

RECEIVED
14 FEB -3 AM 11:14
HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
Lynden Service Center, Inc.,) DOCKET NO. TSCA-10-2014-0028
Lynden, Washington) **CONSENT AGREEMENT AND**
Respondent.) **FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Lynden Service Center, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Washington and is a “person” as defined at 40 C.F.R. § 761.3.

3.2. At all times relevant to the alleged violations, Respondent owned and operated an automotive service center located at 700 Grover Street, Lynden, Washington (“Lynden Facility”). The Lynden Facility is a “facility” as defined at 40 C.F.R. § 761.3.

3.3. On or around June 15, 2011, Emerald Services, Inc. (“Emerald Services”) collected approximately 850 gallons of used oil from Respondent at the Lynden Facility and transported the used oil to one of Emerald Services’ recycling and processing facilities located at 1500 Airport Way South, Seattle, Washington (“Emerald Facility”).

3.4. On or around June 15, 2011, Emerald Services completed an internal laboratory

screening of storage tanks at the Emerald Facility that contained bulk collections of used oil, including the used oil collected from Respondent. The internal laboratory screening identified the presence of the Polychlorinated Biphenyl (“PCB”) Arochlor 1260 in a storage tank at the Emerald Facility.

3.5. Emerald Services conducted additional screening of samples retained from individual collections of used oil and identified Respondent as the likely source of PCBs. On or around June 16, 2011, Emerald Services collected samples from the used oil storage tank at the Lynden Facility. These samples contained the PCB Arochlor 1260 at a concentration of 276 parts per million (“ppm”).

3.6. Pursuant to 40 C.F.R. § 761.60(a), PCB liquids at concentrations equal to or greater than 50 ppm are subject to the disposal regulations at 40 C.F.R. Part 761, Subpart D, and are “PCB waste” as defined at 40 C.F.R. § 761.3. The used oil collected from the Lynden Facility on June 15, 2011, contained PCBs at a concentration of 276 ppm and is PCB waste subject to the disposal requirements at 40 C.F.R. Part 761, Subpart D.

3.7. A “generator of PCB waste” is defined at 40 C.F.R. § 761.3 as any person whose act or process produces PCBs regulated for disposal, whose act first causes PCBs to become regulated for disposal, or who has physical control over the PCBs when the decision is made to terminate the use of the PCBs. In the course of its automotive service operations, Respondent removed used oil containing PCBs which was stored for collection by Emerald Services for recycling, reprocessing, or energy recovery of the used oil. Respondent is a generator of PCB waste because its acts or processes produced PCB-contaminated used oil regulated for disposal, and because it had physical control over the PCBs in the used oil when the decision was made to

terminate their use.

Alleged Violation 1

(Failure to Notify EPA and Obtain EPA Identification Number)

3.8. 40 C.F.R. § 761.202(b) prohibits a generator of PCB waste from processing, storing, disposing, transporting, or offering for transport PCB waste without having first notified EPA and received an EPA Identification Number pursuant to 40 C.F.R. § 761.205.

3.9. Respondent generated PCB waste which it stored and offered for transportation without first notifying EPA and obtaining an EPA Identification Number, in violation of 40 C.F.R. § 761.202(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

Alleged Violation 2

(Failure to Prepare a PCB Waste Manifest)

3.10. 40 C.F.R. § 761.207(a) requires a generator of PCB waste who relinquishes control over PCB waste by transporting or offering the PCB waste for transport to prepare a PCB waste manifest.

3.11. Respondent generated PCB waste and relinquished control of the PCB waste by offering the PCB waste to Emerald Services for transportation without preparing a PCB waste manifest, in violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Alleged Violation 3

(Distribution of PCBs in Commerce)

3.12. 40 C.F.R. § 761.20(c) prohibits any person from distributing PCBs in commerce within the United States unless the person complies with the applicable provisions of 40 C.F.R. Part 761, and the distribution is subject to an exemption or related to an excluded manufacturing

process.

3.13. Respondent distributed PCBs in commerce to Emerald Services without complying with the applicable provisions of 40 C.F.R. Part 761, without an exemption, and unrelated to an excluded manufacturing process, in violation of 40 C.F.R. § 761.20(c) and Section 15 of TSCA, 15 U.S.C. § 2614.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, and Respondent's degree of culpability, as well as other relevant factors.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is twenty-one thousand dollars (\$21,000).

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 according to the following schedule: a payment of \$3,500 within 30 days of the effective date of the CAFO; a payment of \$3,675, which includes \$175 in interest, within six months of the effective date of the CAFO; a payment of \$3,640, which includes \$140 in interest, within twelve months of the effective date of the CAFO; a payment of \$3,605, which includes \$105 in interest, within eighteen months of the effective date of the CAFO; a payment of \$3,570, which includes

\$70 in interest, within twenty-four months of the effective date of the CAFO; and a final payment of \$3,535, which includes \$35 in interest, within thirty months of the effective date of the CAFO.

4.6. Respondent may pay all of the penalty set forth in Paragraph 4.4 in advance of the payment schedule described in Paragraph 4.5 if such a final payment includes interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) through the date of tender of the final payment. If Respondent pays the penalty in full in advance of the payment schedule described in Paragraph 4.5, Respondent must submit notice of such final payment to the Regional Hearing Clerk and EPA Region 10 along with photocopies of the check as described in Paragraph 4.8.

4.7. Payments under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the checks the title and docket number of this action.

4.8. Respondent must serve photocopies of the checks described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tristen Gardner
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.9. If Respondent fails to pay the penalty payments assessed by this CAFO in full by their specific due dates, the entire remaining unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.10. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), if Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.11. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representatives of Respondent and EPA certify that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent and EPA, respectively, to this document.

4.13. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.15. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. EPA and Respondent agree and confirm that this is a full and final resolution of all claims for civil penalties under TSCA arising out of the violations alleged in Part III of this CAFO.

4.17. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

1-18-2014

Jerry Beann
Name: _____

Title: President
Lynden Service Center, Inc.

DATED:

FOR COMPLAINANT:

1/30/2014

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA 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 obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 31st day of January, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Lynden Service Center, Inc. Docket No.: TSCA-10-2014-0028**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Jerry Brann
President
Lynden Service Center, Inc.
700 Grover Street
Lynden, Washington 98264

DATED this 3rd day of February 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10