

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

08 NOV 13 AM 8:00

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Dollar Tree Stores, Inc.)

Docket No. CAA-07-2008-0041

) CONSENT AGREEMENT

) AND

) FINAL ORDER

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Dollar Tree Stores, Inc. ("Respondent") have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Consolidated Rules"), 40-C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted under the authority of the Clean Air Act ("Act"), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d).

2. This Complaint serves as notice that the EPA has reason to believe that Respondent has violated Section 610 of the Act and 40 C.F.R. Part 82, Subpart C.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Air and Waste Management Division, EPA, Region VII.

4. The Respondent is Dollar Tree Stores, Inc. The Respondent is, and was at all times referred to in this Complaint, a "person" as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e).

Regulatory Background

5. Under Section 610 of the Act, 42 U.S.C. § 7671i, the Administrator of EPA promulgated regulations at 40 C.F.R. Part 82, subpart C regarding the selling or distribution of nonessential products that contain Class I substances or that contain or are manufactured with Class II substances ("Stratospheric Ozone Standards").

6. As set forth at 40 C.F.R. § 82.64(d), "no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in § 82.70(a) or (c)."

7. "Ozone Depleting Substance" and "ODS" mean any substance that is either a "Class I substance" or "Class II substance" as defined in 40 C.F.R. § 82.104.

8. 40 C.F.R. § 82.70 provides that "The following products which release a Class II substance (as designated as Class II in 40 C.F.R. Part 82, Appendix B to Subpart A) are identified as being nonessential and the sale or distribution of such products is prohibited under § 82.64(d), (e), or (f) – (a) [a]ny aerosol product or other pressurized dispenser which contains a Class II substance . . . (c) [a]ny plastic foam product which contains, or is manufactured with, a Class II substance. . ."

9. Class II substance means any substance designated as Class II in 40 C.F.R. Part 82, Appendix B to Subpart A, including but not limited to hydrochlorofluorocarbons.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Facts and Violations Alleged by EPA

12. The Complainant hereby states and alleges that Respondent has violated the Act as follows:

a. Respondent is a Virginia corporation operating over 3,200 retail stores in 48 states selling a variety of merchandise.

b. Respondent purchased for re-sale approximately 3,709,440 cans of a confetti string product known as Zany String ("Confetti String Product") between September, 2004, and May, 2005. Respondent distributed a total of approximately 2,554,848 cans to its retail stores and sold approximately 1,887,512 cans of Zany String from its retail stores. Respondent recovered approximately 1,713,951 cans of Zany String from its retail stores and distribution centers and disposed of them properly.

c. Analysis of the contents of the Zany String determined that R-22, a Class II ODS, was present in the cans.

d. Respondent sold or distributed, or offered to sell or distribute, in interstate commerce, Zany Sting, a nonessential product, in violation of 40 C.F.R. § 82.64(d) and 42 U.S.C. § 7671i.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

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

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

4. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the EPA. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

5. Respondent certifies that, to the best of its knowledge, it is complying fully with the Stratospheric Ozone Standards.

6. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

7. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

8. Within sixty (60) days of the effective date of the Final Order, Respondent shall pay a civil penalty, for the violations alleged herein, in the amount of One Hundred and Twenty Thousand Dollars (\$120,000.00).

9. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

10. The payment shall reference In the Matter of Dollar Tree Stores, Inc., Docket Number CAA 07-2008-0041. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

11. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and

accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15.00 will be imposed after thirty (30) days and an additional \$5.00 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

13. The effective date of the Final Order shall be the date on which it is signed by the Regional Judicial Officer. Within ten (10) days of the effective date of the Final Order, Complainant shall cause the Consent Agreement and Final Order as executed by the parties and signed by the Regional Judicial Officer to be mailed by certified mail, return receipt requested, to:

Dollar Tree Stores, Inc.
c/o John Deal, Esq.
500 Volvo Parkway
Chesapeake, Virginia 23320

and

Channing J. Martin, Esq.
Williams Mullen
1021 E. Cary St., 17th Floor
Richmond, Virginia 23219

14. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Rebecca Weber
Rebecca Weber
Director
Air and Waste Management Division

Date: 11/6/08

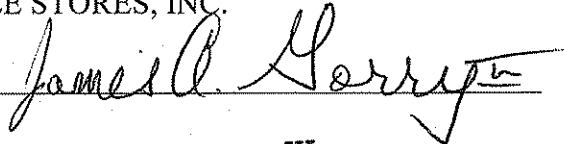
By: Kent Johnson
Kent Johnson
Attorney
Office of Regional Counsel

Date: 11/4/08

Dollar Tree Stores, Inc.
Docket No. CAA 07-2008-0041

RESPONDENT:

DOLLAR TREE STORES, INC.

By: 
Title: James A. Gorry III
General Counsel and
Date: Corporate Secretary 10-27-08

Dollar Tree Stores, Inc.
Docket No. CAA 07-2008-0041

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: Nov. 12, 2008

IN THE MATTER OF Dollar Tree Stores, Inc., Respondent
Docket No. CAA-07-2008-0041

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 hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

Dollar Tree Stores, Inc.
c/o John Deal, Esq.
500 Volvo Parkway
Chesapeake, Virginia 23320

and

Channing J. Martin, Esq.
Williams Mullen
1021 E. Cary St., 17th Floor
Richmond, Virginia 23219

Dated: 11/13/08


Kathy Robinson
Hearing Clerk, Region 7