paragraphs 1-37 are realleged and incorporated herein by reference.
39. Pursuant to 40 C.F.R. § 262.40(c) a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 40 C.F.R. § 262.11 for at least three years from the date the waste was last sent to on-site or off-site for treatment, storage, or disposal.
40. At all times relevant to this CAFO, Respondent did not create and keep the requisite hazardous waste determination records made in accordance with its hazardous waste determination in violation of 40 C.F.R. § 262.40(c).

Claim v. Failure to Make Adequate Hazardous Waste Determination

41. The allegations in Paragraphs 1-40 are realleged and incorporated herein by reference.
42. Respondent is a “generator” within the meaning of 40 C.F.R. § 260.10.
43. During the period of August 2013 to the effective date of this CAFO, Respondent, on several occasions, failed to make adequate hazardous waste determination on all its waste streams.
44. Respondent violated the requirements of RCRA and the regulations promulgated at 40 C.F.R. § 262.11(c) by failing to make the requisite hazardous waste determination on all its solid waste streams.

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IV.
COMPLIANCE ORDER

45. 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 reviewed all environmental requirements (Federal and State) that are applicable to Clariant as generator of hazardous waste and has developed and implemented a RCRA compliance plan designed to ensure that Respondent is meeting the regulations applicable to a generator, including but not limited to: (a) making hazardous waste determinations; (b) managing its hazardous wastes; and (c) reporting and offering for transportation and treatment its hazardous waste;
- B. Respondent shall certify that it has accurately complied with its RCRA Section 3010 Notification; and
- C. Respondent shall provide, with its certification, a copy of Respondent's RCRA compliance plan as described in subparagraph A above.

46. 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 Clariant 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."

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Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

V.
TERMS OF SETTLEMENT

i. **Penalty Provisions**

47. 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 Factual Allegation 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 One Hundred and Sixty-Eight Thousand Eight Hundred and Seventeen Dollars (\$168,817).
48. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
49. The following are Respondent's options for transmitting the penalties:

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 979077
St. Louis, MO 63197-9000

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Overnight Mail (non-U.S. Postal Service), the check 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 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 Clariant Corporation Docket No. RCRA-06-2015-0911) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

50. 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
1445 Ross Avenue
Dallas, Texas 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

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

51. 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 of 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.

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ii. Cost

52. 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.

iii. Termination and Satisfaction

53. When the Respondent believes that it has complied all the requirements of this CAFO, including compliance with the Compliance Order and the payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV, (Compliance Order), Paragraph 46. Unless the EPA, Region 6 objects in writing with specific reasons within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

iv. Effective Date of Settlement

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

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

FOR THE RESPONDENT:

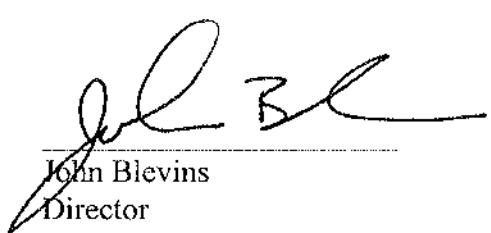
Date: 17 March 2015


Clariant Corporation

Michael A. Teague,
Head of Regional Sustainability
and Regulatory Affairs, North America

FOR THE COMPLAINANT:

Date: 4.6.15


John Blevins

Director

Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 4/16/15



Thomas Rucki
Regional Judicial Officer

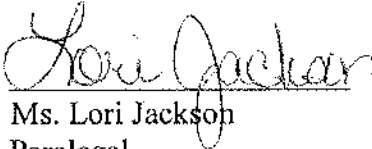
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150 000024538820

Ms. Martha W. Griffin
Assistant General Counsel
Clariant Corporation
400 Monroe Road
Charlotte, NC 28205


Ms. Lori Jackson
Paralegal