

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2018 JUN -6 AM 10:29
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

ROCKWATER ENERGY
SOLUTIONS, LLC

Respondent

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CONSENT AGREEMENT FINAL ORDER

USEPA Docket No. RCRA-06-2018-0918

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, Rockwater Energy Solutions, LLC ("Rockwater" or "Respondent") and concerns Rockwater's two (2) facilities. The facilities that are covered by this CAFO are: (1) Hobbs that is located at 2703 West Maryland, Hobbs, New Mexico; and (2) Snyder that is located at 1600 Avenue Q, Snyder, Texas (the "Facilities" or "Facility").

2. Notice of the commencement of this action has been given to the states of New Mexico and Texas, under Section 3008(a)(2) of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2) for the facilities that are listed in Paragraph 1, respectively.

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3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained in this CAFO.

4. Respondent explicitly waives its right to appeal the proposed final order contained in this CAFO.

5. This CAFO resolves only those violations which are alleged herein.

6. This CAFO covers the violations alleged herein and for the specific periods set forth in Section IV of this CAFO, and for the period covered by Section V (Compliance Order) Paragraphs 102 and 103 of this CAFO.

7. 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 as set forth in Section V, (Compliance Order), Paragraphs 102 and 103 of this CAFO.

8. For purposes of this CAFO, where no differences exist, citations to 40 C.F.R. Parts 260, 261, 262, and 273 are citations to the corresponding New Mexico Administrative Code ("NMAC") sections at Title 20, Chapter 4, Part 1 since the relevant sections in the NMAC incorporate by reference the corresponding federal regulations.

II. JURISDICTION

9. 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 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).

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10. 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. STATUTORY AND REGULATORY BACKGROUND

11. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and the Hazardous and Solid Waste Amendments (“HSWA”) enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 *et seq.*

12. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.

13. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” They prohibit land disposal of certain hazardous wastes, and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.

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14. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded under 40 C.F.R. § 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munitions. Materials are solid waste, as defined in 40 C.F.R. § 261.2, if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

15. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C or it is listed in C.F.R. Part 261, Subpart D.

16. Characteristic hazardous wastes are assigned "D" codes in 40 C.F.R. Part 261, Subpart C, depending on the specific hazardous characteristic that the waste exhibits.

17. An ignitable hazardous waste has a flash point of less than 60 degrees centigrade (140 degrees Fahrenheit) and is assigned the D001 hazardous waste code pursuant to 40 C.F.R. § 261.21.

18. A corrosive hazardous waste has a pH of less than or equal to 2.0 or greater than or equal to 12.5 and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22, and a reactive hazardous waste is assigned the D003 hazardous waste code pursuant to 40 C.F.R. § 261.23.

19. Listed waste are assigned with "F", "K", "P", and "U" codes in 40 C.F.R. Part 261, Subpart D, depending on the specific waste generated from a non-specific source, a specific source, or discarded commercial chemical products, off-specification species, container residues and spill residues therefrom.

20. 40 C.F.R. Parts 264 and/or 265 applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.

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21. The relevant RCRA statutory and regulatory requirements to this CAFO require that generators of solid waste and hazardous waste must, among other things:

- A. Determine whether their generated solid wastes are hazardous, pursuant to 40 C.F.R. § 262.11;
- B. Comply with the statutory notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930;
- C. Comply with the manifest requirements, pursuant to 40 C.F.R. § 262.20; and
- D. Determine its generator status by meeting the exemption conditions set forth at 40 C.F.R. § 262.34 or comply with the specific requirements set forth at 40 C.F.R. § 270.10.

IV.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

22. Rockwater is authorized to do business in the states of Texas and New Mexico and is incorporated in the state of Delaware.

23. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 30 TEX.ADMIN.CODE § 3.2(25), and 40 C.F.R. § 260.10.

24. Respondent, Rockwater is the “owner” and “operator,” of the Facilities at all times relevant to this CAFO and within the meaning of 30 TEX.ADMIN.CODE §§ 335.1(108) and (107), and 40 C.F.R. § 260.10.

25. The Hobbs Facility stores chemical products used in the oil and gas industry.

26. The Snyder Facility stores chemical products used in the oil and gas industry. Until August 4, 2016, Respondent also operated a lab at the Snyder Facility that analyzed crude oil and

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flow back water samples from its customers to determine which of Rockwater's chemicals should be used to treat customers' wells.

27. During the period of August 2014 through March 2018, EPA conducted a RCRA investigation and record review of Rockwater activities as a generator of hazardous waste, in addition to issuing RCRA information requests to treatment, storage, and disposal facilities in Region 6 and to Respondent.

