



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
April 28, 2014

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL 7009 1680 0000 7649 4908
RETURN RECEIPT REQUESTED

RS Used Oil Services, Inc.
c/o David H. Quigley
Akin Gump Strauss Hauser & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Consent Agreement and Final Order in the Matter of
RS Used Oil Services, Inc. Docket No. TSCA-05-2014-0007

Dear Mr. Quigley:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 28, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$108,641.80 is to be paid in the manner described in paragraphs 148 and 149. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by August 25, 2014 (within 120 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

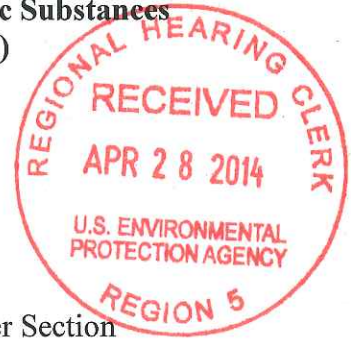
A handwritten signature in black ink, appearing to read "Kendall Moore".

FOR Kendall Moore
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2014-0007
)	
RS Used Oil Services, Inc.)	Proceeding to Assess a Civil Penalty
Monee, Illinois,)	Under Section 16(a) of the Toxic Substances
)	Control Act, 15 U.S.C. § 2615(a)
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is a civil administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA) Region 5.

3. The Respondent is RS Used Oil Services, Inc. (RS), 4801 Southwick Drive, Suite 104, Matteson, Illinois, a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of an administrative complaint, the action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCBs) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7,150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use Prohibitions (PCB rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31,514) and incorporated previous disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

10. Under 40 C.F.R. § 761.3, PCB waste(s) is defined as those PCBs and PCB Items that are subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.

11. A commercial storer of PCB waste is defined at 40 C.F.R. § 761.3, in pertinent part, as someone who engages in storage activities involving PCB waste generated by others.

12. Under 40 C.F.R. §§ 761.3 and 761.65(d), no person may commercially store more than 500 gallons of liquid containing PCBs at regulated levels without first receiving approval from EPA to commercially store PCB waste.

13. Under 40 C.F.R. § 761.205(a)(2), a commercial storer of PCB waste must notify EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities.

14. Under 40 C.F.R. § 761.207, a generator who transports PCB wastes for commercial off-site disposal must prepare a manifest on EPA Form 8700-22.

15. The term “distribute in commerce” is defined at 40 C.F.R. § 761.3 to mean, in pertinent part, to sell, or the sale of, a chemical substance, mixture, or article in commerce.

16. Under 40 C.F.R. § 761.20(c), no person may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States without an exemption, except if the processing or distribution involves an excluded manufacturing process, recycled PCBs, or excluded PCB products.

17. Under 40 C.F.R. § 761.60(a), PCB liquids at concentrations over or equal to 50 ppm must be disposed of in an incinerator that complies with 40 C.F.R. § 761.70.

18. No person may avoid any provision specifying a PCB concentration, including storage and disposal requirements, by diluting the PCBs. *See* 40 C.F.R. § 761.1(b)(5).

19. The Administrator of EPA may assess a civil penalty of up to \$32,500 per day for each violation of TSCA that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation of TSCA that occurred after January 12, 2009 through December 6, 2013, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

General Factual Allegations

20. At all times relevant to this CAFO, Respondent was a “person” as defined at 40 C.F.R. § 761.3.

21. At all times relevant to this CAFO, Respondent collected, processed, and/or distributed used oil at facilities located at 1708 Farr Drive, Dayton, Ohio (“Dayton facility”), 3200 Sheffield Avenue, Hammond, Indiana (“Hammond facility”), and operated the used oil collection and processing facility located at 4501 West 99th Street, Carmel, Indiana (“Carmel

facility”) and the used oil collection and processing facility at 25903 South Ridgeland Avenue, Monee, Illinois (“Monee facility”).

22. On or about February 22, 2011, Respondent collected material, including used oil that contained PCBs, from several customers and stored it in Tanks 1 and 2 at the Dayton facility.

23. The material stored in Tank 1 at the Dayton facility had a PCB concentration of 923 ppm PCB on or about February 28, 2011, and the material stored in Tank 2 had a PCB concentration of 58 ppm PCB on or about March 18, 2011.

