

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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REGIONAL HEARING
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In the Matter of: :
: :
: CONSENT AGREEMENT AND
: FINAL ORDER
: :
W.H. Christian and Sons, Inc. :
: :
Respondent : Docket No. RCRA-02-2007-7108
: :
Proceeding Under Section 3008 :
of the Solid Waste Disposal Act, :
as amended. :
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This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in these proceedings is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Complainant issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" to W.H. Christian and Sons, Inc. ("Respondent") on March 23, 2007 bearing the docket number listed above. The Complaint alleged that Respondent had failed to comply with certain applicable requirements of the authorized New York hazardous waste program, and had stored hazardous waste and operated its facility located at 211-217 Banker Street, Brooklyn, New York without having obtained a permit or qualifying for interim status.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an

appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is subject to the requirements of the Act, and its implementing regulations, including the authorized New York State hazardous waste regulations.
2. As more fully set forth in the allegations contained in the Complaint, Respondent has violated certain applicable federally enforceable authorized state regulations governing the management of hazardous waste at its Facility at 211 - 217 Banker Street, Brooklyn, New York 11222 ("Banker Street Facility").
3. At the time of EPA's first inspection on February 22, 2006 and second inspection on May 18, 2006 ("Inspections") of the Banker Street Facility, the EPA Inspectors documented that Respondent generated and stored perchloroethylene, also known as perc, contaminated wastes prior to disposal off site.
4. Respondent was storing hazardous waste at the Banker Street Facility at the time of the EPA Inspections and had been doing so for at least 180 days prior thereto.
5. To be exempt from the permit requirements of Title 6 New York Codes, Rules and Regulations (6 NYCRR") Part 373, a small quantity generator that generates more than 100 kgs but less than 1,000 kgs of non-acute hazardous waste in a calendar month must comply with all of the provisions of 6 NYCRR § 372.2(a)(8)(iii).
6. At the time of the Inspections, containers of perc hazardous waste, stored at the Banker Street Facility, were not labeled with the words "Hazardous Waste."
7. At the time of the Inspections, containers of perc hazardous waste, stored at the Banker Street Facility, were not marked with the dates when the accumulation of hazardous waste in the containers started ("accumulation start dates").

8. At the time of the first Inspection, containers of perc hazardous waste stored in the court yard at the Banker Street Facility, were not closed, and hazardous waste was not being added or removed from these containers.
9. At the time of second Inspection, Respondent had not notified the police, fire departments, and emergency response teams about the layout of its facility and the properties of hazardous waste that it generated and handled, and had not made arrangements to familiarize police, fire departments, and emergency response teams with the layout of the Facility and the properties of hazardous waste handled there.
10. At the time of the second Inspection, the names and telephone numbers of emergency coordinators, and the location of fire extinguishers and spill control materials were not posted at the Banker Street Facility.
11. As a result of Respondent's failure to mark its hazardous waste containers, keep containers of hazardous waste closed except when adding or removing hazardous waste, provide notice to, and make arrangements with, emergency responders, and post required information, Respondent was not eligible for a permit exemption available to small quantity generators of hazardous waste for the Banker Street Facility.
12. At the time of the Inspections, and for at least 180 days prior thereto, Respondent had failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.
13. Respondent was subject to the permit requirements of Section 3005 of RCRA, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2.
14. At the time of the Inspections, and for at least 180 days prior thereto, Respondent did not have a permit or interim status to store hazardous waste at its Banker Street Facility.

15. At the time of the Inspections, and for at least 180 days prior thereto, Respondent had been operating a hazardous waste management facility without a permit or interim status at its Banker Street Facility.
16. Respondent's storage of hazardous waste and operation of the Banker Street Facility, an existing hazardous waste management facility, without having obtained a permit or qualifying for interim status constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2.
17. Rather than obtain and comply with a permit for the storage of hazardous waste in the future, Respondent has informed EPA that it will comply with the conditions allowing it to accumulate hazardous waste at the Banker Street Facility without a permit.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 and 40 C.F.R. § 22.18 (2002) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained in the Complaint and neither admits nor denies the specific factual allegations contained in the Complaint.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions of this Consent Agreement, and with its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state, or local law nor shall the Consent Agreement be construed of as a ruling on, or determination of,

any issue related to any federal, state, or local permit.

