

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Air Liquide Large Industries U.S. LP,

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2020-0962

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, Air Liquide Large Industries U.S LP ("Respondent" or "Air Liquide") and concerns the Air Liquide Large Industries Corpus Christi SMR facility located at 5880 Up River Road, Corpus Christi, Texas 78407 ("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. 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 which 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:

Jeffrey Clay

clay.jeffrey@epa.gov

To Respondent:

Tim Wilkins

timothy.wilkins@bracewell.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. CODE¹ § 3.2(25), [40 C.F.R. § 260.10].
12. Respondent owns or operates the Air Liquide Large Industries Corpus Christi SMR Facility.
13. The Air Liquide Facility is an industrial gas manufacturing company.
14. EPA conducted a RCRA record review of the Air Liquide Facility activities as a generator of hazardous waste ("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), cadmium (D006), chromium (D007) and listed spent solvents (F001 and F002).
16. The Air Liquide Facility is 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 waste" as defined in 30 TEX.ADMIN. CODE § 335.1 (70), [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].

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.

18. Based on its review, EPA noted that Respondent self-identified as a Very Small Quantity Generator (“VSQG”) of hazardous wastes since 2015; however, EPA determined that Respondent generated wastes in excess of 1,000 kg per month of non-acute hazardous waste in 2017 and generated hazardous waste greater than 100 kilograms but less than 1000 kilograms in a calendar month in 2020. Therefore under 30 TEX.ADMIN. CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained on-site, EPA concluded that Respondent had improperly identified its generator status.
19. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(66) & (70), [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 realleged 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 authorized state, an adequate and timely notification of its hazardous waste activities at the Air Liquide Facility in 2017 and 2020 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 Air Liquide Facility declared its generator status as VSQG.
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 hazardous waste generator is an LQG in a calendar month if it generates more than 1,000 kilograms of non-acute hazardous waste and an SQG if more than 100 kilograms but less than 1000 kilograms per month is generated.
28. The Facility generated hazardous waste as an LQG and SQG in 2017 and 2020, respectively.
29. EPA determined that Respondent was not complying with certain of the generator requirements, as required [40 C.F.R. Part 262].
30. Therefore, Respondent's failure to meet the requirements of its generator status is a violation of one or more of the requirements 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 30 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 Air Liquide Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Air Liquide 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; and

B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Air Liquide Facility within the prescribed time period.

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 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

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 dollars (\$22,660).
34. 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.
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 Air Liquide, Docket No. RCRA-06-2020-0962) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

36. The Respondent shall electronically 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 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

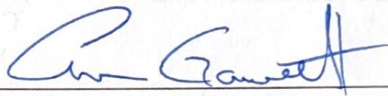
41. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Air Liquide Large Industries U.S. LP
RCRA-06-2020-0962

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

FOR THE RESPONDENT:

Date: July 14, 2020



Air Liquide Large Industries, U.S. LP

Andrew Garnett
VP Hydrogen/Syngas

FOR THE COMPLAINANT:

Date: _____

 Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
0.9.2342.19200300.100.1.1=68001003651793
Date: 2020.07.16 11:13:19 -0500

Cheryl T. Seager
Director
Enforcement and Compliance
Assurance Division
U.S. EPA, Region 6

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: 7/16/2020

Rucki,
Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2020.07.16 14:07:21 -05'00'

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:

timothy.wilkins@bracewell.com

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

vaughn.lorena@epa.gov

JEFFREY CLAY

Digitally signed by JEFFREY CLAY
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=JEFFREY CLAY,
0.9.2342.19200300.100.1.1=68001003652675
Date: 2020.07.16 18:11:50 -05'00'

EPA Region 6