

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

Russell Stover Candies, Inc)
Cookeville, TN)

Respondent.)

) Docket No. CAA-04-2007-1505(b)

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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), 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 Russell Stover Candies, Inc. (hereinafter, "Respondent").

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 (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation incorporated in Kansas City, Missouri, and doing business in the state of Tennessee.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

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6. 40 C.F.R. § 82.166(k) requires that owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. The owner/operator must keep records of refrigerant purchased and added to such appliances in cases where owners add their own refrigerant. Such records should indicate the date(s) when the refrigerant is added.

7. 40 C.F.R. § 82.162 requires that no later than August 12, 1993, or within 20 days of commencing business for those persons not in business at the time of promulgation of Part 82, persons maintaining, servicing, or repairing appliances except for motor vehicle air conditioning (MVAC), and persons disposing of appliances except for small appliances and MVACs, must certify to the Administrator that such person has acquired certified recovery or recycling equipment and is complying with the applicable requirements of this subpart.

8. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 608 of CAA, 42 U.S.C. § 7671h, that occurred after March 15, 2004.

II. Factual Allegations

9. EPA alleges that, Respondent has not been maintaining records pursuant to 40 C.F.R. § 82.166(k) regarding service/repair records for eight heating, ventilation, and air conditioning system (HVAC) units containing more than 50 lbs of a Class I or Class II refrigerant, and is therefore in violation of § 82.166(k). In the cases when repairs were done by contractors and records were kept, seven of the records did not include the quantity of refrigerant added.

10. EPA alleges that Respondent failed to certify in a timely manner to EPA that persons performing service were using approved refrigerant recovery/recycling equipment. Respondent violated CAA § 609(d), 42 U.S.C. § 7671h(d), and 40 C.F.R. § 82.42(a) by failing to certify in a timely manner that they have acquired and were properly using approved refrigerant recovery/recycling equipment.

III. Consent Agreement

11. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 8 above, but Respondent neither admits nor denies the factual allegations set out in paragraphs 9 and 10 above.

12. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

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

14. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant HVAC requirements of the CAA at Section 608.

15. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of Section 608 alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.

16. 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 the CAA.

IV. Final Order

17. Respondent is assessed a civil penalty of **SIXTY-TWO THOUSAND EIGHT HUNDRED AND TWENTY-FOUR DOLLARS (\$62,824)** which is to be paid within thirty (30) days after the date Respondent receives a copy of the fully executed CAFO.

18. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

US checks in US dollars sent by regular US postal service mail:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

For Fedex and other non-US Postal Service express mail:

Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

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

19. 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

Ms. Laurie Savoy
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

20. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to paragraph 21.

21. 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 date of entry 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 of up to six percent per year compounded annually may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

24. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Ms. Laurie Savoy
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9201

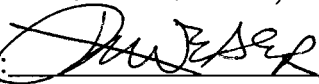
25. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

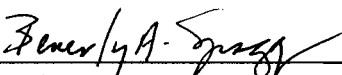
26. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Russell Stover Candies, Inc

By:  Date: 1-2-07
Mr. Robinn S. Weber
VP of Human Resources
Russell Stover Candies, Inc.

U.S. Environmental Protection Agency

By:  Date: 12/20/06
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division,
Region 4

APPROVED AND SO ORDERED this 29th day of January, 2007.


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: Russell Stover Candies, Inc., Docket No. CAA-04-2007-1505(b), on the parties listed below in the manner indicated:

Mr. Robert Lambrechts, Esq.
Lathrop & Gage L.C.
10851 Mastin Blvd, Suite 1000
Overland Park, KS 66210-1669

(Via Certified Mail
Return Receipt Requested)


Mr. Alan Dion
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Ms. Laurie Savoy
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

Date: 1-30-07



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 1/25/07
(Name) (Date)

in the OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Russell Stover Credits Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 62,824
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2007 1505 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |



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

MAN 3 0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAN 3 0 2007

Mr. Robert Lambrechts, Esq.
Lathrop & Gage L.C.
10851 Mastin Blvd, Suite 1000
Overland Park, KS 66210-1669

Re: Consent Agreement and Final Order In the Matter of Russell Stover Candies, Inc.
Docket No. CAA-04-2007-1505(b)

Dear Mr. Lambrechts:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.5(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV, Final Order, for the terms and instructions regarding your final payment on the penalty due.

Also enclosed is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

Should you have any questions, please contact Ms. Laurie Savoy, Environmental Engineer in the South Air Enforcement Section, at (404) 562-9201.

Sincerely,

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

Enclosures

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.