



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 13 2011

Dennis M. Stotts
Senior Attorney
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, Florida 34205

SUBJ: Contender Boats, Inc., Homestead, Florida Facility
Consent Agreement and Final Order, Docket No. RCRA-04-2011-4006(b)

Dear Dennis,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CAFO) resolving the violations of the Resource Conservation and Recovery Act alleged by EPA against Contender Boat, Inc.'s, Homestead, Florida, facility (Contender). Please note that payment of Contender's penalty is due within thirty days of the effective date of the CAFO. The effective date of the CAFO is the date the CAFO is filed with the Regional Hearing Clerk

Thank you for your assistance in getting this matter resolved. If you have any questions, please call me at (404) 562-9544.

Sincerely,

A handwritten signature in cursive script that reads "Joan".

Joan Redleaf Durbin
Senior Attorney
US EPA, Region 4

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2011-4006(b)
)
Contender Boats, Inc.) Proceeding under Section 3008(a) of the
1820 S.E. 38th Avenue) Resource Conservation and
Homestead, Florida 33035) Recovery Act, 42 U.S.C. § 6928(a)
)
EPA ID No.: FLR000027573)
)
Respondent)
_____)

HEARING CLERK

2011 SEP 13 PM 2:24

RECEIVED
EPA REGION IV

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of the Florida Statutes (F. S.), Part IV Resource Recovery and Management, Section 403.702 et seq. (LEXIS 2006) (Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq.). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of Sections 403.702 et seq. F.S., and regulations promulgated pursuant thereto and set forth at Chapters 62-730 et seq., Florida Administrative Code Annotated Rules (Fla. Admin. Code Ann. r.) (regulations promulgated pursuant to RCRA and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270).
2. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is Contender Boats, Inc., a corporation incorporated under the laws of the State of Florida. Respondent operates a facility located at 1820 S.E. 38th Avenue, Homestead, Florida (Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida (the State) received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in Sections 403.702 et seq., F.S., and Fla. Admin. Code Ann. r. 62-730 et seq.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the State's authorization status. On November 17, 2000, the State received authorization under HSWA.
8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, in January 1994 and October 2001, the State received final authorization from EPA to carry out the used oil management program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in Sections 403.702 et seq. F.S., and Fla. Admin. Code Ann. r. 62-710 and 62-730 et seq.
9. Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
10. As the authorized provisions of Florida's hazardous waste program operate in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized Florida program, however, for ease of reference, the federal citations will follow in parentheses.
11. Section 403.721, F.S., (Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)) requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. Part 262).
12. Section 403.722, F.S., (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)) requires that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found in Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 (40 C.F.R. Parts 124, 264, 265 and 270).
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.020 (40 C.F.R. § 261.2), a "solid waste" is any discarded material that is not otherwise excluded by regulation.

14. Pursuant to Fla. Admin. Code Ann. r. 62-730.020 (40 C.F.R. § 261.3), a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under Fla. Admin. Code Ann. r. 62-730.030 (40 C.F.R. § 261.4(b)) and it meets any of the criteria set out in this section.
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.020 (40 C.F.R. § 260.10), a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.”
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.030 (40 C.F.R. § 261.20), a solid waste that exhibits any of the characteristics identified in Fla. Admin. Code Ann. r. 62-730.030 (40 C.F.R. §§ 261.21 through 261.24), is a characteristic hazardous waste.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.030 (40 C.F.R. § 261.21), a solid waste that exhibits the characteristic of ignitibility is a hazardous waste with the EPA Hazardous Waste Number of D001.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.030 (40 C.F.R. § 261.30), a solid waste that is listed in Fla. Admin. Code Ann. r. 62-730.030 (Subpart D of 40 C.F.R. Part 261), is a listed hazardous waste.
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)), a generator of greater than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that the generator complies with the management requirements listed in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(1)-(c)(2)) (hereinafter referred to as the “permit exemption”).
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(1)(i)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.173), which states a generator must keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(1)(i)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.174), which states a generator must inspect areas where hazardous waste containers are stored at least weekly. In addition, Fla. Admin. Code Ann. r. 62-730.160(6) requires that written documentation of the inspections be kept at least three years from the date of the inspection.
22. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(2)), a condition of the permit exemption requires a generator to clearly mark the date upon which each period of accumulation begins on each container and make sure the date is clearly visible.
23. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(3)), a condition of the permit exemption requires a generator to label or mark clearly the words “Hazardous Waste” on each container and tank accumulating hazardous waste on site.

24. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(b)), which states facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part within six months after the date of their employment or assignment to a facility.
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(c)), which states facility personnel must take part in an annual review of the program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.
26. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(d)), which states the owner or operator must maintain the following documents and records at the facility:
 - (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - (2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
 - (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section; and
 - (4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), a condition of the permit exemption requires a generator to comply with Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.53(b)), which states a generator must submit its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(b)), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 (40 C.F.R. §§ 264 and 265 and the permit requirements of 40 C.F.R. § 270).
29. Pursuant to Fla. Admin. Code Ann. r. 62-710.210 (40 C.F.R. § 279.1), "used oil" means "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

30. Pursuant to Fla. Admin. Code Ann. r. 62-710.210 (40 C.F.R. § 279.1), “used oil generator” means “any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.”
31. Pursuant to Fla. Admin. Code Ann. r. 62-710.210 (40 C.F.R. § 279.22(c)(1)), containers and aboveground storage tanks used to store used oil at used oil generator facilities must be labeled or marked clearly with the words “Used Oil.”
32. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.

IV. EPA ALLEGATIONS AND DETERMINATIONS

33. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020 (Section 40 C.F.R. § 260.10).
34. Respondent is the owner and operator of a “facility” located at 1820 S.E. 38th Avenue, Homestead, Florida, as defined in Fla. Admin. Code Ann. r. 62-730.020 (40 C.F.R. § 260.10).
35. On June 10, 2009, a representative of EPA and representatives of the Florida Department of Environmental Protection (FDEP) performed a RCRA compliance evaluation inspection (CEI) of Respondent’s Facility.
36. At the Facility, Respondent manufactures fiberglass hulled sport fishing boats.
37. At the facility, Respondent uses acetone as a solvent to clean its equipment. Respondent’s spent solvent is a solid waste pursuant to Fla. Admin. Code Ann. r. 62-730.020 (40 C.F.R. § 261.2).
38. The spent acetone solvent generated by the Respondent exhibits the characteristic of ignitability and is therefore D001 hazardous waste.
39. The spent acetone solvent generated by the Respondent is listed in 40 C.F.R. § 261.31 and is therefore F003 hazardous waste.
40. Respondent, as a result of facility operations, is a generator of hazardous waste. Respondent generates greater than 1,000 kilograms of hazardous waste in a calendar month.
41. At the time of the CEI, Respondent had two 55-gallon drums of hazardous waste in the waste storage area that had a beginning date of accumulation of 10/2/06, meaning the drums were stored on-site for 982 days. At the time of the CEI, Respondent did not have a storage permit. Pursuant to Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(b)), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility. EPA therefore alleges the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925) for operating a hazardous waste storage facility without a permit or interim status.

42. At the time of the CEI, Respondent had thirty 55-gallon drums of D001/F003 hazardous waste in the Hazardous Waste Storage Area that were not marked with the beginning date of accumulation. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(2)), which states the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
43. At the time of the CEI, Respondent had thirty 55-gallon drums of D001/F003 hazardous waste in the Hazardous Waste Storage Area that were not marked with the words "Hazardous Waste." EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(3)), which states that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste."
44. At the time of the CEI, Facility personnel had not completed a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part within six months after the date of their employment or assignment to a facility. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(b)), which states facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part within six months after the date of their employment or assignment to a facility.
45. At the time of the CEI, Facility personnel had not taken part in an annual review of the program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(c)), which states facility personnel must take part in an annual review of the program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.
46. At the time of the CEI, Respondent did not have the job title, written job description, written description of required training, and records that document the training for each position listed in Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(d)(1)) at the facility related to hazardous waste management. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere

to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.16(d)), which states the owner or operator must maintain the following documents and records at the facility:

- (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - (2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
 - (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section; and
 - (4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.
47. At the time of the CEI, Respondent had not submitted its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(4)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.53(b)), which states a generator must submit its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
48. At the time of the CEI, Respondent was accumulating hazardous waste in containers that were open. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing and treating hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(1)(i)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.173), which states a generator must keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
49. At the time of the CEI, Respondent was not performing weekly inspections of areas where containers of hazardous waste were being stored. EPA therefore alleges that the Respondent has violated Section 403.722 F.S., (Section 3005 of RCRA, 42 U.S.C. § 6925), for storing hazardous waste without a permit or interim status because the Respondent failed to adhere to a condition for permit exemption found in Fla. Admin. Code Ann. r. 62-730.160 (40 C.F.R. § 262.34(a)(1)(i)), which references Fla. Admin. Code Ann. r. 62-730.180 (40 C.F.R. § 265.174), which states a generator must inspect areas where hazardous waste containers are stored at least weekly.

