FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2018 JUL 18 AM 9: 15
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	CONSENT AGREEMENT
LFM INDUSTRIES INC.	§	AND FINAL ORDER
	§	
HOUSTON, TEXAS	§	Docket No. RCRA-06-2018-0909
	§	
RESPONDENT	§	

CONSENT AGREEMENT

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, LFM Industries Inc. ("Respondent") and concerns the facility located at 117 North Palmer Street in Houston, Texas ("Houston Facility").

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).

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. 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 which are alleged herein.

6. Respondent consents to the following: issuance of the CAFO hereinafter recited; the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO; and to the specific stated compliance order.

II. JURISDICTION

7. 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).

8. 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. GENERAL ALLEGATIONS

9. Respondent is a Texas corporation authorized to do business in the State of Texas on October 29, 2003.

10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 TEX. ADMIN. CODE[1] § 3.2(25) (40 C.F.R. § 260.10[2]).

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[1] All references to the Texas Administrative Code ("TEX. ADMIN. CODE") within this CAFO are to the EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program. 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 State of Texas RCRA Program and authorized by the EPA. References found within this CAFO are to the EPA authorized version of the TEX. ADMIN. CODE and citations may vary slightly from the published version of the TEX. ADMIN. CODE.
[2] Citations to the Code of Federal Regulations (C.F.R.) within this CAFO are to the authorized version of the C.F.R. at the time of filing and may vary from current references to the C.F.R.

11. Pursuant to 30 TEX. ADMIN. CODE §§ 335.1(107) and (108) (40 C.F.R. § 260.10), Respondent, at all times relevant to this CAFO, was an "owner" or "operator" of the Houston Facility.

12. Respondent is a "generator" of "hazardous waste" as the terms are defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10) and 30 TEX. ADMIN. CODE § 335.1(69) (40 C.F.R. § 260.10).

13. During the period from December 2016 to September 2017, EPA conducted a RCRA investigation and record review (Investigation) of Respondent's activities as a generator of hazardous waste and its compliance with RCRA and the regulations promulgated thereunder.

14. During the Investigation, EPA determined Respondent, at a minimum, generated and offered for transport and treatment, 1,375 gallons of hazardous waste (Corrosivity (D002) and Chromium (D007)) on June 11, 2013; and 808 gallons of hazardous waste (Chromium (D007)) on October 11, 2013.

15. The waste streams identified in Paragraph 14 are "hazardous waste" as defined in 30 TEX. ADMIN. CODE § 335.1(69), (40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33).

16. Respondent, at all times relevant to this CAFO, was a "generator" of hazardous waste at the Houston Facility, as the term is defined in 30 TEX. ADMIN. CODE § 335.1(65) (40 C.F.R. § 260.10).

17. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded its threshold amount of 100 kilograms per month under 30 TEX. ADMIN. CODE Chapter 335, Subchapter C, (40 C.F.R. Part 262), for the periods that such wastes remained onsite.

18. 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. VIOLATIONS

Claim 1: Notification Requirements

19. Complainant hereby restates and incorporates by reference Paragraphs 1 through 18.

20. Pursuant to 30 TEX. ADMIN. CODE § 335.6(c), any person generating a characteristic or listed 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. This includes a subsequent notification for a change in the status of a generator. *See also* RCRA § 3010(a), 42 U.S.C. § 6930(a).

21. Pursuant to 30 TEX. ADMIN. CODE § 335.63(a), (40 C.F.R. § 262.12(a)), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

22. Respondent, during the relevant time period, generated hazardous waste in quantities that exceeded the threshold amount of a Conditionally Exempt Small Quantity Generator (CESQG) of 100 kilograms per month.

23. Respondent treated, stored, disposed of, and/or offered for transportation hazardous waste.

24. Respondent's Houston Facility, during the relevant time period, did not have, nor apply for, an EPA identification number.

