

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

Red Giant Oil Company a/k/a
Serle Petroleum
1701 S 3rd Street
Council Bluffs, Iowa 51503,

Respondent.

Proceeding under Sections 3008(a) and (g)
of the Resource Conservation and
Recovery Act as amended,
42 U.S.C. §§ 6928(a) and (g)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2017-0003

I. PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Red Giant Oil Company a/k/a Serle Petroleum (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice. This authority has been delegated by the Administrator of the EPA to the Regional Administrator and further delegated to the Director of the Air and Waste Management Division.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent violated Section 3014 of RCRA, 42 U.S.C § 6935, the standards for the management of used oil (40 C.F.R. Part 279).

Parties

3. Complainant is the Branch Chief of the Waste Enforcement and Materials Management branch in the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

4. Respondent is Red Giant Oil Company a/k/a Serle Petroleum, a corporation incorporated under the laws of the state of Nebraska and authorized to do business in Iowa and operate under the laws of the state of Iowa.

Statutory and Regulatory Framework

5. When the EPA determines that any person has violated or is in violation of any RCRA requirement, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$95,284 for violations that occur after November 2, 2015. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by the EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this CAFO.

General Factual Background

7. Respondent is a corporation and authorized to conduct business within the state of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent operates six different facilities in five different states. The facility that is the subject of the CAFO is located at 1701 South 3rd Street, Council Bluffs, Iowa. Respondent blends and transports virgin petroleum oil products for railroad clients. Red Giant also transports and receives used oil to process and ship to Seabrook, Texas for re-refining. According to Respondent, this facility processes approximately 36,000 gallons of used oil per week from all sources.

9. On July 22, 2014, a contractor with the EPA, conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) at Respondent’s Council Bluffs facility.

§ 6935, and thus Respondent is subject to compliance orders and penalties under 42 U.S.C. § 6928 (a) and (g).

Count 2
Failure to Prepare and Implement Emergency Preparedness Documents and Actions

16. The regulations at 40 C.F.R. § 279.52(a) and (b) require facilities to prepare and implement emergency preparedness documents and actions. Red Giant failed to implement some of these requirements as follows:

- a) Failure to include the capabilities of response equipment in its contingency plan, as required by 40 C.F.R. § 279.52(b)(2)(v);
- b) Failure to amend the list of the facility's emergency coordinators as required by 40 C.F.R. § 279.52(b)(4)(iv);
- c) Failure to make arrangements with a local hospital, as required by 40 C.F.R. § 279.52(a)(6)(i)(D).

17. Respondent's failure to prepare and implement emergency preparedness documents and actions, described above, is a violation of 40 C.F.R. § 279.52(a) and (b), promulgated pursuant to Section 3014 of RCRA, 42 U.S.C. § 6935, and thus Respondent is subject to compliance orders and penalties under 42 U.S.C. § 6928 (a) and (g).

Count 3
Failure to File Biennial Report

18. The regulations at 40 C.F.R. § 279.57(b) require facilities to prepare and submit a report on a biennial basis which describes the amount of used oil it has accepted for processing and re-refining and a description of the processes it uses.

19. Respondent failed to submit the report described above, as required, for the years 2011, 2013 and 2015.

20. Respondent's failure to submit the report described above, as required, for the years 2011, 2013 or 2015 violates 40 C.F.R. § 279.57(b), promulgated pursuant to Section 3014 of RCRA, 42 U.S.C. § 6935, and thus Respondent is subject to compliance orders and penalties under 42 U.S.C. § 6928 (a) and (g).

Based on a review of the inspection report and the information provided during the inspection and subsequent thereto by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a conditionally exempt small quantity generator (CESQG) of hazardous wastes under 40 C.F.R. § 261.5, and as a used oil generator, transporter, and processor pursuant to 40 C.F.R. § 279.

10. At the time of the inspection, the following used oil containers were present:

- a) One 2,500-gallon tank in the truck shop
- b) One 50-gallon tank in the truck shop
- c) Five Hundred jars (500 ml) in the laboratory
- d) One Thousand jars (500 ml) in the lube office
- e) One 5-gallon container of used oil mixed with solvent
- f) Thirteen storage tanks of used oil
- g) Twenty-two 55-gallon drums of UO filters

11. Respondent has been assigned the following EPA ID Number: IAD984591032.

Violations

Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Failure to Label Used Oil Containers

12. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

13. The regulations at 40 C.F.R. § 279.54(f)(1) require processors and refiners of used oil to label or clearly mark containers and above ground tanks used to store used oil at generator facilities with the words "Used Oil."

