

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) DOCKET NO. RCRA-04-2007-4012(b)
)
CAROLINA LOGISTICS SERVICES,)
INCORPORATED) PROCEEDING UNDER SECTION
5295 LOGISTICS DR., STE. 103) 3008(a) OF THE RESOURCE
MEMPHIS, TENNESSEE 38118) CONSERVATION AND
) RECOVERY ACT,
) 42 U.S.C. § 6928(a)
EPA ID No.: TNR 000 019 919)
)
RESPONDENT)
_____)

RECEIVED
EPA REGION IV
2009 MAY 14 AM 7:47
HEARINGS CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.*, and the Tennessee Code Annotated (T.C.A.) § 68-212-101 *et seq.*, as amended. This action is seeking civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and T.C.A. and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270 and 273, and Tennessee Rule (TR) Chapter 1200-1-11.
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 (CA/FO). 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 CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

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

5. Respondent is Carolina Logistics Services, Inc. (CLS), a corporation incorporated under the laws of North Carolina and doing business in the State of Tennessee. The business is located at 5295 Logistics Drive, Memphis, Tennessee 38118.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 5, 1985, the State of Tennessee received final authorization to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The requirements of the authorized program are found at T.C.A. §68-212-101 et seq. and TRC Chapter 1200-1-11.
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 effective in all states regardless of their authorization status and are implemented by EPA until the State is granted final authorization with respect to those requirements. On December 26, 2000, the State of Tennessee received authorization under HSWA.
8. 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) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant gave written notice of this action to the State of Tennessee before the issuance of this CA/FO
10. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), and T.C.A. 68-212-101, et seq., sets forth standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262 and TN Chapter 1200-1-11.
11. Section 3004 of RCRA, 42 U.S.C. § 6922, and T.C.A. 68-212-101, et seq., sets forth standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at 40 C.F.R. Part 264 and TN Chapter 1200-1-11-.06.
12. Section 3005 of RCRA, 42 U.S.C. § 6925, and T.C.A. 68-212-101, et seq., set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 40 C.F.R. Parts 264 (permitted) and 265 (interim status) and TN Rules 1200-01-11-.05 (interim status) and 1200-01-11-.06 (permitted).
13. Pursuant to 40 C.F.R. § 261.2 and TN Rule 1200-01-11-.02(1)(b), a “solid waste” is any discarded material that is not otherwise excluded by regulation.

14. Pursuant to 40 C.F.R. § 261.3 and TN Rule TN Rule 1200-01-11-.02(1)(c), 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 TN Rule 1200-01-11-.02(1)(d) and it meets any of the criteria set out in this section.
15. Pursuant to 40 C.F.R. § 260.10 and TN rule 1200-01-11-.01, a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in TN Rule 12-01-11-.02.” [40 C.F.R. § 261.3]
16. Pursuant to 40 C.F.R. § 262.34(a)(1) and TN Rule 1200-1-11-.03(4)(e)(1), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator complies with the management requirements listed in this subpart.
17. Pursuant to 40 C.F.R. § 262.34(a)(2) and TN Rule 1200-1-11-.03(4)(e)(2), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator clearly mark the date accumulation begins on the container.
18. Pursuant to 40 C.F.R. § 262.34(a)(3) and TN Rule 1200-1-11-.03(4)(e)(3), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator mark each container with the words “Hazardous “Waste” while the waste is being accumulated onsite.
19. Pursuant to 40 C.F.R. § 262.34(c) and TN Rule 1200-1-11-.03(4)(e)(5), a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near the point of generation without a permit or interim status provided he marks his containers with the words “Hazardous Waste” or other words that identify the contents. Once the 55-gallon limit of hazardous waste or one quart limit of acutely hazardous waste is exceeded, the excess accumulation of hazardous waste must be marked with the date the excess began accumulating.
20. Pursuant to 40 C.F.R. § 262.34(a)(1)(I) and TN Rule 1200-1-11-.03(3)(f), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator complies with Preparedness and Prevention requirements of 40 C.F.R. Part 265, Subpart C and TN Rule 1200-1-11-.05(3).
21. Pursuant to 40 C.F.R. § 265.35 and TN 1200-1-11-.05(3)(f), a generator must maintain aisle space to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency.
22. Pursuant to 40 C.F.R. § 262.20 and TN Rule 1200-1-11-.03(3), a generator who offers for transportation hazardous waste for offsite treatment, storage or disposal must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in Appendix I of TN Rule 1200-1-11-.03(9)(a) [appendix to 40 C.F.R. Part 262]. These instructions require that the

generator include his EPA identification number and the identification of the generator on the manifest.

