

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2018 FEB -7 AM 10:58
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

TRACTOR SUPPLY COMPANY

WACO, TEXAS

RESPONDENT

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CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-06-2018-0913

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, Tractor Supply Company Distribution Center 398 ("Respondent") and concerns the facility located at 2801 Corporation Parkway, Waco, Texas 76712 (Distribution Warehouse).

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 following: issuance of the CAFO hereinafter recited; and the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

II. JURISDICTION

7. This CAFO is issued by 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).

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. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a Company authorized to do business in the State of Texas.

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 § 3.2(25) [40 C.F.R. § 260.10].

11. Pursuant to 30 TEX. ADMIN. CODE §§ 335.1(109) and (110) (40 C.F.R. § 260.10), Respondent, at all times relevant to this CAFO, was an “owner” or “operator” of the Distribution Warehouse.

12. The Distribution Warehouse is a facility that acts as a warehouse for the other facilities.

13. During the period from December 2016 to September 2017, EPA conducted a RCRA record review 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 discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste having the following hazardous waste codes:

- a. Characteristic of Ignitability (D001), Corrosivity (D002);
- b. Characteristic for toxicity: D005, D006, D007, D008, D035; and
- c. U002, U080, U154, U240, U244, U247, U248, and U279.

15. The Distribution Warehouse is a “facility” within the meaning of 30 TEX. ADMIN. CODE § 335.1(60), [40 C.F.R. § 260.10].

16. The waste streams identified in Paragraph 14 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].

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

18. From the Investigation, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the 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.

19. 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].

Claim 1: Notification Requirements

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

21. 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.

22. 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.

23. 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.

24. Respondent’s Distribution Warehouse during the relevant time period, did not have nor apply for an EPA identification number.

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

26. At the time of the investigation, Respondent had not filed with EPA or Texas an adequate and timely notification of its hazardous waste activities at the Distribution Warehouse.

27. Respondent’s failure to provide notification to EPA or Texas of its hazardous waste activities was a violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

28. EPA finds at all relevant times to the CAFO, the Distribution Warehouse 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)].

29. On February 22, 2017, in response to Respondent's Notification, TCEQ issued a Notice of Registration for the Distribution Warehouse. The Distribution Warehouse has been assigned EPA ID TXR000084084.

IV. TERMS OF SETTLEMENT

A. Penalty Provisions

30. 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 **\$33,900.00**

31. 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.

32. 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
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 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 Tractor Supply Company, Docket No. RCRA-06-2018-0913**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

33. 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
Dallas, TX 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attention: Enforcement Officer Ashley Pederson

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

34. 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). 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 fifteen dollar (\$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 fifteen dollars (\$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

35. 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

36. When Respondent believes that it has complied with all the requirements of this CAFO, including payment of the civil penalty, Respondent shall certify this in writing. 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. Effective Date of Settlement

37. 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: January 31, 2018


Tractor Supply Company - Benjamin F. Parrish, Jr.
Executive Vice President, General
Counsel and Corporate Secretary

FOR THE COMPLAINANT:

Date: 2/8/2018


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: _____

2/7/18



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of February, 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: 7001 0360 0003 6674 8315

Angela Jean Levin
Troutman Sanders LLP on behalf of Tractor Supply Company
580 California Street, Suite 1100
San Francisco, CA 94104

Hari Jackson