24. The material stored in Tanks 1 and 2 at the Dayton facility, starting on or about February 28, 2011, is “PCB waste” as that term is defined at 40 C.F.R. § 761.3.

25. On or about July 18, 2011, Respondent collected material, including used oil that contained PCBs, from several customers, and stored it at the Hammond facility.

26. The material stored in Tank 37 at the Hammond facility had a PCB concentration of 760 ppm PCB on or about July 20, 2011.

27. The material stored at the Hammond facility, starting on or about July 18, 2011, is “PCB waste” as that term is defined at 40 C.F.R. § 761.3.

28. On or about May 21, 2011, Respondent offloaded material collected from several customers, primarily used oil, into Trailer T253 and then offloaded it into a Functional Guard Tank in Carmel, Indiana.

29. The material in Trailer T253 had a PCB concentration of 158 ppm PCB on or about May 20, 2011.

30. The material stored in the Functional Guard Tank in Carmel, Indiana, starting on or about May 21, 2011, is “PCB waste” as that term is defined at 40 C.F.R. § 761.3.

31. On or about May 24, 2011, Respondent offloaded material, primarily used oil, from the Functional Guard Tank in Carmel, Indiana into Tank 5 in Monee, Illinois.

32. The material stored in Tank 5 in Monee, Illinois had a PCB concentration of 10.5 ppm PCB on May 31, 2011. However, the oil contained material that had been in the Functional Guard Tank in Carmel, Indiana on or about May 21, 2011.

33. The material stored in Tank 5 in Monee, Illinois, starting on or about May 24, 2011, is "PCB waste" as that term is defined at 40 C.F.R. § 761.3.

34. On or about May 24, 2011, Respondent transferred material, primarily used oil, to Tank 3 in Roxana, Illinois.

35. The material stored in Tank 3 in Roxana, Illinois had a PCB concentration of 139 ppm PCB on or about June 2, 2011.

36. The material stored in Tank 3 in Roxana, Illinois, starting on or about June 2, 2011, is "PCB waste" as that term is defined at 40 C.F.R. § 761.3.

37. On or about May 21, 2011, Respondent transferred material, primarily used oil, to its NuStar facility in Clermont, Indiana.

38. The material stored at the NuStar facility in Clermont, Indiana had a PCB concentration of 8.4 ppm PCB on May 27, 2011.

39. The material stored at the NuStar facility in Clermont, Indiana, starting on or about May 25, 2011, is "PCB waste" as that term is defined at 40 C.F.R. § 761.3.

Count I – Commercial Storage without a Permit (Dayton facility)

40. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

41. On or about March 11, 2011, Respondent was storing 15,000 gallons of PCB waste collected from various customers in Tank 1 at its Dayton facility.

42. On February 28, 2011, the Dayton facility did not have a PCB commercial storage approval under 40 C.F.R. § 761.65(d).

43. Respondent's commercial storage of 15,000 gallons of PCB waste at its Dayton facility constituted commercial storage of PCB waste without approval from EPA in violation of 40 C.F.R. §§ 761.3 and 761.65(d).

Count II – Failure to Notify as a Commercial Storer (Dayton facility)

44. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

45. On February 28, 2011, Respondent was storing 15,000 gallons of PCB waste collected from various customers in Tank 1 at its Dayton facility.

46. Respondent did not notify EPA of its commercial storage of PCB waste at its Dayton facility on February 28, 2011.

47. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

Count III – Failure to Manifest Shipment of PCB Waste for Commercial Off-Site Disposal (Dayton facility)

48. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

49. On February 22 and 23, 2011, Respondent shipped over 1,100 gallons of oil containing PCBs from Tanks 1 and 2 at the Dayton facility to Alton, Illinois for commercial off-site disposal.

50. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipments of over 1,100 gallons of oil containing PCBs from Tanks 1 and 2 at the Dayton facility to Alton, Illinois for commercial off-site disposal on February 22 and 23, 2011.

51. Respondent's shipments of over 1,100 gallons of oil containing PCBs from Tanks 1 and 2 at the Dayton facility to Alton, Illinois on February 22 and 23, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

Count IV – Distribution in Commerce (Dayton facility)

52. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

53. On February 22, 2011, Respondent shipped 7,000 gallons of oil containing PCBs from Tank 1 at the Dayton facility to Heartland Refinery in Columbus, Ohio.

