



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 09 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ken Chambers
K. C. Industries Trucking, L.L.C.
2420 Old Highway 60
Mulberry, Florida 33860

Re: K. C. Industries Trucking, L.L.C.
Consent Agreement and Final Order
Docket No. CERCLA-04-2017-2001(b)

Dear Mr. Chambers:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts K. C. Industries Trucking, L.L.C., on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions concerning this matter or K. C. Industries Trucking, L.L.C.'s compliance status in the future, please contact Michiko Kono, Associate Regional Counsel, at (404) 562-9558.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety & Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
K. C. Industries Trucking, L.L.C.)
)
Respondent.)
_____)

Docket Number: CERCLA-04-2017-2001(b)

HEARING CLERK

2/17/18 - 9 AM 9:07

OFFICE OF REGIONAL
ADMINISTRATOR

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is K. C. Industries Trucking, L.L.C.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegations 14-31 dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) 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) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, K. C. Industries Trucking, L.L.C. (KCI), is a company doing business in the State of Florida.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6. Respondent is located at 2420 Old Highway 60, Mulberry, Florida, 33860.

III. EPA's Allegations of Violations

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility during the relevant period described below. The term "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), includes motor vehicles.

10. Sulfuric acid is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 1,000 pounds, as specified in 40 C.F.R. § 302.4.

11. On June 12, 2015, a release of sulfuric acid above the RQ occurred from Respondent's motor vehicle (facility), which was located at 5 Chop Road, Orangeburg, South Carolina.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of sulfuric acid in an amount equal to or greater than its RQ from the facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, the EPA may assess a "maximum statutory" penalty for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

18. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

19. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of CERCLA or other applicable laws and regulations.

20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

V. Final Order

21. Respondent shall pay a civil penalty of **TWO THOUSAND, TWO HUNDRED THIRTEEN DOLLARS (\$2,213)** for the CERCLA violation in Section III, which shall be paid within thirty (30) days of the effective date of this CAFO.

22. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1819

BY ELECTRONIC TRANSFER*

Federal Reserve Bank of New York

ABA: 021030004

Account Number: 68010727

SWIFT address: FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

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

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

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

Erika White
U.S.EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

25. Respondent shall complete a SEP in the category of an Emergency Planning and Preparedness project designed to protect the environment and the people that could be harmed by chemical accidents by providing assistance (such as, response equipment or training) to responsible state or local emergency response or planning entities as follows (hereinafter referred to as the SEP):

- a. Respondent will donate the following to the recipient selected by the Respondent as identified below:

Recipient: Orangeburg County Office of Emergency Services

Quantity Description

1 1978 Polar 40 foot Tanker

- b. The value of the equipment shall not be less than **NINETEEN THOUSAND, EIGHT HUNDRED THIRTY-TWO DOLLARS (\$19,832)**.
 - c. Respondent must complete the donation of the above equipment within 45 days of the effective date of this CAFO.
26. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service donated by Respondent in connection with the SEP.
27. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$19,832**;
 - b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
 - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
 - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
 - h. That Respondent has inquired of Orangeburg County Office of Emergency Services whether it is a party to an open federal financial assistance transaction

that is funding or could fund the same activity as the SEP and has been informed by Orangeburg County Office of Emergency Services that it is not a party to such a transaction.

28. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)”.

29. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:

a. The SEP Completion Report shall include the following:

An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete the SEP.

b. The SEP Completion Report shall be submitted to the EPA within sixty (60) days of the effective date of this CAFO to the following:

Erika White
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

30. Upon request, Respondent shall send EPA any additional documentation requested by EPA.

31. Respondent agrees that in order to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to donate the equipment valued at **NINETEEN THOUSAND, EIGHT HUNDRED THIRTY-TWO DOLLARS (\$19,832)**, Respondent shall pay to the United States, a stipulated penalty of **SIX THOUSAND SIX HUNDRED TIRTY-SEVEN DOLLARS (\$6,637)**.
- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **\$100** for each calendar day that the report is late.

- c. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

32. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

33. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

VII. Other Provisions

34. Pursuant to 31 U.S.C. § 3717, 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 effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

36. This CAFO shall be binding upon the Respondent, its successors, and assigns.

37. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169

38. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VIII. Effective Date

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

AGREED AND CONSENTED TO:

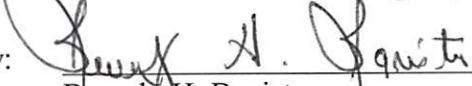
K. C. Industries Trucking, L.L.C.

By:  (Signed) Date: 12/27/16

Name: STEVE MCARTER (Typed or Printed)

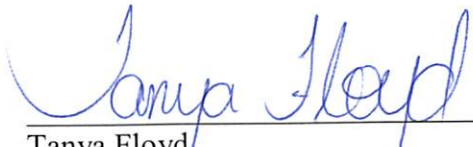
Title: MANAGING MEMBER (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 2/23/17

Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 7th day of March, 2017.


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order: In the Matter of K. C. Industries Trucking, L.L.C., Docket
Number: CERCLA-04-2017-2001(b) on the parties listed below in the manner indicated:

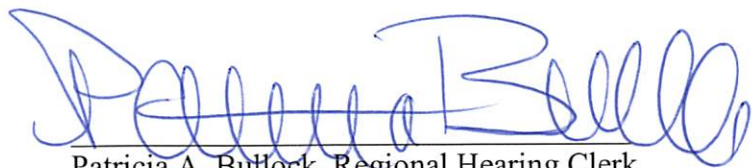
Robert W. Bookman (Via EPA's internal mail)
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street
Atlanta, GA 30303

Michiko Kono (Via EPA's internal mail)
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
Senior Attorney
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

Ken Chambers (Via certified mail, return receipt requested)
K. C. Industries Trucking, L.L.C.
2240 Old Highway 60
Mulberry, FL 33860

Date: 3/9/17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511