

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

FILED

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REGIONAL HEARING STAFF  
EPA REGION VI

IN THE MATTER OF:

THE GREEN PROJECT, INC.

NEW ORLEANS, LOUISIANA

RESPONDENT

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CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. RCRA-06-2017-0933

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**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 The Green Project, Inc. (Respondent), and concerns the facility located at 2831 Marais Street, New Orleans, Louisiana (facility).

2. Notice of this action has been given to the State of Louisiana, 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 these proceedings, Respondent admits the jurisdictional allegations herein.

4. 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.

5. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

6. This CAFO resolves only those violations that are alleged herein.

7. 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**

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), 22.18(b)(2), and 22.18(b)(3).

9. 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. Furthermore, Respondent 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 non-profit corporation registered to do business in the State of Louisiana on March 7, 1994 (formerly Mid-City Green Project, Inc. and changed to The Green Project, Inc. on November 13, 1997).

11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), (40 C.F.R. § 260.10); and within the meaning of LA. ADMIN. CODE 33:V.109 (40 C.F.R. § 260.10).

12. Respondent is an "owner" or "operator" of the facility within the meaning of LA. ADMIN. CODE 33:V.109 (40 C.F.R. §260.10).

13. Respondent is a “generator” of “hazardous waste” at the facility, as the terms are defined in LA. ADMIN. CODE 33:V.109 (40 C.F.R. § 260.10).

14. 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 at 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at LA. ADMIN. CODE 33:V.Chapters 1 through 51 (40 C.F.R. §§ 262 and/or 270).

15. The exemptions set forth at LA. ADMIN. CODE 33:V.108.C, [40 C.F.R. § 261.5(c)], are not applicable to Respondent.

16. Between October 2016 and April 2017, EPA conducted an investigation and record review (Investigation) of Respondent’s performance as a hazardous waste generator and compliance with RCRA and the regulations promulgated thereunder.

17. Respondent, during all relevant times to this CAFO, was registered as a Conditionally Exempt Small Quantity Generator (CESQG).

18. From the Investigation, EPA determined that during months in 2013 and 2014, Respondent generated and offered for transport, hazardous waste with the following waste codes:

- a) D001;
- b) D005;
- c) D007;
- d) D035;
- e) F003; and
- f) F005.

19. The waste streams identified in Paragraph 18 are hazardous waste as defined in LA. ADMIN. CODE 33:V.4901 and 4903 (40 C.F.R. § 261.3).

20. Respondent generated the hazardous waste streams, identified in Paragraph 18, during 2013 and 2014 at quantities that exceeded the threshold amount for a CESQG of 100 kilograms of hazardous waste per month.

21. While generating waste at the rate of a large quantity generator, Respondent did not have an adequate contingency plan, emergency procedures, and/or RCRA specific training.

**Claim I: Notification Requirements**

22. A generator of hazardous waste is subject to certain requirements, including the applicable parts of LA. ADMIN. CODE 33:V.Chapters 1 through 51 (40 C.F.R. Parts 124, 262-68, 270).

23. 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 the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

24. During the applicable months in 2013 and 2014 when Respondent generated hazardous waste at the rate of a LQG, Respondent was registered as a CESQG.

25. During the applicable months in 2013 and 2014, Respondent did not file a subsequent notification.

26. Respondent did not file with the Administrator or with the authorized State an adequate and subsequent notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Claim II: Failure to Operate Within Stated Generator Status**

27. Complainant hereby restates and incorporates by reference Paragraphs 1 through 26.

28. A generator of hazardous waste is subject to certain requirements, including the applicable parts of LA. ADMIN. CODE 33:V.Chapters 1 through 51 (40 C.F.R. Parts 124, 262-68, 270).

29. Pursuant to LA. ADMIN. CODE 33:V.108 and 40 C.F.R. § 261.5(b), as long as a CESQG generator complies with the applicable requirement under LA. ADMIN. CODE 33:V.108.E, F, G, and J and 40 C.F.R. §§ 261.5(e), (f), (g) and (j) the generator's hazardous waste is not subject to regulation under LA. ADMIN. CODE 33:V. Chapters 3-37, 41, 43, and 53, except for LA. ADMIN. CODE 33:V .3105, Table 1; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.

30. Respondent generated the hazardous waste streams, identified in Paragraph 18, during 2013 and 2014 at quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month.

31. While generating waste at the rate of a large quantity generator, Respondent did not have an adequate contingency plan, emergency procedures, and/or RCRA specific training.

32. Respondent failed to comply with the requirements of a LQG, at all times relevant to this CAFO, pursuant to the applicable parts of LA. ADMIN. CODE 33:V.Chapters 1 through 51 (40 C.F.R. Parts 124, 262-68, 270).

### **Claim III. Failure to Make Accurate Hazardous Waste Determination**

33. Complainant hereby restates and incorporates by reference Paragraphs 1 through 32.

34. Respondent did not have the necessary records, whether through process knowledge or analytical results, to indicate it made an adequate hazardous waste determination on its waste streams that were shipped out in 2013 and 2014.

35. Respondent failed to make adequate hazardous waste determination on its solid waste streams in violation of Section 3002 of RCRA, 42 U.S.C. § 6922, and the applicable regulatory requirements of the LA. ADMIN. CODE 33:V.1103, [40 C.F.R. § 262.11].

#### IV. COMPLIANCE ORDER

36. Pursuant to RCRA § 3008(a), 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 certify the following:

- a. Respondent has developed and implemented standard operating procedures to ensure that it is operating in compliance with RCRA and the regulations promulgated thereunder. This includes, but is not limited to, procedures for:
  - i. making hazardous waste determinations;
  - ii. training personnel involved in managing hazardous waste; and
  - iii. reporting, transporting, and disposing of hazardous waste.

37. 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 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 the CAFO shall be sent to the following:

Fred Deppe  
U.S. Environmental Protection Agency  
Compliance Assurance and Enforcement Division  
Waste Enforcement Branch  
Waste Compliance II Section (6EN-H2)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

## V. TERMS OF SETTLEMENT

### A. Penalty Provisions

38. 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, Respondent's good faith efforts to comply with the applicable regulations, and after conducting an ability to pay analysis, it is ordered that Respondent be assessed a civil penalty of \$5,000.00.

39. The following are Respondent's options for transmitting the penalties:

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Checks sent via Overnight Mail (non-U.S. Postal Service) 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 Transfers should be remitted to:

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 The Green Project, Inc., Docket No. RCRA-06-2017-0933**) shall be documented on or within your chosen method of payment to ensure proper credit.

40. 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, Branch Chief  
Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733  
Attn: Fred Deppe

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

41. 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 of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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 that remains delinquent more than ninety (90) days pursuant to 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 pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. Costs**

42. 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**

43. 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 IV (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. Effective Date of Settlement**

44. 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: 06/27/2017

  
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The Green Project, Inc.

FOR THE COMPLAINANT:

Date: July 25, 2017


  
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Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement 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: 8-7-17

  
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Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of August, 2017, 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** 70051820000374510478

Catherine Crowell  
Executive Director  
The Green Project, Inc.  
2831 Marais Street  
New Orleans, Louisiana

*for Sandra Hardy*  
\_\_\_\_\_  
Ms. Lori Jackson  
Paralegal