28. On April 4, 2017, Rockwater provided EPA responses to EPA's informal request for information dated March 27, 2017 (the Response I).

29. On October 13, 2017, Rockwater provided EPA responses to EPA's formal request for information dated September 15, 2017 (the Response II).

30. EPA's record review of Rockwater, including EPA's information requests, the respective responses from the treatment, storage, and disposal facilities, and Rockwater's Response I and Response II, including subsequent information provided by Rockwater in early 2018 to EPA, are for purposes of this CAFO and within the meaning of this CAFO the "Investigation".

31. From the Investigation, EPA concluded that Rockwater generates "solid waste" within the meaning of 30 TEX.ADMIN.CODE § 335.1(138), and 40 C.F.R. § 261.2, from the Facilities.

32. The exclusion set forth at 40 C.F.R. § 261.4(b)(5) for drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy is not applicable to the hazardous waste streams generated at each of the Facilities and are relevant to this CAFO.

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33. From the Investigation, EPA concluded that Rockwater generates “hazardous waste” within the meaning of 30 TEX.ADMIN.CODE §§ 335.1 (69) and (70), and 40 C.F.R. Part 261, Subparts C and D.

34. The Facilities listed in Paragraph 1 are each a “facility” within the meaning of 30 TEX.ADMIN.CODE § 335.1(59), and 40 C.F.R. § 260.10.

35. For the Facilities listed in Paragraph 1 of this CAFO, Rockwater is a “generator” of “hazardous waste” as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69), and 40 C.F.R. § 260.10.

36. As a generator of hazardous waste at or from the facilities, Rockwater is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, 30 TEX.ADMIN.CODE, Chapter 335, and the regulations set forth at 40 C.F.R. Part 262 and 270.

HOBBS, NEW MEXICO

37. Rockwater acquired the Hobbs Facility on or about June 1, 2011.

38. From EPA’s Investigation, and specifically Respondent’s Response I, EPA determined that Respondent assumed ownership of the Hobbs Facility in early 2012.

39. From EPA’s Investigation, and specifically Respondent’s Response I, EPA determined that Respondent collected samples from onsite waste on June 24, 2016.

40. From EPA’s Investigation, and specifically Respondent’s Response I, EPA determine that on July 20, 2016, Respondent obtained results from its sampling event, which confirmed that the waste onsite was “solid waste” as defined at 40 C.F.R. § 261.2.

41. From EPA’s Investigation, and specifically Respondent’s Response I, EPA determined that on July 20, 2016, Respondent obtained results from its sampling event, and in conjunction with information gained from Respondent’s manifest confirmed that the waste onsite

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was also "hazardous waste" as defined at 40 C.F.R §§ 261.21 and 261.22, with the respective waste codes D001 and D002.

42. On September 26, 2016, Respondent shipped its hazardous waste on Manifest 003148430GBF to an offsite treatment, storage, and disposal facility.

43. Respondent recorded a total of 1100 gallons of hazardous waste on Manifest 003148430GBF.

44. EPA converted the 1100 gallons of waste to kilograms and has determined that Respondent shipped off-site at or about 4170 kilograms of hazardous waste, specifically D001 and D002 on Manifest 003148430GBF.

45. From EPA's Investigation, EPA determined that Respondent stored onsite, at a minimum, 4170 kilogram of hazardous waste from June 24, 2016 until September 26, 2016.

46. On or about April 5, 2017, upon being informed the requisite Initial Notification to receive an EPA Identification for the Hobbs Facility was never submitted, Rockwater promptly submitted the Initial Notification to obtain its EPA's identification number for the Hobbs Facility.

SNYDER, TEXAS

47. Rockwater acquired the Snyder Facility on or about June 1, 2011.

48. From EPA's Investigation, and specifically Respondent's Response I, EPA determined that Respondent assumed ownership of the Snyder Facility in early 2012.

49. From early 2012, Rockwater identified several partial and full containers of chemicals on-site from previous activities.

50. From EPA's Investigation, and specifically Respondent's Response II, EPA determined that the Snyder lab operated since Rockwater acquired and assumed ownership of the Snyder Facility from June 2011 and no later than early 2012.

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51. From EPA's Investigation, and specifically Respondent's Response II, EPA determined that Respondent identified chemicals on-site as potentially "outdated products" and hence waste.

52. On October 10, 2014, Respondent collected samples of the waste stored onsite in drums and totes.

53. From EPA's Investigation, and specifically Respondent's Response II, EPA determined that on November 7, 2014, Respondent obtained results from its sampling event, which confirmed that the waste stored on-site in drums and totes was "solid waste" as defined at 30 TEX.ADMIN.CODE § 335.1(138), [40 C.F.R. § 261.2].

