



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

December 12, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 2780 0002 4357 3513

Mr. John Dugdale
Counsel for Bayport Processing, LLC
Burford & Ryburn, LLP
3100 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201

Re: Bayport Processing, LLC Consent Agreement and Final Order

Dear Mr. Dugdale:

Enclosed is a draft Consent Agreement and Final Order (CAFO) to resolve the outstanding environmental violations at Bayport Processing, LLC (Bayport). This draft CAFO must be signed by an authorized representative of Bayport by December 16, 2011, and returned to the attention of Marcia E. Moncrieffe (6RC-ER) at the above address.

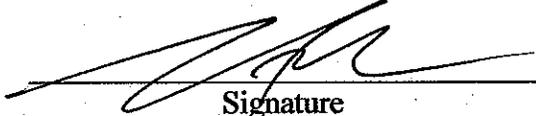
The Environmental Protection Agency, Region 6, appreciates your cooperation throughout this process. If you have any questions, or if you would like to discuss/amend any of the proposed terms of this CAFO, please do not hesitate to contact Ms. Moncrieffe at (214) 665-7343.

Sincerely,


John Blevins
Director
Compliance Assurance and
Enforcement Division

**DRAFT CAFO
FOR CONCURRENCE ONLY**

BAYPORT PROCESSING, LLC
Docket No. RCRA-06-2012-0925



Signature

12-12-01

Date

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

In the Matter of:

Bayport Processing, LLC
12901-A Bay Park Road
Pasadena, TX 77507

Respondent

Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2012-0925

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 ("EPA") and Respondent, Bayport Processing, LLC ("Bayport," or "Respondent"), and concerns the facility located at 12901-A Bay Park Road, Pasadena, TX 77507 (the "Facility").
2. This CAFO amends the Administrative Order on Consent EPA issued on September 30, 2005, Docket No. RCRA-06-2005-0917 ("AOC") and the Consent Agreement and Final Order, Docket No. RCRA-06-2006-0902, ("2006 CAFO"). The AOC and the CAFO provide for the amendment by mutual agreement of EPA and the Respondent. This CAFO also modifies and partially and conditionally terminates certain requirements of the 2006 CAFO and the AOC.
3. By letter dated December 28, 2010, counsel for Respondent submitted to counsel for EPA correspondence that supported Respondent's contention that the Permit TCEQ had

issued to Respondent effectively encompassed the substantive terms of Complainant's AOC and the CAFO.

4. On April 25, 2011, TCEQ issued a modification of the Permit ("Permit Modification"), the substantive provisions of which address the remaining Interim Measures dictated by Section VII, Work to be Performed, of the AOC.
5. On June 24, 2011, counsel for Respondent and Complainant discussed the potential terms for the termination and conditional termination of certain provisions of the AOC and the CAFO.
6. On July 7, 2011, counsel for Respondent submitted to counsel for Complainant correspondence styled "In the Matter of: Bayport Processing, LLC, Administrative Order on Consent Docket No. RCRA-06-2005-0917 and Consent Agreement and Final Order Docket No. RCRA-06-2006-0902; TCEQ Permit HW-50207: Request for Conditional Termination of Consent Agreement."
7. In that correspondence, counsel for Respondent indicated that Respondent, with the exception of the removal of all materials from Tanks 500S and 500N, had satisfactorily completed the Interim Measures ("IM"), had satisfied all of the terms of the Permit Modification, the substantive provisions of which address the remaining Interim Measures dictated by Section VII, Work to be Performed, of the Region's AOC, and had become financially capable of performing, and would timely perform, all provisions of the RCRA Facility Investigation ("RFI") and the Corrective Measures Study ("CMS") as dictated by Section VII of the AOC. Respondent has also concluded that it is financially capable of satisfying the AOC's Corrective Measures Implementation requirements.

8. Based on those facts, counsel for Respondent concluded that Respondent has substantially completed or will complete in the near future all work under the AOC, the 2006 CAFO, the Permit, and the Permit Modification, and has satisfied or will satisfy all terms and conditions of the AOC and 2006 CAFO through the completion of prior interim measures and by its ongoing and future compliance with the terms and conditions of the AOC, the CAFO, and the Permit.
9. The authority for this amendment and partial and conditional termination is set out at Section XX of the AOC, Subsequent Modification of the Final AOC.