54. Respondent's February 22, 2011 shipment of 7,000 gallons of oil containing PCBs from Tank 1 at the Dayton facility to Heartland Refinery in Columbus, Ohio constitutes processing or distribution of PCBs in commerce in violation of 40 C.F.R. § 761.20(c).

Count V – Distribution in Commerce (Dayton facility)

55. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

56. On February 27, 2011, Respondent shipped 7,070 gallons of oil containing PCBs from Tank 2 at the Dayton facility to Heartland Refinery in Columbus, Ohio.

57. Respondent's February 27, 2011 shipment of 7,070 gallons of oil containing PCBs from Tank 2 at the Dayton facility to Heartland Refinery in Columbus, Ohio constitutes processing or distribution of PCBs in commerce in violation of 40 C.F.R. § 761.20(c).

Count VI – Distribution in Commerce (Dayton facility)

58. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

59. On March 2, 2011, Respondent shipped 650 gallons of PCB waste from Tank 2 at the Dayton facility to USI Sharonville, Ohio.

60. Respondent's March 2, 2011 shipment of 650 gallons of PCB waste from Tank 2 at the Dayton facility to USI Sharonville, Ohio constitutes processing or distribution of PCBs in commerce in violation of 40 C.F.R. § 761.20(c).

Count VII – Distribution in Commerce (Dayton facility)

61. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

62. On March 4, 2011, Respondent shipped 704 gallons of oily water with a PCB concentration of 4 ppm from Tank 1 at the Dayton facility to USI Sharonville, Ohio.

63. Respondent's March 4, 2011 shipment of 704 gallons of oily water from Tank 1 at the Dayton facility to USI Sharonville, Ohio constitutes processing or distribution of PCBs in commerce in violation of 40 C.F.R. § 761.20(c).

**Count VIII – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Dayton facility)**

64. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

65. On February 22, 2011, Respondent shipped 7,000 gallons of oil containing PCBs from Tank 1 at the Dayton facility to Heartland Refinery, Ohio for commercial off-site disposal.

66. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 7,000 gallons of oil containing PCBs from Tank 1 at the Dayton facility to Heartland Refinery, Ohio for commercial off-site disposal on February 22, 2011.

67. Respondent's shipment of 7,000 gallons of oil containing PCBs from Tank 1 at the Dayton facility to Heartland Refinery, Ohio on February 22, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count IX – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Dayton facility)**

68. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

69. On February 27, 2011, Respondent shipped 7,070 gallons of oil containing PCBs from Tank 2 at the Dayton facility to Heartland Refinery, Ohio for commercial off-site disposal.

70. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 7,070 gallons of oil containing PCBs from Tank 2 at the Dayton facility to Heartland Refinery, Ohio for commercial off-site disposal on February 27, 2011.

71. Respondent's shipment of 7,070 gallons of oil containing PCBs from Tank 2 at the Dayton facility to Heartland Refinery, Ohio on February 27, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count X – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Dayton facility)**

72. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

73. On March 2, 2011, Respondent shipped 650 gallons of PCB waste from Tank 2 at the Dayton facility to USI Sharonville, Ohio for commercial off-site disposal.

74. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 650 gallons of PCB waste from Tank 2 at the Dayton facility to USI Sharonville, Ohio for commercial off-site disposal on March 2, 2011.

75. Respondent's shipment of 650 gallons of PCB waste from Tank 2 at the Dayton facility to USI Sharonville, Ohio on March 2, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count XI – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Dayton facility)**

76. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

77. On March 4, 2011, Respondent shipped 704 gallons of oily water from Tank 1 at the Dayton facility to USI Sharonville, Ohio for commercial off-site disposal.

78. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 704 gallons of oily water from Tank 1 at the Dayton facility to USI Sharonville, Ohio for commercial off-site disposal on March 4, 2011.

79. Respondent's shipment of 704 gallons of oily water from Tank 1 at the Dayton facility to USI Sharonville, Ohio on March 4, 2011, without preparing EPA Form 8700-22,

constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

Count XII – Commercial Storage without a Permit (Hammond facility)

80. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

81. On July 18, 2011, Respondent was storing 326,597 gallons of PCB waste collected from various customers at the Hammond facility.

82. On July 18, 2011, the Hammond facility did not have a PCB commercial storage approval under 40 C.F.R. § 761.65(d).

83. Respondent's commercial storage of 326,597 gallons of PCB waste at its Hammond facility constituted commercial storage of PCB waste without approval from EPA in violation of 40 C.F.R. §§ 761.3 and 761.65(d).

