

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Hexion Inc.

Brady, Texas
Cleburne, Texas
Diboll, Texas

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0957

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, Hexion Inc. ("Respondent" or "Hexion") and concerns three facilities located in EPA Region 6. All three facilities ("Facilities") are located in the State of Texas. The Facilities include:
 - A. Brady Facility: 45 Acfrac Road, Brady, Texas 76825;
 - B. Cleburne Facility: 3202 Windmill Road, Cleburne, Texas, 76033
 - C. Diboll Facility: 100 W. Borden Drive, Diboll, Texas, 75491
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).¹

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.

3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, 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. The Respondent 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 in the CAFO.
5. The CAFO resolves only those violations that 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.
7. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this CAFO pursuant to 40 Code of Federal Regulations ("C.F.R.") § 22.6, by email to the following addresses:

To EPA:

clay.jeffrey@epa.gov

To Respondent:

craig.strutz@hexion.com

II. JURISDICTION

8. 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 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

9. 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

10. Respondent is a corporation authorized to do business in the State of Texas.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 TEX.ADMIN. CODE § 3.2(25), [40 C.F.R. § 260.10].
12. Respondent owns or operates the Facilities.
13. At the Diboll Facility, the Respondent treats sand used in the oil and gas fracturing process, and at the now inactive Cleburne and Brady Facilities, Respondent previously manufactured resin coated sands.
14. During the period from January 2020 - April 2020, EPA conducted a RCRA record review of Respondent's activities as a generator of hazardous wastes ("Investigation").
15. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous wastes with the characteristic of ignitability (D001), corrosivity (D002), lead (D008) and Benzene (D018).
16. The Facilities are each a "facility" within the meaning of 30 TEX.ADMIN. CODE § 335.1(60), [40 C.F.R. § 260.10].

17. The waste streams identified above are "hazardous wastes" as defined in 30 TEX.ADMIN.CODE § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
18. Based on its review, EPA noted that Respondent self-identified as a “non-hazardous waste generator,” a “very small quantity generator” or a “large quantity generator” of hazardous wastes; however, EPA determined that Respondent had generated hazardous wastes and therefore Respondent’s generation of hazardous wastes corresponded to a small quantity generator (“SQG”) or a large quantity generator (“LQG”) status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained on-site. Therefore, EPA concluded that Respondent had improperly identified their generator status at each of the Facilities, and/or did not comply with all requirements applicable to its generator status.
19. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(72) & (78), [40 C.F.R. § 260.10].
20. 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 in 30 TEX.ADMIN.CODE Chapter 335, Subchapter C, [40 C.F.R. Part 262].

IV. ALLEGED VIOLATIONS

Claims i. Notification Requirements

21. The allegations in Paragraphs 1-20 are re-alleged and incorporated herein by reference.
22. 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 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).

23. Respondent did not file with EPA or the State of Texas an adequate and timely notification of its hazardous waste activities at the Facilities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claims ii. Failure to Operate within Its Stated Generator Status

24. The allegations in Paragraphs 1-23 are realleged and incorporated herein by reference.
25. During the Investigation, EPA determined that the Hexion Facilities declared its generator status alternatively as: “non-hazardous waste generator,” or a “very small quantity generator,” or a “large quantity generator.”
26. A generator of hazardous waste is subject to multiple requirements, including the applicable parts of 30 T.A.C. Chapter 335, Subchapters (C), (E), (F), (H), and (O) [40 C.F.R. Parts 262, 264-68, 270].
27. Pursuant to 30 T.A.C. §§ 335.78(a) and (b) [40 C.F.R. §§ 261.5(a) and (b)], a generator is a SQG in a calendar month if it generates >100 kilograms of non-acute hazardous waste, and a LQG in a calendar month if it generates 1,000 kilograms of non-acute hazardous waste and complies with 30 T.A.C. § 335.78 [40 C.F.R. § 261.5].
28. The Facilities generated hazardous waste as an SQG and/or LQG during the time period under review.
29. EPA determined that Respondent was not complying with certain of the requirements for SQG or LQG, including the failure to provide an emergency preparedness and/or adequate contingency plan, as required [40 C.F.R. Part 265].

30. Therefore, Respondent's failure to meet the requirements of its generator status is a violation of one or more of the requirements for SQG or LQG generators under 30 TEX.ADMIN. CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34/or 270].

V. COMPLIANCE ORDER

31. 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 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 Hexion Facilities to determine the accurate waste codes and, if hazardous waste streams continue to exist at a Facility, that Hexion has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Hexion Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facilities, based on current waste generation activities, and within the prescribed time period; and
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

32. 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, or their designee, 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: Debra Pandak
Dallas, Texas 75270-2102
pandak.debra@epa.gov

Where required, notice shall be sent electronically by email to Enforcement Officer Debra

Pandak at pandak.debra@epa.gov

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

33. 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, the parties have agreed that Respondent be assessed a civil penalty of Twenty-two thousand, six hundred and sixty-two dollars (\$22,662).
34. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the "Treasurer of the United States."

35. 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, Missouri 63197-9000

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 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 Hexion Inc, Docket No. RCRA-06-2020-0957) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

pandak.debra@epa.gov

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

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

37. 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).
38. 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

39. 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

40. 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 V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification

D. Effective Date of Settlement

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

Hexion Inc.
RCRA-06-2020-0957

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

FOR THE RESPONDENT:

Date: _____

Hexion Inc.

Hexion Inc.
RCRA-06-2020-0957

FOR THE COMPLAINANT:

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 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.

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via electronic mail to Complainant:

clay.jeffrey@epa.gov

Copy via electronic mail to Respondent:

craig.sturtz@hexion.com

Copy via electronic mail to the EPA, Region 6, Regional Hearing Clerk:

vaughn.loreana@epa.gov

EPA Region 6