II.

JURISDICTION

10. This CAFO is issued by the EPA, Region 6 pursuant to Section 3008 (a) of the Resource Conservation and Recovery Act ("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 the AOC under 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).
11. 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 AOC, Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.

PARTIES BOUND

12. This CAFO shall apply to and be binding upon EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to, contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of the Site. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CAFO.
13. Respondent shall provide a copy of this CAFO to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this CAFO, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent shall provide a copy of this CAFO within seven (7) days of the Effective Date of this CAFO, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this CAFO. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this CAFO, on compliance with the terms of this CAFO. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this CAFO.

14. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the Site or the operation of the facility, Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify EPA within 24 hours of the decision to transfer property. Respondent shall notify EPA of any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary transfer. Not later than 3 days after any transfer, Respondent shall submit copies of the transfer documents to EPA.

IV.

STATEMENT OF PURPOSE

15. This CAFO provides for the termination of the requirements of Section VII.1. of the AOC styled Interim/Stabilization Measures ("IM"), and for the conditional termination of the RCRA Facility Investigation ("RFI") and Corrective Measures Study ("CMS") as set out at Section VII.2 of the AOC, and of the Corrective Measures Implementation ("CMI"), as set out at Section VII.3. of the AOC.
16. In Section XVIII of the AOC, Reservation of Rights, EPA has specifically reserved all statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may relate to Bayport's failure to comply with the above-enumerated requirements of the AOC in connection with the Facility.
17. This CAFO incorporates by reference the requirements of the 2006 CAFO, the provisions of the December 19, 2007 Texas Commission on Environmental Quality ("TCEQ") Permit HW-50207 and the April 25, 2011 TCEQ modification of the Permit ("Permit Modification"), the substantive provisions of which address the remaining Interim Measures dictated by Section VII, Work to be Performed, of the Region's AOC.

18. In entering into this CAFO, the mutual objectives of EPA and Respondent are to identify, investigate, 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 Work ordered by EPA be designed and implemented to protect human health and/or the environment. These mutual objectives are described in Attachment A, the SOW, which is hereby incorporated into this CAFO by reference.
19. Respondent shall finance and perform the Work in accordance with this CAFO, plans, standards, specifications and schedules set forth in this CAFO or developed by Respondent and approved by EPA pursuant to this CAFO.

V.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. The Findings of Fact and Conclusions of Law set out in the AOC and 2006 CAFO are incorporated by reference herein as if set out word-for-word.

VI.

COMPLIANCE ORDER

21. Within thirty (30) days of the effective date of this CAFO, Respondent shall certify in writing to the EPA that all requirements of the 2006 CAFO and the AOC, except the requirement that is set forth in Paragraph 22 of this CAFO, have been fully completed and that for those requirements, Respondent is in compliance with all applicable laws and regulations. Respondent shall provide with its certification a descriptive list of the completed requirements, the associated dates, and identify the 2006 CAFO or the AOC as the controlling document.

22. Pursuant to Permit HW-50207, Sheet 24 of 40, New Provisions VII.C.2.a and c. and VII.C.2.d., Respondent shall no later than January 31, 2012, have removed all remaining wastes from Tanks 500N and 500S for processing in an authorized facility unit(s) or at an authorized off-site facility.
23. On or before February 15, 2012, Respondent shall certify in writing that it has fully complied with the requirements set forth in Paragraph 22.
24. In all instances in which this CAFO requires written certification to EPA, Respondent's Managing Director or any other corporate officer who has full authority to legally bind Bayport, and a professional engineer ("PE") registered with the State of Texas who has personal knowledge of Bayport's obligations under the 2006 CAFO, the AOC, Permit and this CAFO, shall certify, within the required time period that each requirement of this CAFO is in full compliance with this CAFO and with all applicable Permits, laws, and regulations.

VII.

STIPULATED PENALTIES

25. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

| <u>Period of Failure to Comply</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------------------|--------------------------------------|
| 1st through 15th day | \$ 1,000.00 |
| 16th through 30th day | \$ 5,000.00 |
| 31st day and beyond | \$ 10,000.00 |

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SETTLEMENT: INADMISSIBLE IN EVIDENCE PURSUANT TO FRE 408
11/30/2011 Draft

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

26. The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within thirty (30) days of receipt of a demand letter for payment to the following address:

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

The case name and docket number (In the Matter of Bayport Processing, LLC. Docket No. RCRA 06-2012-0925 shall be clearly typed on the check to ensure proper credit.

The Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check or certified check to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Associate Director, Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, Water/RCRA Legal Branch (6RC-EW)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Adherence to these procedures will ensure proper credit when payments are received. In addition, the provisions of Section VII concerning interest, penalties, and administrative costs also apply.

27. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of the Respondent's failure to comply with the requirements of this Conditional CAFO, including sanctions that EPA may seek under Section 3008 of RCRA, 42 U.S.C. § 6928.
28. If the Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

VIII.

DISPUTE RESOLUTION

29. If the Respondent objects to any decision or directive of EPA in regard to Section VI (Compliance Order) or VII (Stipulated Penalties), the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director, Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, Water/RCRA Legal Branch (6RC-EW)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

30. The RCRA Enforcement Associate Director or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the

Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this Conditional CAFO.

31. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division ("Division Director") or his/her designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.
32. If the Dispute Resolution process results in a modification of this Conditional CAFO, the modified Conditional CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section X, Modification, below.

IX.

NOTIFICATION

33. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be

PRIVILEGED AND CONFIDENTIAL DRAFT DOCUMENT MADE IN FURTHERANCE OF
SETTLEMENT: INADMISSIBLE IN EVIDENCE PURSUANT TO FRE 408
11/30/2011 Draft

directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:

Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attention: Frances Verhalen

Respondent:

Mr. Dean E. Cederquist
Managing Member, Bayport Process, LLC
12901 A Bay Park Road
Pasadena, TX 77507

Copies to:

Mr. John Dugdale
Burford & Ryburn, LLP
3100 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201

Mr. Kyle Shelton
Manager, Corrective Action
RPS
1250 S. Capital of Texas Highway
Building 3, Suite 200
Austin, TX 78746

X.

MODIFICATION

34. The terms, conditions, and compliance requirements of this CAFO 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.

XI.

RETENTION OF ENFORCEMENT RIGHTS

35. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.
36. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

XII.

INDEMNIFICATION OF EPA

37. 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 the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

XIII.

FINANCIAL ASSURANCE

38. The Respondent shall provide Financial Assurance for the performance of the activities required under this CAFO. The Financial Assurance shall demonstrate that the Respondent has the ability to complete the work required by this AOC, and to pay all claims pursuant to this AOC. The Financial Assurance amount shall not be less than the amount necessary to perform the activities under this CAFO. Respondent shall obtain and present to EPA, within thirty (30) days after the Effective Date of this CAFO, an Escrow Account maintained by an FDIC-regulated financial institution that demonstrates that Respondent has sufficient financial assets available to perform the requirements of the AOC.

XIV.

RECORD PRESERVATION

39. The Respondent shall preserve, during the pendency of this CAFO, 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 CAFO regardless of any document retention policy to the contrary.

XV.

COSTS

40. 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.

XVI.

TERMINATION AND SATISFACTION

41. EPA shall terminate this CAFO, the 2006 CAFO, and the AOC, when it determines that Respondent has satisfied all terms and conditions of those orders following Respondent's request for such termination. In making a request for termination, Respondent must provide EPA with documentation that supports such a request, which documentation shall include a certification of completion of the extant requirements of this CAFO, the 2006 CAFO, and the AOC. Such a certification of completion shall be in a form approved by EPA and certified in accordance with Section VII of this CAFO.

XVII.

EFFECTIVE DATE

42. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

Date: _____

Mr. Dean E. Cederquist
Managing Member
Bayport Processing, LLC

FOR THE COMPLAINANT:

Date: _____

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing Conditional Consent Agreement 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 Consent Agreement. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2011, 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

Mr. Dean E. Cederquist
Managing Member
Bayport Processing, LLC
12901 A Bay Park Road
Pasadena, TX 77507

Copies to:

Mr. John Dugdale
Burford & Ryburn, LLP
3100 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201

Mr. Kyle Shelton
Manager, Corrective Action
RPS
1250 S. Capital of Texas Highway
Building 3, Suite 200
Austin, TX 78746

Ms. Lori Jackson
Paralegal