Count XIII – Failure to Notify as a Commercial Storer (Hammond facility)

84. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

85. On July 18, 2011, Respondent was storing 326,597 gallons of PCB waste collected from various customers at its Hammond facility.

86. Respondent did not notify EPA of its commercial storage of PCB waste at its Hammond facility on July 18, 2011.

87. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

**Count XIV – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

88. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

89. On July 21, 2011, Respondent shipped three shipments of 5,959; 6,175; and 6,159 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Kansas City, Kansas for storage.

90. Respondent did not prepare a manifest on EPA Form 8700-22 for its three shipments of 5,959; 6,175; and 6,159 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Kansas City, Kansas for storage on July 21, 2011.

91. Respondent's shipments of 5,959; 6,175; and 6,159 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Kansas City, Kansas on July 21, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for storage in violation of 40 C.F.R. § 761.207.

**Count XV – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

92. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

93. On July 22, 2011, Respondent shipped four shipments of 5,989; 6,584; 6,660; and 6,005 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Monee, Illinois for storage.

94. Respondent did not prepare a manifest on EPA Form 8700-22 for its four shipments of 5,989; 6,584; 6,660; and 6,005 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Monee, Illinois for storage on July 22, 2011.

95. Respondent's shipments of 5,989; 6,584; 6,660; and 6,005 gallons of PCB waste from Tank 37 at the Hammond facility to Respondent's facility in Monee, Illinois on July 22, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for storage in violation of 40 C.F.R. § 761.207.

**Count XVI – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

96. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

97. On July 22, 2011, Respondent shipped 6,575 gallons of PCB waste from Tank 37 at the Hammond facility to Payne and Dolan, Cedar Lake, Wisconsin for commercial off-site disposal.

98. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 6,575 gallons of PCB waste from Tank 37 at the Hammond facility to Payne and Dolan, Cedar Lake, Wisconsin for commercial off-site disposal on July 22, 2011.

99. Respondent's shipment of 6,575 gallons of PCB waste from Tank 37 at the Hammond facility to Payne and Dolan, Cedar Lake, Wisconsin on July 22, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count XVII – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

100. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

101. On July 22, 2011, Respondent shipped 6,550 gallons of PCB waste from KCK Tank 11 to C.B. Asphalt, Lee Summit, Missouri for commercial off-site disposal.

102. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 6,550 gallons of PCB waste from Tank 37 at the Hammond facility to C.B. Asphalt, Lee Summit, Missouri for commercial off-site disposal on July 21, 2011.

103. Respondent's shipment of 6,550 gallons of PCB waste from KCK Tank 11 to C.B. Asphalt, Lee Summit, Missouri on July 22, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count XVIII – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

104. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

105. On July 22, 2011, Respondent shipped 6,148 gallons of PCB waste from Tank 37 at the Hammond facility to APAC, Louisburg, Kansas for commercial off-site disposal.

106. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 6,148 gallons of PCB waste from Tank 37 at the Hammond facility to APAC, Louisburg, Kansas for commercial off-site disposal on July 22, 2011.

107. Respondent's shipment of 6,148 gallons of PCB waste from Tank 37 at the Hammond facility to APAC, Louisburg, Kansas on July 22, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

**Count XIX – Failure to Manifest Shipment of PCB Waste
for Commercial Off-Site Disposal (Hammond facility)**

108. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

109. On July 21, 2011, Respondent shipped 6,860 gallons of PCB waste from Tank 37 at the Hammond facility to Joliet Asphalt, Elwood, Illinois for commercial off-site disposal.

110. Respondent did not prepare a manifest on EPA Form 8700-22 for its shipment of 6,860 gallons of PCB waste from Tank 37 at the Hammond facility to Joliet Asphalt, Elwood, Illinois for commercial off-site disposal on July 21, 2011.

111. Respondent's shipment of 6,860 gallons of PCB waste from Tank 37 at the Hammond facility to Joliet Asphalt, Elwood, Illinois on July 21, 2011, without preparing EPA Form 8700-22, constitutes a failure to manifest shipment of PCB waste on EPA Form 8700-22 for commercial off-site disposal in violation of 40 C.F.R. § 761.207.