25. In 2013, Respondent had not filed with EPA or Texas an adequate and timely notification of its hazardous waste activities at the Houston Facility.

26. EPA finds Respondent's failure to provide notification to EPA or Texas of its hazardous waste activities was a violation of 30 TEX. ADMIN. CODE § 335.6(c). *See also* 42 U.S.C. § 6930(a).

27. EPA finds that at all relevant times to the CAFO, the Houston Facility treated, stored, disposed of, and/or offered for transportation hazardous waste without having received an EPA identification number from the Administrator in violation of 30 TEX. ADMIN. CODE § 335.63(a), (40 C.F.R. § 262.12(a)).

Claim 2: Failure to Operate Within Generator Status

28. Complainant hereby restates and incorporates by reference Paragraphs 1 through 27.

29. A generator of hazardous waste is subject to the multiple requirements, including the applicable parts of 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

30. From the Investigation, EPA determined that Respondent, for portions of the relevant years, generated hazardous waste as a Large Quantity Generator (LQG).

31. Respondent's Hazardous Waste Training Records for its Houston Facility did not include the following: a job title for each position at the facility related to hazardous waste management; name of the employee filling each job; a written job description for each job title; a written description of the type and amount of both introductory and continuing training given to each employee; and records indicating the required training has been completed for each employee.

32. Respondent's Hazardous Waste Contingency Plan for its Houston Facility did not: list the names, addresses and phone numbers for all persons qualified to act as the emergency coordinator; list all emergency equipment at the facility; include an evacuation

plan for facility personnel; nor describe the arrangements agreed to by local emergency responders.

33. EPA finds that for the portions of the affected year while operating as a LQG, Respondent failed to comply with various sections of the applicable LQG requirements under 30 TEX. ADMIN. CODE § 335, Subchapters (C)-(H), (O) (40 C.F.R. Parts 124, 262-68, 270).

Claim 3: Failure to File a Biennial Report

34. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33.

35. Pursuant to 30 TEX. ADMIN. CODE § 335.71 (40 C.F.R. § 262.41), a large quantity generator of hazardous waste for any month during the previous odd-numbered report year is required to submit a Biennial Report to EPA's Regional Administrator, and to the TCEQ, in the following even-numbered year.

36. From the Investigation, EPA determined that Respondent was a LQG for portions of calendar year 2013.

37. Respondent did not file an Annual Waste Summary to TCEQ or a Biennial Report to EPA or TCEQ in 2014 for the 2013 reporting year.

38. EPA finds that for the 2013 reporting year, Respondent failed to file an Annual Waste Summary or Biennial Report to TCEQ and/or EPA in violation of 30 TEX. ADMIN. CODE §§ 335.9 and 335.71 (40 C.F.R. § 262.41).

Count 4: Failure to Make Adequate Hazardous Waste Determinations

39. Complainant hereby restates and incorporates by reference Paragraphs 1 through 38.

40. Pursuant to 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)), a person who generates a solid waste must determine if that waste is hazardous.

41. During the Investigation, Respondent was unable to provide its hazardous waste determinations to EPA for its different hazardous waste streams.

42. EPA finds Respondent failed to make adequate hazardous waste determinations for its hazardous waste streams in violation of 30 TEX. ADMIN. CODE § 335.62 (40 C.F.R. § 262.11(a)).

V. COMPLIANCE ORDER

43. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), it is hereby ordered that Respondent, which has consented to the terms of this Order, shall, through the use of an independent third-party audit and the subsequent requirements elaborated in Paragraphs 46-63, comply with the general and specific obligations under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations.

44. Respondent shall comply with the terms of this Order as expeditiously as practicable, but in no event longer than one year after the date the order was issued.

45. Failure to meet the terms of the Order identified below will be deemed a violation of the Order, subject to federal civil penalties and enforcement under 3008(c) of RCRA, 42 U.S.C. § 6928(c). The terms include abiding by the timelines and certification requirements. Failure to abide by the timelines and certification will be deemed a violation of the Order.