50. At the time of the CEI, Respondent was storing used oil in containers that were not labeled or marked clearly with the words "Used Oil." EPA therefore alleges that the Respondent has violated Fla. Admin. Code Ann. r. 62-710.210 (40 C.F.R. § 279.22(c)(1)).

V. TERMS OF AGREEMENT

Based on the foregoing Allegations and Determinations, the parties agree to the following:

51. For the purpose of this CAFO, Respondent admits the jurisdictional allegations set out above.
52. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the Allegations and Determinations contained in this CAFO.
53. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations contained herein, and its right to appeal this CAFO.
54. Respondent waives its right to challenge the validity of this CAFO and the settlement of the violations alleged herein, on the basis of any issue related to the Paperwork Reduction Act.
55. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO.
56. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.
57. The parties agree that they will pay their own costs and attorney's fees.
58. The parties agree that compliance with the terms of this CAFO shall resolve the alleged violations of RCRA in this CAFO.

VI. CIVIL PENALTY

59. Respondent consents to the payment of a civil penalty in the amount of Fifty-Thousand Dollars (\$50,000), plus 1% interest pursuant to 31 U.S.C. § 3717, which is to be paid in quarterly installments over a period of two years. The initial payment is due within 30 days of the Effective Date of this CAFO. Each subsequent payment shall be due 90 days after the previous payment. If Respondent fails to make a scheduled payment for 30 days after the due date, all subsequent payments become immediately due and payable on the 31st day from such due date.
60. Payments shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of each check. Payments shall be tendered to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street N.W.
Washington, DC 20074
Contact: Jesse White, (301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

and to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

61. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore, begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest - Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge - Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
 - c. Non-Payment Penalty - On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
62. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 28 U.S.C. § 162(f).

VII. PARTIES BOUND

63. This CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, and agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.
64. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
65. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to this CAFO.

VIII. RESERVATION OF RIGHTS

66. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.
67. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.
68. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
69. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
70. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
71. The provisions of this CAFO shall be deemed satisfied upon Respondent's full implementation of the actions required in this CAFO.

IX. OTHER APPLICABLE LAWS

72. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

73. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Joan Redleaf Durbin
Senior Attorney
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

74. A copy of any documents that Complainant files in this action shall be sent to the following person who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Dennis M. Stotts
Senior Attorney
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, Florida 34205

XI. SEVERABILITY

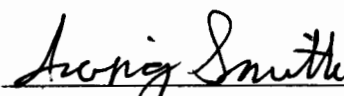
75. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

76. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

Contender Boats, Inc.

By: 
Irving Smith
Chief Operating Officer

Dated: 9/6/2011

U.S. Environmental Protection Agency

By: 
Frank N. Ney, Acting Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 9/8/11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2011-4006(b)
)
Contender Boats, Inc.) Proceeding under Section 3008(a) of the
1820 S.E. 38 th Avenue) Resource Conservation and
Homestead, Florida 33035) Recovery Act, 42 U.S.C. § 6928(a)
)
EPA ID No.: FLR000027573)
)
Respondent)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 13th day of Sept., 2011.

BY: Susan S. Schub
Susan S. Schub
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Contender Boats, Inc., Docket Number: RCRA-04-2011-4006(b), on the parties listed below in the manner indicated:

Joan Redleaf Durbin
OEA – 13th Floor
U.S. EPA – Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

(Via EPA's internal mail)

Alan A. Annicella,
RCRA Division – 10th Floor
U.S. EPA – Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

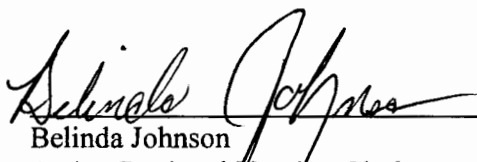
(Via EPA's internal mail)

Dennis M. Stotts
Senior Attorney
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, Florida 34205

(Via Certified Mail – Return Receipt Requested)

Date

9/13/2011


Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303