Count XX – Improper Disposal of PCB Liquids (Hammond facility)

112. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

113. On July 21, 2011, Respondent shipped 6,550 gallons of PCB-contaminated oil from KCK Tank 11 to C.B. Asphalt, Lee Summit, Missouri. The oil was added to existing oil in a tank at C.B. Asphalt.

114. C.B. Asphalt burned 9,808 gallons of the resulting PCB-contaminated oil before it was notified to cease burning.

115. C.B. Asphalt is not an incinerator that complies with 40 C.F.R. § 761.70.

116. Since Respondent shipped PCB liquid that was subsequently burned at an incinerator that does not comply with 40 C.F.R. § 761.70, Respondent disposed of PCB liquids in violation of 40 C.F.R. § 761.60(a).

Count XXI – Improper Disposal of PCB Liquids (Hammond facility)

117. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

118. On July 21, 2011, Respondent shipped 6,860 gallons of PCB-contaminated oil from Tank 37 at the Hammond facility to Joliet Asphalt, Elwood, Illinois. The oil was added to existing oil in a tank at Joliet Asphalt.

119. Joliet Asphalt burned 2,280 gallons of the resulting PCB-contaminated oil before it was notified to cease burning.

120. Joliet Asphalt is not an incinerator that complies with 40 C.F.R. § 761.70.

121. Since Respondent shipped PCB liquid that was subsequently burned at an incinerator that does not comply with 40 C.F.R. § 761.70, Respondent disposed of PCB liquids in violation of 40 C.F.R. § 761.60(a).

Count XXII – Improper Disposal of PCB Liquids (Hammond facility)

122. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

123. On July 22, 2011, Respondent shipped 6,575 gallons of PCB-contaminated oil from Tank 37 at the Hammond facility to Payne and Dolan, Cedar Lake, Wisconsin. The oil was added to existing oil in a tank at Payne and Dolan.

124. Payne and Dolan burned 3,257 gallons of the resulting PCB-contaminated oil before it was notified to cease burning.

125. Payne and Dolan is not an incinerator that complies with 40 C.F.R. § 761.70.

126. Since Respondent shipped PCB liquid that was subsequently burned at an incinerator that does not comply with 40 C.F.R. § 761.70, Respondent disposed of PCB liquids in violation of 40 C.F.R. § 761.60(a).

Count XXIII – Failure to Notify as a Commercial Storer (Carmel facility)

127. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

128. On May 25, 2011, Respondent was storing 6,200 gallons of PCB waste in its Water Tank 3 in Carmel, Indiana.

129. Respondent did not notify EPA of its commercial storage of PCB waste in its Water Tank 3 in Carmel, Indiana on May 25, 2011.

130. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

Count XXIV – Failure to Notify as a Commercial Storer (Monee facility)

131. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

132. On May 25, 2011, Respondent was storing 28,200 gallons of PCB waste in its Tank 5 in Monee, Illinois.

133. Respondent did not notify EPA of its commercial storage of PCB waste in its Tank 5 in Monee, Illinois on May 25, 2011.

134. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities

constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

Count XXV – Failure to Notify as a Commercial Storer (Roxana facility)

135. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

136. On May 25, 2011, Respondent was storing 15,400 gallons of PCB waste in its Tank 3 in Roxana, Illinois.

137. Respondent did not notify EPA of its commercial storage of PCB waste in its Tank 3 in Roxana, Illinois on May 25, 2011.

138. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

Count XXVI – Failure to Notify as a Commercial Storer (Clermont facility)

139. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

140. On May 25, 2011, Respondent was storing 118,000 gallons of PCB waste in its NuStar facility in Clermont, Indiana.

141. Respondent did not notify EPA of its commercial storage of PCB waste in its NuStar facility in Clermont, Indiana on May 25, 2011.

142. Respondent's commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities

constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2).

Count XXVII – Distribution in Commerce (Carmel facility)

143. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

144. On May 24, 2011, Respondent transferred 1,000 gallons of PCB waste from its Functional Guard Tank in Carmel, Indiana to Tank 5 in Monee, Illinois.

145. Respondent’s May 24, 2011 shipment of 1,000 gallons of PCB waste from its Functional Guard Tank in Carmel, Indiana to Tank 5 in Monee, Illinois constitutes processing or distribution of PCBs in commerce in violation of 40 C.F.R. § 761.20(c).