A. Third-Party Audit Terms and Timeline

46. Respondent agrees to the following:

a. Within thirty (30) days of this Order becoming effective, Respondent will identify and retain a third-party auditor or audit team to evaluate

Respondent's compliance with Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations.

b. Within forty-five (45) days of this Order becoming effective, Respondent shall submit a certification attesting to the following:

> I certify, under penalty of law, that I identified and retained a third-party auditor or audit team to evaluate my compliance with the requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations, for the facility that forms the basis of the Order found in Docket No. RCRA-06-2018-0909, and who meets the requirements of an independent auditor or audit team found at Section V(B) found in that Order. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

c. Within forty-five (45) days of this Order becoming effective, the third-party auditor or certifying official of the audit team shall submit a certification attesting to the following:

> I certify, under penalty of law, that I have been retained by LFM Industries Inc., to evaluate its compliance with the requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations, at the facility that forms the basis of the Order found in Docket No. RCRA-06-2018-0909. I further certify that I meet the requirements of an independent auditor or audit team found at Section V(B) of that Order. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

d. Within one-hundred and fifty (150) days of this Order becoming effective, the Auditor or Audit team shall submit the Audit Report pursuant to the terms found below at Section V(D).

i. Violations, potential violations, and other areas of concern, including the alleged violations that form the basis of this Order, will be specifically identified in each audit report:

1. This document does not include or in any way release violations of federal law identified as a result of these audits. EPA reserves the right, in its discretion, to pursue enforcement of any violations of federal law identified as a result of these audits, both internal and external; and
2. the report will also identify observations or improvement actions that are not necessarily violations.

ii. The results of all external audits will meet the requirements for auditor independence, audit results, and responses identified below.

e. Within two-hundred and ten (210) days of this Order becoming effective, Respondent shall submit the Audit Report Response pursuant to the terms found below at Section V(D).

f. Within one year, Respondent shall submit a certification attesting to the following:

> I certify, under penalty of law, that I corrected the violations that forms the basis of the Order found in Docket No. RCRA-06-2018-0909, addressed the areas of concern in the Audit Report, implemented recommendations found in my Response Report, and certify that LFM Industries Inc., is now in compliance with Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations found at 40 C.F.R. Parts 260-270. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

g. All audits, audit reports, audit responses, and certifications of compliance with Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations, shall be completed within one year of the effective date of this Order.

h. Audits conducted pursuant to this Order, whether internal or performed by third parties, and any associated documents will be provided to EPA for any purpose, including forming the basis for an enforcement action.

B. Third-Party Auditor and Audit Team

47. Each Audit shall have an audit leader (Auditor) who meets the requirements of independence outlined below. Different standards shall apply to audit team members.

48. Auditors shall be impartial and independent in conducting all third-party audit activities.

49. Auditors shall receive no compensation or financial benefit from the outcome of the audit, apart from payment for auditing services.

50. Auditors shall be:

a. knowledgeable of the requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the applicable implementing regulations;

b. experienced with the hazardous waste generated and processes being audited; and

c. trained or certified in proper auditing techniques.

Auditors do not need to be registered Professional Engineers. The audit team does not require the participation of a Professional Engineer.

51. Respondent may not select an Auditor who has performed work for Respondent within the last two years at the time of contract between the Auditor and Respondent.

52. Respondent may not hire, as either employees or contractors, Auditors, or audit team members, for a period of two years following the submission of the final audit report from the Auditor to Respondent.

53. All Auditors, and audit team members, shall sign and date a conflict of interest statement verifying that they are eligible to perform the audit under the terms of this agreement.

54. These requirements shall not apply to an organization that employs, or is owned by, an Auditor and in which an employee has performed work for Respondent in the past two years where the organization ensures that such personnel do not participate in the audit, or manage or advise the audit team concerning the audit.

55. Retired employees who satisfy the requirements of independence may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans.