54. From EPA's investigation, and specifically Respondent's Response II, EPA determined that on November 7, 2014, Respondent obtained results from its sample event, which confirmed that the waste stored on-site in drums and totes, including waste generated from Respondent's lab were "hazardous waste" as defined at 40 C.F.R §§ 261.21, 261.22 and 261.23, with the respective waste codes D001, D002, D018, D022, D026, D028, and D040.

55. On August 4, 2016, Respondent shipped the hazardous waste on three manifests: 002910735GBF; 002910733GBF; and 002910734GBF to an offsite treatment storage disposal facility.

56. The aggregate quantity of hazardous waste from all three manifests was 24,258 kilograms.

57. From EPA's Investigation, EPA determined that Respondent stored onsite, at a minimum, 24,258 kilogram of hazardous waste from October 21, 2014 through August 4, 2016.

58. On or about July 11, 2016, Rockwater obtained an EPA identification number for the Snyder Facility.

CLAIMS FOR RELIEF

HOBBS, NEW MEXICO

First Claim for Relief

(Failure to Submit Timely and Complete RCRA 3010 Notification)

59. The allegations in Paragraphs 1-46 are realleged and incorporated herein by reference.

60. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating, transporting, and/or, owning or operating a facility for treatment, storage, or disposal of a characteristic or listed hazardous waste shall file with the Administrator a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

61. During the Investigation, EPA determined that from the date of September 26, 2016 through April 5, 2017, Rockwater did not timely request and obtain an EPA Identification number for its Hobbs, New Mexico Facility.

62. During the Investigation, EPA determined that for the periods relevant to this CAFO, Rockwater did not timely file with the Administrator a notification of hazardous waste activities for the Hobbs New Mexico Facility. Specifically, Respondent did not describe all its waste activities, including locations and general description of such activity and the identified characteristic or listed hazardous wastes generated, stored, and managed at its Hobbs Facility as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

63. Respondent has violated Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), for its failure to timely file the required notification(s) for its Hobbs Facility, stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

Second Claim for Relief

(Failure to Make Hazardous Waste Determinations on All Solid Waste Streams)

64. The allegations in Paragraphs 1-46 are realleged and incorporated herein by reference.

65. Pursuant to 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used. Respondent, as a generator of solid waste, is required to make a hazardous waste determination.

66. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that Respondent generated multiple solid waste streams, including the sludge taken from tanks and tote bottoms, for which EPA sought and received no hazardous waste determination made contemporaneously at the point(s) of generation and at the time the waste was generated.

67. Based on EPA's knowledge, gained from the Investigation, about the activities at Rockwater's Hobbs Facility, EPA determined that Rockwater consolidated its waste streams before sampling and did not comply with the methods identified in 40 C.F.R. § 262.11(c)(1).

68. Respondent has violated 40 C.F.R. § 262.11 by failing to timely conduct hazardous waste determinations on all its solid waste streams in the manner proscribed by 40 C.F.R. § 262.11(c)(1).

Third Claim for Relief

(Failure to Comply with the One-Time Written Notice Requirement, LDR)

69. The allegations in Paragraphs 1-46 are realleged and incorporated herein by reference.

70. Pursuant to 40 C.F.R. § 268.7(a)(2) or 40 C.F.R. § 268.7(a)(3)(i), and in accordance with all applicable requirements of 40 C.F.R. § 268.7, Land Disposal Restrictions (LDR), at a

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minimum, a generator with the initial shipment of waste to each treatment, storage, or disposal facility must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file.

71. At all times relevant to this CAFO, Rockwater did not retain a copy of the one-time written notice in its file for the waste sent to each treatment, storage, or disposal facility receiving the waste for its Hobbs Facility.

72. Rockwater has therefore violated 40 C.F.R. § 268.7 of the LDR regulations for prohibited waste for its failure to comply with the one-time written notice requirement for the waste shipped from the Hobbs facility to a treatment, storage, or disposal facility.

Fourth Claim for Relief

(Failure to Comply with the Applicable Generator Requirements)

73. The allegations in Paragraphs 1-46 are realleged and incorporated herein by reference.

74. Based on EPA's knowledge gained from the Investigation, about the activities at Rockwater's Hobbs Facility, EPA determined that Respondent generated at a minimum, 4170 kilograms of hazardous waste on site as early as June 24, 2016 and that during the relevant period that such hazardous waste remained onsite at the Hobbs Facility, Rockwater operated as large quantity generator (LQG).