Civil Penalty

146. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator to take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, when determining the amount of civil penalty for violations of TSCA.

147. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 16(a)(2)(B) of TSCA, and Respondent’s good faith and cooperation in resolving this matter, Complainant determined that an appropriate civil penalty to settle this action is \$108,641.80.

148. Within 120 days of the effective date of this CAFO, Respondent must pay a \$108,641.80 civil penalty for the TSCA violations. Respondent must pay the penalty by sending by first class mail a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

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

The check must note "In the Matter of RS Used Oil Services, Inc.," the docket number of this CAFO, and the billing document (BD) number.

149. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Kendall Moore (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

150. This civil penalty is not deductible for federal tax purposes.

151. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

152. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment

was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

153. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by reducing greenhouse gas (GHG) emissions from Respondent's distribution in commerce of used oil.

154. Respondent will complete the SEP described in the paragraph above by replacing a portion of its diesel-fueled heavy duty vehicle fleet with compressed natural gas (CNG) models. The SEP must be completed no later than August 1, 2015.

155. Respondent must spend at least \$240,634 to fund the SEP described in the paragraph above.

156. Respondent certifies as follows:

I certify that RS Used Oil Services, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that RS Used Oil Services, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that RS Used Oil Services, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

157. Within 15 days of the date that the SEP is completed, but in no event later than August 15, 2015, Respondent must submit a SEP completion report to EPA. The report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. An itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders and cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

158. Respondent must submit the SEP completion report from the paragraph above by first-class mail to Kendall Moore, Pesticides and Toxics Compliance Section, at the address provided above.

159. For two years following the submission of the SEP completion report, Respondent must maintain copies of research, data, and other supporting documentation for the SEP completion report, and Respondent must provide such materials to EPA within 7 days of EPA's request for the materials.

160. In the SEP completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

161. Following receipt of the SEP completion report described above, EPA must notify Respondent in writing if:

- a. There are deficiencies in the SEP as completed or in the SEP report, in which case EPA will give Respondent 30 days to correct the deficiencies; or
- b. It has not satisfactorily completed the SEP and the SEP report.

162. If EPA exercises option a in paragraph 161 above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 163, below.

163. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$275,511.20 (in addition to the civil penalty at paragraph 147);
- b. If Respondent does not complete the SEP satisfactorily according to the requirements of the CAFO, but EPA determines that Respondent made good faith and timely efforts to complete the SEP, and Respondent certifies, with supporting documents, that it has spent at least 90 percent of the amount set forth in paragraph 155 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above;
- c. If Respondent completes the SEP satisfactorily according to the requirements of the CAFO, but spends less than 90 percent of the amount set forth in paragraph 155 above, Respondent must pay a penalty of \$68,877.80 (in addition to the civil penalty at paragraph 147);
- d. If Respondent completes the SEP satisfactorily according to the requirements of the CAFO, and spends at least 90 percent of the amount

set forth in paragraph 155 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above;

- e. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$600	31 st day and beyond

164. EPA's reasonable determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent. EPA's determinations shall constitute a final action, and Respondent shall have the right to an appeal to the Environmental Appeals Board (EAB).

165. Respondent must pay any stipulated penalties under paragraph 163 within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 148, above, and will pay interest and nonpayment penalties on any overdue amounts.

166. Any public statement that Respondent makes referring to the SEP must include the following language: "RS Used Oil Services, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against RS Used Oil Services, Inc. for alleged violations of the Toxic Substances Control Act."

167. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all

reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

168. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

169. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

170. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

171. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws.

172. The terms of this CAFO bind Respondent, its successors and assigns.

173. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


174. Each party agrees to bear its own costs and attorneys fees in this action.

175. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order
In the Matter of: RS Used Oil Services, Inc.
Docket No.**


RS Used Oil Services, Inc., Respondent

3/27/14
Date


Randall Wilson
Chief Financial Officer and Treasurer
RS Used Oil Services, Inc.

United States Environmental Protection Agency, Complainant

4/22/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: RS Used Oil Services, Inc.
Docket No. TSCA-05-2014-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-24-2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5


CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving RS Used Oil Services, Inc., was filed on April 28, 2014, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7009 1680 0000 7649 4908 to:

RS Used Oil Services, Inc.
c/o David H. Quigley
Akin Gump Strauss Hauser & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Robert M. Peachey, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2014-0007