C. Third-Party Auditor Responsibilities

56. Respondent shall ensure that the third-party auditor:

a. manages the audit and participates in audit initiation, design, implementation, and reporting;

b. evaluates the competency of audit team members, as applicable, to determine appropriate roles and responsibilities for the audit;

c. prepares the audit report and documents the full team's views and opinions in the final audit report; and

d. certifies the final audit report and its contents as meeting the requirements of this document.

D. Audit Report and Response

57. *Audit Report.* Respondent shall ensure that the auditor prepares and submits an audit report that:

a. Identifies the lead auditor or manager, participating individuals, and any other key persons participating in the audit, including names, titles, and summaries of qualifications;

b. Documents the auditor's evaluation of each process audited to determine whether procedures and practices developed by Respondent are adequate and being followed;

c. Documents the findings of the audit, including any identified compliance or performance deficiencies. The auditor shall also ensure that photographs and video recordings will be made of each audit to enhance understanding of the audit reports and provide context to the audit results. These photographs and video recordings shall be incorporated and included in the audit reports submitted;

d. Includes a summary of Respondent's comments on, and identify any adjustments made by the auditor to, any draft audit report provided by the auditor to Respondent for review or comment; and

e. Include the following certification, signed and dated by the auditor or supervising manager for the audit:

> I certify that this compliance audit report was prepared under my direction or supervision in accordance with a system designed to

> assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to all applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, the inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

58. The auditor shall submit the audit report, including all draft and final copies, to EPA and Respondent at the same time.

59. The audit report and related records, including any documents reviewed, cited, or relied on by the audit team in undertaking the audit, shall not be privileged as attorney-client communications or attorney work products, even if written for or reviewed by legal staff.

60. *Response Report.* As soon as possible, but no later than 90 days after receiving the final audit report, Respondent shall determine an appropriate response to each of the findings in the audit report, and develop and provide to EPA a response report that includes:

a. A copy of the final audit report;

b. An appropriate response to each of the audit report findings;

c. A schedule for promptly addressing deficiencies; and

d. A certification, signed and dated by Respondent's senior corporate officer or other official in an equivalent position, stating:

> I certify under penalty of law that the attached compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the

report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

61. Respondent shall implement the schedule to address deficiencies identified in the audit findings response report.

62. Respondent shall document the actions taken to address each deficiency, along with the date completed. If deficiencies are corrected prior to the response report then they may be included in that document. If deficiencies are corrected after submittal of the response report, those actions should be identified under a separate letter, as they occur.

63. Respondent shall retain all copies of draft and final audit reports, including associated documents, for a period of five years from the date of the final audit report, and provide any audit reports or documents to EPA upon request.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

64. 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, it is ordered that Respondent be assessed a civil penalty of **sixty-two thousand and three-hundred dollars ($62,300.00)**. However, based on an analysis of

Respondent's financial circumstances and ability to pay, it is ordered that Respondent be assessed a civil penalty in the amount of **zero dollars ($0.00)**.

B. Costs

65. 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

66. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless 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. Notifications

67. Submissions required by this Order shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

Ashley Pederson
U.S. Environmental Protection Agency Region 6
Waste Compliance III Section (6EN-H3)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Pederson.ashley@epa.gov

68. EPA will send all written communications to the following representative for Respondent:

> Lisa Faith Massey
> LFM Industries Inc.
> 117 North Palmer Street
> Houston, Texas 77003

69. All documents submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

E. Effective Date of Settlement

70. This CAFO shall 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: 7/2/2018

Lisa Faith Massey
LFM Industries Inc.

FOR THE COMPLAINANT:

Date: 7/17/2018

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement 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.

Date: 7/17/2018

Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2018, 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 below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7015 1520 0003 3990 9064

Lisa Faith Massey
LFM Industries Inc.
117 North Palmer Street
Houston, Texas 77003

Lori Jackson