75. During the period of July 20, 2016 and through September 26, 2016, EPA determined that at the Hobbs Facility, Rockwater operated as a LQG for all "out dated" chemicals at the Hobbs Facility and triggered the LQG requirements.

76. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that Rockwater did not have in place contingency plans, emergency procedures, and/or

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implement the necessary training for the Respondent's employees, and therefore did not comply with the requirements of a LQG.

77. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that for the period of July 20, 2016 through September 26, 2016, Rockwater operated as a LQG at the Hobbs Facility and failed to fully or adequately meet the exemption conditions set forth at 40 C.F.R. §§ 262.34(a)(4)(v) and 262.34 (d)(4) and (d)(5) and therefore violated 40 C.F.R. §§ 270.1 and 270.10.

SNYDER, TEXAS

Fifth Claim for Relief

(Failure to Submit RCRA 3010 Notification(s))

78. The allegations in Paragraphs 1-36 and 47-58 are realleged and incorporated herein by reference.

79. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating, transporting, and/or, owning or operating a facility for treatment, storage, or disposal of a characteristic or listed hazardous waste shall file with the Administrator a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

80. During the Investigation, EPA determined that from October 21, 2014 through July 11, 2016, at a minimum, Rockwater operated without the required EPA Identification number at the Snyder Facility.

81. During the Investigation, EPA determined that from October 21, 2014 through July 11, 2016, Rockwater did not timely file with the Administrator a notification of its hazardous waste activities for the Snyder Facility. Specifically, Respondent did not describe all of its waste activities,

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including locations and general description of such activity and the identified characteristic or listed hazardous wastes generated, stored, and/or managed at its Snyder Facility as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a)

82. Respondent has violated Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), for its failure to timely file the required notification(s) for its Snyder Facility, stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

Sixth Claim for Relief

(Failure to Make Complete and Accurate Hazardous Waste Determinations)

83. The allegations in Paragraphs 1-36 and 47-58 are realleged and incorporated herein by reference.

84. Pursuant to 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 261.2], must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used. Respondent, as a generator of solid waste, is required to make a hazardous waste determination.

85. From EPA's Investigation and a review of Rockwater's Responses I and II, EPA determined that at or about June 15, 2016, Rockwater generated several solid waste streams, and did not make complete and accurate hazardous waste determinations.

86. Based on EPA's knowledge of the activities and operations at Rockwater's Snyder Facility, EPA determined that Rockwater generated several waste streams, including waste streams from its on-site lab, and from the spill that occurred on October 21, 2014, and for which Respondent did not make complete and accurate hazardous waste determinations.

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87. Based on EPA's knowledge, gained from the Investigation, about the activities at Rockwater's Snyder Facility, EPA determined that Rockwater consolidated its waste streams before sampling and did comply with the methods identified in 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11(c)(1)].

88. Respondent has violated 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11] by failing to conduct complete and accurate hazardous waste determinations on all its solid waste streams.

Seventh Claim for Relief

(Failure to Comply with the Applicable Generator Requirements)

89. The allegations in Paragraphs 1-36 and 47-58 are realleged and incorporated herein by reference.

90. During the period of October 21, 2014, through August 4, 2016, EPA determined that during the relevant period that such hazardous waste remained onsite at the Snyder Facility, Rockwater operated at a minimum as small quantity generator (SQG) at its onsite lab, and in several instances triggered the SQG requirements.

91. During the period of October 21, 2014, and through August 4, 2016, EPA determined that during the relevant period that such hazardous waste remained onsite at the Snyder Facility, Rockwater operated at various periods as an LQG for all "out dated" chemicals at the Snyder Facility and triggered the LQG requirements.

92. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that Rockwater did not have in place contingency plans, emergency procedures, and/or implement the necessary training for the Respondent's employees, and therefore did not comply with the requirements of a SQG or a LQG.

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93. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that for the period of October 21, 2014 through August 4, 2016, Rockwater operated in some instances as a LQG and in other instances as a SQG at the Snyder Facility and failed to fully or adequately meet the exemption conditions set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. §§ 262.34(a)(4)(v) and 262.34 (d)(4) and (d)(5)], and therefore violated 30 TEX.ADMIN.CODE § 335.2, [40 C.F.R. §§ 270.1 and 270.10].

Eighth Claim for Relief

(Failure to comply with the Annual/biennial reporting requirements)

94. The allegations in Paragraphs 1-36 and 47-58 are realleged and incorporated herein by reference.

95. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41(a)], a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a Biennial Report to EPA's Regional Administrator, by March 1 of each even-numbered year for the waste generated in each odd number year.

