

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 N. 5TH STREET
KANSAS CITY, KANSAS 66107

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
R S Used Oil Services, Inc.)
)
16 Central Avenue)
Kansas City, Kansas)
)
RCRA I.D. No. KSR000017996)
)
Respondent.)
)
Proceeding under Section 3008(a) and (g) of)
of the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2005-0401

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and R S Used Oil Services, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of the Air, RCRA, and Toxics Division of EPA, Region VII, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985, and EPA Delegation No. R7-8-9-A, dated January 1, 1995, and redelegated by Divisional Delegation R7-DIV-8-9-A, dated June 15, 2005.

4. The Respondent is R S Used Oil Services Corporation, Inc. (R S Used Oil) a company incorporated under the laws of Illinois and authorized to conduct business in the State of Kansas as a foreign for profit business entity.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "KAR 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizing penalties up to \$27,500 per day for violations that occurred between January 30, 1997, and March 15, 2004, and \$32,500 for violations occurring after March 15, 2004.

Factual Background

7. Respondent is an Illinois corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent's facility, located at 16 Central Avenue, Kansas City, Kansas, was used as a used oil processing facility. R S Used Oil used railroad tank cars to store and process used oil at the Central Ave. facility. R S Used Oil processed used oil from route trucks through a 400-micron filtration system before placing the used oil in the tank cars. Waste water that separated from the used oil was occasionally drained from the bottom of the tank cars and disposed. R S Used Oil marketed used oil to other processors or on-spec used oil burners. Respondent occasionally marketed used oil to refineries via rail cars.

9. Respondent, because of its activities at the facility, was a used oil processor and marketer and thus subject to 40 C.F.R. Part 279 (Standards for the Management of Used Oil) specifically Subpart D (Standards for Used Oil Transporter and Transfer Facilities), Subpart F (Standards for Used Oil Processors and Re-refiners), Subpart H (Standards for Used Oil Fuel Marketers) and K.A.R. 28-31-16 as it incorporates 40 C.F.R. Part 279 by reference.

10. On or about February 19-20, 2004, an EPA representative conducted a Compliance Evaluation Inspection of the R S Used Oil facility at 16 Central Avenue, Kansas City, Kansas. At the time of the February 19-20, 2004, inspection, R S Used Oil conducted used oil transporting, processing, and marketing activities at the facility.

Violations

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 above, as if fully set forth herein.

Inadequate Record Keeping

Failure to include EPA Identification Number

12. The regulations at 40 C.F.R. 279.46(a)(2) and 279.56(b)(3) require that transporters and processors of used oil must include in records for each shipment the EPA identification number (if applicable) of the generator, transporter, or processor/refiner who provide the used oil for transport and the EPA identification number of the transporter who delivered the used oil to the processor/refiner.

13. Respondent failed to include the EPA identification number on shipping documents related to hundreds of shipments of used oil to and from its Central Avenue facility and therefore violated 40 C.F.R. 279.46(a)(2) and 279.56(b)(3).

Failure to Operate According to General Facility Standards

Release of Used Oil to the Environment

14. 40 C.F.R. 279.52(a)(1) requires that facilities must be maintained to and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

15. During the February 19-20, 2004, inspection, the inspector observed areas where used oil had been released to soil and not properly addressed.

16. The failure to adequately prevent and address releases of used oil is a failure to

maintain or operate the facility to minimize the possibility release of used oil to soil or surface water and is therefore a violation of 40 C.F.R. 279.52(a)(1).Failure to Have Internal Alarm System

17. The regulations at 40 C.F.R. § 279.52 and K.A.R.28-31-16 establish General Facility Standards. In particular, 40 C.F.R. § 279.52(a)(2) requires internal communications or alarm systems capable of providing immediate emergency instruction to facility personnel.

18. Respondent, at the time of the inspection, did not have the required internal communication or alarm systems at the 16 Central Avenue Facility and therefore violated 40 C.F.R. § 279.52(a)(2).

Inadequate Contingency Plan

19. 40 C.F.R. § 279.52(b) requires used oil processors and re-refiners to establish a contingency plan to describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local response teams to coordinate emergency services.

