



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8360

MAR 01 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eric W. Gerstenberg
President
Clean Harbors PPM, LLC
42 Longwater Drive
Norwell, MA 02061

RE: Clean Harbors PPM, LLC
Consent Agreement and Final Order - Docket No. TSCA-04-2011-2904(b)

Dear Mr. Gerstenberg:

Enclosed please find a copy of the Consent Agreement and Final Order (CAFO) in the above-referenced matter.

If you have any questions, please feel free to contact Brooke York, of my staff, at (404) 562-8025. Legal questions should be directed to Lucia Mendez at (404) 562-9637.

Sincerely,

A handwritten signature in black ink, appearing to read "CÉSAR A. ZAPATA".

César A. Zapata, Chief
RCRA and OPA Enforcement and
Compliance Branch
RCRA Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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EPA REGION IV

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HEARING CLERK

In the Matter of:)
)
Clean Harbors PPM, LLC) Docket No. TSCA-04-2011-2904(b)
1875 Forge Street)
Tucker, Georgia 30084)
)
Respondent)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is United States Environmental Protection Agency, Region 4 (EPA). Respondent is Clean Harbors PPM, LLC, a corporation duly licensed under the laws of the State of Georgia.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CA/FO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), the Administrator of the EPA promulgated rules in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring between March 15, 2004, and January 12, 2009, a penalty of up to \$32,500 may be assessed. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Regional Judicial Officer by the EPA Delegation # 12-2-C, dated September 7, 2005.
5. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Brooke York
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-8025

Respondent
Eric W. Gerstenberg
President
Clean Harbors PPM, LLC
42 Longwater Drive
Norwell, Massachusetts 02061

III. The EPA's Findings of Fact and Specific Allegations

6. Respondent, is a user of PCB Items as defined by 40 C.F.R. § 761.3 operating in the State of Georgia and is a "person" as defined in 40 C.F.R. § 761.3. Respondent's Tucker, Georgia, Clean Harbors facility holds an Approval to Commercially Store and Dispose of PCBs by Chemical Dechlorination which is dated February 6, 2007, and is scheduled to expire on June 22, 2014.
7. "PCB Container" is defined by 40 C.F.R. § 761.3 to mean any package, can, bottle, bag, barrel, drum, tank or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
8. On or about March 30, 2011, an inspection was conducted by a representative of the EPA at the Respondent's facility located at 1875 Forge Street, in Tucker, Georgia, to determine compliance with the PCB regulations.
9. Pursuant to 40 C.F.R. § 761.40(a)(1), all PCB Containers shall be marked with a PCB M_L mark. During the inspection, the EPA's inspectors observed PCB Containers, including buckets, drip pans, waste containers, and drums in the Tank Farm Area, the Storage Area and the Laboratory that did not have a PCB M_L label. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(1).
10. Pursuant to 40 C.F.R. § 761.40(c)(6), all PCB Containers shall be closed. During the inspection, the EPA's inspectors observed PCB Containers in the Tank Farm Area which

were open. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(1).

11. Pursuant to 40 C.F.R. § 761.40(a)(2), all PCB Transformers shall be marked with the PCB M_L marking. During the inspection, the EPA's inspectors observed PCB Transformers stored for disposal in the designated PCB Storage Area and on the trailer in the Loading Area which did not have a M_L mark. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(2).
12. Pursuant to Clean Harbors Approval requirement B.7.a., adequate aisle space within the container storage area in Warehouse 2 must be maintained at all times to allow access for purposes of inspection and spill response for leaking containers. During the inspection, the EPA's inspectors observed that there was no aisle space in the container storage area in Warehouse 2. Therefore, the EPA alleges that Respondent violated Clean Harbors Approval requirement B.7.a.
13. Pursuant to 40 C.F.R. § 761.40(b), vehicles that transport PCB Containers that contain more than 45 kg of liquid PCBs at concentrations of ≥ 50 ppm or with one or more PCB Transformers shall be marked on each end and each side with the PCB M_L mark. During the inspection, the EPA's inspectors observed that the trailer holding numerous PCB Transformers located in the loading area of the facility was not marked with the PCB M_L mark. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(b).

IV. Consent Agreement

14. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
15. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.

16. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of the nature of the alleged violation, the EPA has determined that an appropriate civil penalty to settle this action is in the amount of TEN THOUSAND SIX HUNDRED FORTY DOLLARS (\$10,640).
17. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in Section V of this CA/FO.
18. Respondent certifies that to the best of its knowledge, as of the date of its execution of this CA/FO, it is in compliance with all relevant requirements of TSCA and the PCB regulations found in 40 C.F.R. Part 761.
19. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the specific violations alleged herein. Except as specifically provided in this CA/FO, the EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CA/FO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is Respondent's responsibility to comply with said laws and regulations.
20. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. 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 TSCA.

V. Final Order

21. Respondent is assessed a civil penalty of TEN THOUSAND SIX HUNDRED FORTY DOLLARS (\$10,640), which shall be paid within 30 days from the effective date of this CA/FO.

22. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall either send the check to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

- Or, for payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), Respondent shall send the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson (314) 418-4087

23. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CA/FO, to each of the following persons at the following addresses:

24.

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Brooke York
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and

Lucia Mendez
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

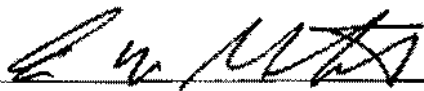
25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt to claim a deduction for any civil penalty payment made pursuant to this CA/FO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CA/FO.
26. 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 the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

VI. Effective Date

27. 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:

Respondent: Clean Harbors PPM, LLC
Docket No.: TSCA-04-2011-2904(b)

By:  (Signature) Date: 1/30/12


Name: Eric W. Gerstenberg
Title: President

Complainant: U.S. Environmental Protection Agency

By:  Date: 2/16/12

G. Alan Farmer
Director
RCRA Division
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 23rd day of February, 2012.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Clean Harbors PPM, LLC., Docket Number: TSCA-04-2011-2904(b), to the addressees listed below.

Mr. Eric W. Gerstenberg
President
Clean Harbors PPM, LLC
42 Longwater Drive
Norwell, MA 02061

(via Certified Mail, Return Receipt Requested)

Brooke York
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Quantindra Smith
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Robert Caplan
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Date: 3-1-12



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9511