96. EPA has determined that for the period of 2014 through 2016, Rockwater did not submit the requisite Biennial Reports, specifically for the year 2015 for the Snyder Facility.

97. For its non-submittal of the required Biennial Report for the year 2015, Respondent operated the Snyder Facility in violation of 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41(a)].

Ninth Claim for Relief

(Failure to Comply with the Applicable Permit Requirements for the Storage of Hazardous Waste)

98. The allegations in Paragraphs 1-36 and 47-58 are realleged and incorporated herein by reference.

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99. At a minimum, from the date October 21, 2014 through August 4, 2016, Rockwater began storing hazardous waste without a permit or interim status.

100. Specifically, Rockwater stored on site 24,258 kilograms of hazardous waste at its Snyder Facility and in the relevant period operated as a storage facility.

101. From the Investigation and a review of Rockwater's Responses I and II, EPA determined that the Snyder Facility operated without meeting any of the applicable requirements of 30 TEX.ADMIN.CODE § 335.2, [40 C.F.R. Parts 264 and 270].

V.
COMPLIANCE ORDER

102. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within sixty (60) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following to EPA:

- A. Respondent shall certify that it has assessed all its solid waste streams at each Facility listed in Paragraph 1 of this CAFO to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") for each Facility to ensure that Rockwater is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (i) making hazardous waste determinations; (ii) managing hazardous wastes; (iii) reporting, transporting, and disposing of hazardous waste; (iv) preparing its manifests; (v) keeping the required records; and (vi) meeting the requirements of LDR regulations;
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 Notification, where applicable, for each Facility and within the prescribed time period, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930;

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C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above; and

D. If Respondent cannot comply within sixty (60) calendar days of the effective date of this CAFO, Respondent shall notify EPA and request an extension of time, including a timetable for compliance. EPA will grant an extension of up to ninety (90) calendar days. If Respondent determines that it needs longer than the additional ninety (90) calendar days to come into compliance, Respondent will need to initiate a conference call with EPA to discuss the rationale for the delay, before EPA will grant additional extensions.

103. 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 Rockwater 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. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance I Section (6EN-H1)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Tripti Thapa

In the alternative, documents required by this CAFO may be sent to Tripti Thapa via email at Thapa.Tripti@EPA.Gov.

VI.
TERMS OF SETTLEMENT

i. Penalty Provisions

104. 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 Allegations and Alleged Violations, 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 Five Hundred and Fifteen Thousand One Hundred and Nineteen Dollars (\$515,119). The Penalty shall be paid within thirty (30) days of the effective date of this CAFO, and made payable to the Treasurer, United States.

105. 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

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

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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 Rockwater Energy Solution LLC, Docket No. RCRA-06-2018-0918) shall be clearly documented on or within Respondent's chosen method of payment to ensure proper credit.

106. 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, Suite 1200
Dallas, Texas 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Attention: Tripti Thapa

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

107. 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

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and loan rate in accordance with 40 C.F.R. § 13.11(a). 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.

ii. Cost

108. 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. 104-121), and any regulations promulgated pursuant to those Acts.

iii. Termination and Satisfaction

109. 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 so certify in writing and in accordance with the certification language set forth in Section V (Compliance Order), Paragraph 103 of this CAFO. Unless the EPA, 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.

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110. This CAFO resolves the claims set forth in Section IV, Factual Allegations and Alleged Violations, and Rockwater, and its officers, directors, employees, and affiliated entities are released from civil liabilities for causes of action associated with those claims that relate to the Facilities for the years 2011 through 2016 as provided in 40 C.F.R. §§ 22.18(c) and 22.31 upon the termination of this CAFO.

iv. Effective Date of Settlement

111. 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: 5/30/18



ROCKWATER ENERGY SOLUTION, LLC
PAUL PISTONO
EVP

FOR THE COMPLAINANT:

Date: 6/5/18



Cheryl T. Seager
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 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. 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 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/6/18



Thomas Rucki
Regional Judicial Officer

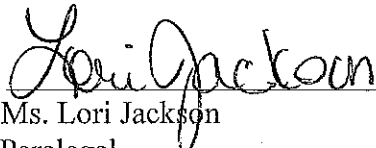
Re: Rockwater Energy Solutions, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of June, 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 identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7015 B2D 0003 39909101

Rockwater Energy Solution, LLC
Adam R. Law
Senior Vice President
General Counsel and Corporate Secretary
515 Post Oak Blvd., Suite 200
Houston, Texas 77027
PH: 713-296-1018


Ms. Lori Jackson
Paralegal

