

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Cactus Environmental Services, Inc.

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2021-0914

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, Cactus Environmental Services ("Respondent" or "Cactus") and concerns the facility located at 4960 Singleton Blvd Dallas, Texas 77060 ("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)¹.
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.

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.

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 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 Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

Jeffrey Clay
clay.jeffrey@epa.gov

To Respondent:

Jason Boatright
jboatright@canteyhanger.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 Code of Federal Regulations (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 and authorized to do business in the State of Texas. Respondent is a small business pursuant to the Small Business Administration guidelines.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 335.2(25), [40 C.F.R. § 260.10].
12. Respondent owns and operates the Facility.
13. The Facility is engaged in waste management providing clean-up and transportation services for hazardous and non-hazardous waste.
14. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
15. During 2019, EPA conducted an investigation of the Respondent's activities as a transporter of hazardous wastes.
16. EPA reviewed manifests and determined that Respondent held hazardous wastes in excess of 10 days as defined in 30 TEX.ADMIN.CODE § 335.94, [40 C.F.R. § 263.12(a)].
17. Respondent is a "transporter" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 324.2 and §§ 335.1(164) & (73) [40 C.F.R. § 279.1; 40 C.F.R. § 260.10].
18. As a hazardous waste transporter, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 Texas Admin. Code 335 Subchapter C, [40 C.F.R Part 263].

19. On July 10, July 17, August 12 and August 14, 2020, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.
20. From the investigation, EPA determined Respondent's Facility, at a minimum, failed to transport waste within the time frame allowed for transporters of hazardous waste.

IV. ALLEGED VIOLATIONS

Claim 1. Transfer Facility Requirements

21. The allegations in Paragraphs 1-20 are re-alleged and incorporated herein by reference.
22. Pursuant to 30 TEX.ADMIN. CODE § 335.94, [40 C.F.R. § 263.12(a)], a transporter can store manifested hazardous waste at a transfer facility for no longer than 10 days during the course of transportation to a permitted treatment, storage, and disposal facility.
23. A review of manifests related to Respondent's hazardous waste transportation identified manifested shipments of hazardous waste that were stored at the Facility for more than 10 days.
24. Therefore, EPA alleges that CACTUS is in violation of 30 TEX.ADMIN.CODE §335.94 [40 C.F.R. § 263.12(a)].

V. COMPLIANCE ORDER

25. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 60 calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has updated its operations and procedures to include all RCRA requirements promulgated thereunder, including: (a) development and implementation of standard operating procedures ("SOPs") to ensure that Respondent is operating the Facility in compliance with RCRA and the regulations, (b) manage transport

and storage of hazardous wastes within regulations; and (c) meet the requirements of SPCC plan.

- B. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
- C. Respondent shall provide to EPA an estimate the cost of implementation of injunctive relief.
- D. Respondent shall provide to EPA an estimate of the environmental benefit (reduction of waste or reduction in the toxicity of waste).

26. 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 electronically sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECD-SR)
ATTN: Debra Pandak
Dallas, Texas 75270-2102
pandak.debra@epa.gov

Where required, notice shall be sent electronically by email to Enforcement Officer Debra Pandak at pandak.debra@epa.gov.

IV. TERMS OF SETTLEMENT

A. Penalty Provisions

27. 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 Thousand, Two-Hundred and Ninety-Four Dollars (\$20,294)**.
28. The penalty shall be paid over a 24-month period, to begin 30 days after the effective date of this CAFO and made payable, in equal payments, to the "Treasurer of the United States."
29. 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 Cactus Environmental Services, Docket No. RCRA-06-2021-0914**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECD-SR)
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.

31. As part of settlement agreements, EPA has agreed to waive interest payment during the 24-month payment schedule.

32. However, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent

thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

33. 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

34. 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

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

Cactus Environmental Services, Inc.
RCRA-06-2021-0914

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

FOR THE RESPONDENT:

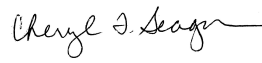
Date: _____

Jeremy Orr Digitally signed by Jeremy Orr
Date: 2021.03.01 07:35:10
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Cactus Environmental Services, Inc.
Jeremy Cactus, President

Cactus Environmental Services, Inc.
RCRA-06-2021-0914

FOR THE COMPLAINANT:



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: 2021.03.03 11:11:48 -06'00'

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.

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.03.03 14:40:53 -06'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify 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, Suite 500, 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:

jboatright@canteyhanger.com

Copy via electronic mail to 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,
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Date: 2021.03.03 18:42:14 -06'00'

EPA Region 6