4. Respondent shall pay, by cashier's or certified check, a civil penalty in settlement of the violations alleged in the Complaint, in the amount of **twelve thousand five hundred dollars (\$12,500)**. The payment instrument shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

EPA Region 2 (Regional Hearing Clerk),
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251.

The check shall be identified with a notation of the name and docket number of this case: In the Matter of W.H. Christian and Sons, Inc., RCRA-02-2007-7108. Respondent shall also send a copy of the checks to both Beverly Kolenberg, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address on the 16th floor.

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the "due date").
- b. Failure to pay the full amount, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment

handling charge of \$15.00 will be assessed for each thirty (30) day period, or any portion thereof, following the due date in which the balance remains unpaid.

- d. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this CA/FO shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

5. Commencing on the effective date of the Order, Respondent shall: (a) store hazardous waste in containers labeled "Hazardous Waste" and with other words that identify the contents of the containers; (b) mark all hazardous waste containers with the date accumulation of hazardous waste starts in that container; (c) utilize containers that are closed to accumulate and/or store hazardous waste; (d) post, to the extent that it has not done so, emergency information such as the name and telephone numbers of emergency coordinators and the location of fire extinguishers and spill control materials near a telephone in any hazardous waste storage area; and (e) undertake, to the extent that it has not done so, to notify and to maintain up-to-date arrangements or agreements with local hospitals, police and emergency response teams to familiarize them with the layout of the Facility, the properties of the hazardous wastes handled and the associated hazards, entrances to and roads near the Facility, possible evacuation routes and the possible injuries which could result from fires, explosions or releases at the Facility.
6. Respondent shall submit to EPA within thirty (30) calendar days of the effective date of the Order, written notice of its compliance with each of the requirements in Paragraph 5, above. Notice shall be sent to:

Ronald Voelkel, Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

7. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA in full settlement of the civil liabilities that might have attached to Respondent as a result of the violations alleged by EPA in the Complaint bearing the Docket No. RCRA-02-2007-7108. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order.
- 8 Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
9. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
10. Respondent certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. Each party hereto agrees to bear its own costs and fees in this matter.
12. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA

employee other than the Regional Hearing Clerk.

13. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except one to enforce the terms of this CA/FO.
14. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives, successors and assigns.

RESPONDENT: FOR: W.H. Christian and Sons, Inc.

BY: Willis H. Christian
NAME

TITLE: V.P.

DATE: 8/22/07

COMPLAINANT: BY:

[Signature] PATRICK DURAN FOR OL
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: AUGUST 28, 2007

In the Matter of W.H. Christian and Sons, Inc., Docket No. RCRA-02-2007-7108

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

DATE: 8-28-07

Alan J. Steinberg

Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of W.H. Christian and Sons, Inc., Docket No. RCRA-02-2007-7108

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
- Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. William H. Christian
Vice President
W.H. Christian and Sons, Inc.
22 - 28 Franklin Street
Brooklyn, New York 11222

Dated: SEP - 4 2007

Midred Bay



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2007 SEP -5 PM 12:14

REGIONAL HEARING
CLERK

August 30, 2007

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. William H. Christian
Vice President
W. H. Christian and Sons, Inc.
22 - 28 Franklin Street
Brooklyn, New York 11222

Re: In the Matter of W. H. Christian and Sons, Inc.
Docket No. RCRA-02-2007-7108

Dear Mr. Christian:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2 on August 28, 2007.

The schedule for payment of the penalty is set forth in Paragraph 4 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

A handwritten signature in cursive script that reads "Beverly Kolenberg".

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

Enclosure