23. Pursuant to 40 C.F.R. § 262.34(a)(1)(i) and TN Rule 1200-1-11-.03(4), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator complies with the container management standards under 40 C.F.R. Part 264, Subpart C and TN Rule 1200-1-11-.05(9).
24. Pursuant to 40 C.F.R. § 265.174 and TN Rule 1200-1-11-.5(9)(e), the owner/operator must inspect areas where containers are stored, at least weekly, looking for leaks and deterioration caused by corrosion or other factors.
25. Pursuant to 40 C.F.R. 262.34(a)(4), a generator may accumulate hazardous waste on site for 90-days or less without a permit or without having interim status provided that generator complies with the requirements for owners or operators in Subpart C and D in 40 C.F.R. Part 265 and TN Rule 1200-1-11-0.5(3) and (4).
26. Pursuant to 40 C.F.R. § 265.52(d) and TN Rule 1200-1-11-.05(4)(c)(4), the contingency plan required by this subsection must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.
27. Pursuant to 40 C.F.R. § 265.52(e) and TN Rule 1200-1-11-.05(4)(c)(5), the contingency plan required by this subsection must include a list of all emergency equipment, such as fire extinguishing systems, spill control equipment, communication and alarm systems, and decontamination equipment. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capacities. names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.
28. Pursuant to 40 C.F.R. § 265.53(b) and TN Rule 1200-1-11-.05(4)(d), a copy of the contingency plan and all revisions to the plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

IV. EPA ALLEGATIONS AND DETERMINATIONS

29. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and TN Rule 1200-01-11-.01(2)(a).
30. Respondent is the "owner" and "operator" of a "facility," as those terms are defined in 40 C.F.R. § 260.10 and TN Rule 1200-01-11-.01(2)(a).
31. Respondent began its operation at its current location in March 2005 and was assigned the site specific EPA ID number TNR 00-001-9919 by TDEC.

32. On November 16-17, 2006, EPA and TDEC conducted a RCRA Compliance Evaluation Inspection (CEI) of Respondent's facility, accompanied by Alfred Taylor, Facility Manager.
33. Respondent operates as a return goods service center in a centralized warehouse. Respondent receives, sorts, redistributes, stores, or disposes of damaged, off-spec, or outdated consumer goods based on the originating manufacturer's specification. Customers returning the goods receive a return credit from the manufacturer.
34. Some of the damaged, off-spec, or outdated consumer goods qualify as a hazardous waste when discarded. Respondent determines whether the goods qualify as hazardous waste upon receipt at the warehouse. Respondent's hazardous waste stream consists of a myriad of discarded consumer products, such as sun screen, personal care items, and over-the-counter medications.
35. Respondent's facility consists of roughly 44,000 square foot of warehouse space, which encompasses a staging area, 2 grocery scan lines, a S.C. Johnson line, and several storage areas.
36. Respondent's waste streams are characteristically hazardous for ignitability (D001) and corrosivity (D002) as those terms are defined at 40 C.F.R. §§ 261.21 and 261.22 and TN Rule 1200-1-11.02(3)(b) and (c).
37. At the time of the CEI, the Respondent was operating five less-than-90-day storage areas which contained a total of 188 containers. Of these, 188 containers were not marked with the words "hazardous waste" and approximately 167 were not marked with the date of accumulation.
38. EPA therefore alleges that Respondent violated 40 C.F.R. § 262.34(a)(2) and TN Rule 1200-1-11-.03(e)(2) by storing 167 containers of hazardous waste without marking the date of accumulation on each container.
39. EPA also alleges that Respondent violated 40 C.F.R. § 262.34(1)(3) and TN Rule 1200-1-11-.03(e)(3) by storing 188 containers of hazardous waste without marking each container with the words "Hazardous Waste."
40. At the time of the CEI, one of the less-than-90 day storage areas contained at least 106 containers of hazardous waste that had been stored in excess of 90 days. Respondent does not have interim status or a permit for storage of hazardous waste.
41. EPA therefore alleges that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and T.C.A. 68-212-108 and the implementing regulations under 40 C.F.R. Parts 264 and 265 and TN Rules 1200-01-11-.05 by operating a storage facility without interim status or a permit.