14. At the time of the inspection, Respondent failed to label or clearly mark the following used oil containers:

- a) Five Hundred jars (500 ml) in the laboratory
- b) One Thousand jars (500 ml) in the lube office
- c) One 5-gallon container of used oil mixed with solvent
- d) Five storage tanks of used oil
- e) Twenty-two 55-gallon drums of used oil filters

15. Respondent's failure to label the containers of used oil described above is a violation of 40 C.F.R. § 279.54(f)(1), promulgated pursuant to Section 3014 of RCRA, 42 U.S.C.

Count 4
Failure to Include Facility and Transporter Identification Numbers on Shipping Documents

21. The regulations at 40 C.F.R. § 279.56(b) require used oil processor/re-refiners to keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility, which must, among other things, contain the EPA identification number of the transporter who delivers the used oil to the burner or processor/re-refiner and the EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil.

22. The inspection revealed that shipping documents for the three years prior to the inspection lacked the transporter EPA identification number and the re-refinery's EPA identification number, as required by 40 C.F.R. § 279.56(b).

23. Respondent's failure to include the required EPA identification numbers on its shipping documents, is a violation of 40 C.F.R. § 279.56(b), promulgated pursuant to Section 3014 of RCRA, 42 U.S.C. § 6935, and thus Respondent is subject to compliance orders and penalties under 42 U.S.C. § 6928 (a) and (g).

CONSENT AGREEMENT

24. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

25. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

26. Respondent neither admits nor denies the factual allegations set forth in this CAFO.

27. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

28. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

29. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

30. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for the violations alleged in this CAFO. Complainant reserves the right to

take any enforcement action with respect to any other violations of RCRA or any other applicable law.

31. Full payment of the penalty proposed in this CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

32. The effect of settlement described above is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph below.

33. Respondent certifies that by signing this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, and all regulations promulgated thereunder.

34. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

35. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Thirty-Four Thousand Five Hundred and Eighty Dollars (\$34,580), as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

36. The penalty specified in the paragraph above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal, State and local taxes.

37. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited above.

38. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

39. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Effective Date

40. This CAFO shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

41. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

42. 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.

43. 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.

44. 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 the 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 and the environment.

45. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

46. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of Thirty-Four Thousand Five Hundred and Eighty Dollars (\$34,580).

2. Payment of the penalty shall be made by cashier's or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier's or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

5. Within 30 days after the effective date of this Final Order and quarterly thereafter for a period of one year, Respondent shall provide a report (five reports in total) containing photographic documentation of proper and compliant used oil, hazardous waste, and universal waste container management for all such containers in the facility for one selected day during each quarter.

6. In each quarterly report, Respondent shall provide representative copies of each type of used oil transportation document demonstrating such documents have been properly completed. Such copies shall represent similar documents for each week in the quarter.

7. In the second and fifth quarterly report, Respondent shall provide a copy of the facility's compliant contingency plan with documentation that the contingency plan has been shared with the police, fire, emergency response, and hospital organizations Respondent would use in a relevant emergency situation.

8. Provide a copy of the 2017 biennial report due to be sent to the EPA by March 1, 2018.

9. Each plan and report required to be submitted by Paragraph 5 above shall be accompanied by a cover letter that includes a signed certification that the documents submitted are, to the best of the certifying official's knowledge and belief, true, accurate, and complete.

Submittals

10. All documents required to be submitted to the EPA pursuant to this Final Order shall be sent to:

Edwin G. Buckner, P.E.
AWMD/WEMM
US Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Buckner.edwin@epa.gov
(913) 551-7621

11. All such documents may be submitted in hard copy or electronic format at Respondent's discretion.

C. Parties Bound

12. The Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

27 Mar 17

Date



Mary Goetz, Branch Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

27 Mar 17

Date



Raymond C. Bosch
Office of Regional Counsel

RESPONDENT:

RED GIANT OIL COMPANY
A/K/A SERLE PETROLEUM

3/20/17
Date

Sherryl G. Bills-Taylor
Signature

Sherryl G. Bills-Taylor
Printed Name

president
Title

IT IS SO ORDERED. This Final Order shall become effective upon filing.

March 27, 2017

Date

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy delivered to [✓]Attorney for Complainant:
via email

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Copy delivered to the Attorney for Respondent by first class mail:

Michael J. Linder, Attorney
Koley Jessen P.C., L.L.O.
1125 S. 103rd St., Suite 800
Omaha, Nebraska 68124

Copy delivered to the State of Iowa:

Amie Davidson, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources

3/28/17
Date

Kathy Robinson
Kathy Robinson
Regional Hearing Clerk