20. 40 C.F.R. § 279.52(b) also requires that the contingency plan list emergency contacts and controls.

21. Respondent's Spill Prevention Controls and Countermeasures/Contingency Plan did not describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local response teams to coordinate emergency services nor did the plan include emergency contacts and controls, and therefore violated 40 C.F.R. § 279.52(b).

Improper Used Oil Management

Failure to Provide Secondary Containment

22. 40 C.F.R. § 279.54(c) requires that containers used to store or process used oil at processing facilities must be equipped with a secondary containment system.

23. The rail cars (containers) and associated processing equipment at the 16 Central Avenue facility did not have secondary containment. Respondent's failure to provide secondary containment is a violation of 40 C.F.R. 279.54(c).

Failure to Label Used Oil Containers

24. 40 C.F.R. 279.54(f) requires that containers and above-ground tanks used to store or process used oil at processing facilities must be labeled or marked clearly with the words "Used Oil."

25. During the February 19-20, 2004, inspection, the inspector observed that the rail cars used to store and process used oil were not labeled or marked with the words "Used Oil." Respondent's failure to mark or label the tank cars is a violation of 40 C.F.R. 279.54(f).

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and the Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and 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 portion of this Consent Agreement and 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.

4. 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 proposed Final Order portion of the Consent Agreement and Final Order.

5. Respondent and Complainant agree to resolve the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Respondent certifies that it is in compliance with all applicable federal, state, and local environmental statutes and regulations and applicable permits at all of its facilities.

8. 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.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

10. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of sixty-thousand dollars (\$60,000) plus two years interest at 1% per annum equaling six hundred seventy-six dollars and ninety-six cents (\$676.96). Due to the fact that Respondent is a small business and has incurred significant expense to improve its facilities and operations to ensure compliance with applicable statutes, regulations, and permit, EPA permits Respondent to pay the penalty on a two-year schedule. The payments shall be as follows:

A. Respondent shall pay the penalty in quarterly installments of seven thousand five hundred eight-four dollars and sixty-two cents (\$7,584.62). A sum that includes principal and accrued interest for a period of two (2) years beginning thirty (30) days after the effective date of this Consent Agreement and Final Order.

B. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

11. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101;

and

Edwin Buckner, P.E.
Compliance Officer
RCRA Enforcement and State Programs Branch
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the penalty is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

13. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

In the matter of R S Used Oil Services, Inc
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For RESPONDENT RS USED OIL SERVICES, INC.

9-30-05
Date

Signature 

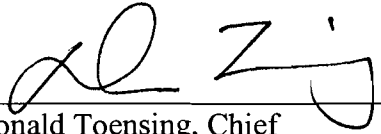
Printed Name DONALD A. WINKLER

Title PRESIDENT

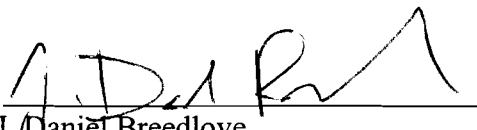
For COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/30/05
Date


Donald Toensing, Chief
RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

9/30/05
Date


J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

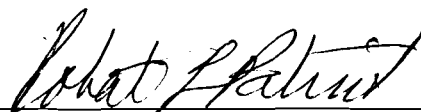
FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty in accordance with the terms set forth by the parties in the Consent Agreement.

2. 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.

IT IS SO ORDERED. This Final Order shall become effective upon.



Robert Patrick
Regional Judicial Officer

Date September 30, 2005

IN THE MATTER OF R S Used Oil Service, Inc., Respondent
Docket No. RCRA-07-2005-0401

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:

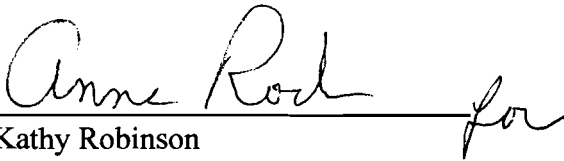
Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
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:

William J. Kennedy
RS Used Oil Services, Inc.
25903 S. Ridgeland Avenue
Monee, IL 60449

Dated: 9/30/05



Kathy Robinson
Regional Hearing Clerk