42. At the time of the CEI, Respondent was storing containers of hazardous waste on metal shelving racks, some of which were over 4 racks high. On each rack, containers were stacked one on top of the other. Some of the stacks on the highest racks were over five containers high. No space was left between the containers on a pallet or between the pallets themselves. The stacked containers were so crowded that it would be impossible to inspect the integrity of the containers or allow for the unobstructed movement of personnel, fire protection equipment, and decontamination equipment in the event of an emergency.
43. Therefore, EPA alleges Respondent violated 40 C.F.R. § 265.35 and TN Rule 1200-1-11.05 (3)(f) by failing to maintain adequate aisle space in its container storage areas.
44. At the time of the CEI, Respondent was not inspecting the containers at least weekly to look for signs of leaks and deterioration caused by corrosion or other factors.
45. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 265.174 and TN Rule 1200-1-11-.05(9)(e) by failing to conduct weekly inspections of its containers.
46. At the time of the CEI, Respondent's Contingency Plan was inadequate. The Plan lacked the name, home address, and phone numbers (home and office) of the emergency coordinators, or a list of emergency equipment at the facility. In addition, Respondent could not demonstrate that copies of the Plan had been submitted to all local police departments, fire departments, hospital, and State and local emergency response teams that may be called upon to provide emergency services.
47. Therefore, EPA alleges that Respondent violated 40 C.F.R. 265.52(e) and TN Rule 1200-1-11-.05(4)(c)(5) for failing to provide an adequate contingency plan.
48. EPA also alleges that Respondent violated 40 C.F.R. § 265.53(b) and TN Rule 1200-1-11-.05(4)(d) by failing to provide a copy of the Contingency Plan to all local police departments, fire departments, hospital, and State and local emergency response teams that may be called upon to provide emergency services.

V. TERMS OF AGREEMENT

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

49. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
50. The Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
51. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

52. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
53. Respondent waives any right it may have pursuant to 40 CFR § 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 CA/FO.
54. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
55. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
56. Respondent by signing this CA/FO also certifies that all violations alleged in this CA/FO and the TDEC compliance inspection have been corrected.
57. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

58. Respondent consents to the payment of a civil penalty in the amount of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500.00) within thirty (30) calendar days of the effective date of this CA/FO.
59. Payment 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 the check and in a cover letter transmitting the check. Payment shall be tendered to:

United States Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000
60. Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

And to:

Doug McCurry, Chief
North Section
RCRA & OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

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 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 or stipulated 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©.

(b) Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$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 or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) 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 CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

VII. PARTIES BOUND

63. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all person, 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 CA/FO.

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 CA/FO.

65. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

66. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the 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.
67. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
68. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the 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.
69. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

IX. OTHER APPLICABLE LAWS

70. All actions required to be taken pursuant to this CA/FO 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

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

Susan Capel
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909
(404) 562-9566

XI. SEVERABILITY

72. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO 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 CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE


73. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

CAROLINA LOGISTICS SERVICES, INC. (CLS)

By:  Dated: 4/17/08
Name: RODNEY E. BIAS (Typed or Printed)
Title: VP, REGULATORY COMPLIANCE (Typed or Printed)

U.S. Environmental Protection Agency

By:  Dated: 5/7/08
Caroline Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

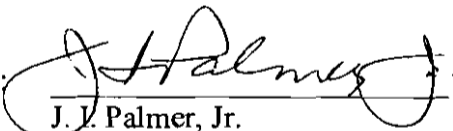
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO. RCRA-04-2007-4012(b)
)	
CAROLINA LOGISTICS SERVICES,)	
INCORPORATED)	PROCEEDING UNDER SECTION
5295 LOGISTICS DR., STE. 103)	3008(a) OF THE RESOURCE
MEMPHIS, TENNESSEE 38118)	CONSERVATION AND
)	RECOVERY ACT,
)	42 U.S.C. § 6928(a)
EPA ID No.: TNR 000 019 919)	
)	
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 CFR 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 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 13 day of May, 2008.

BY: 
J. J. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Carolina Logistics Services, Inc. (CLS), Docket Number: RCRA-04-2007-4012(b), on MAY 14 2008 2008, and on MAY 14 2008 2008, served the parties listed below in the manner indicated:

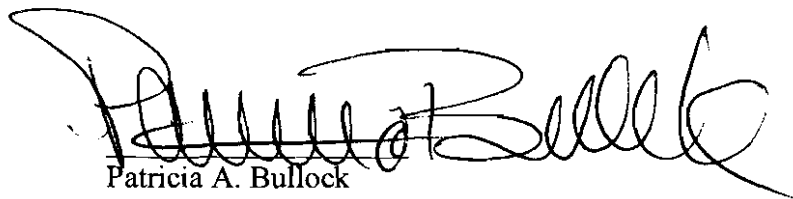
Susan Capel
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

(Via EPA's internal mail)

Scott Reisch, Partner
Hogan & Hartson LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202
303-899-7355

(Via Certified Mail - Return
Receipt Requested)

Date: 5-14-08



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511