



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

April 24, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL No. 7011 1150 0000 2643 8432
RETURN RECEIPT REQUESTED

Mr. Lou Filosa
Effluent Technology, Inc.
21123 Prestancia Drive
Mokena, Illinois 60448

Consent Agreement and Final Order In the Matter of Excel Environmental, Inc.
Docket No. TSCA-05-2015-0007

Mr. Filosa:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on April 24, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,000 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

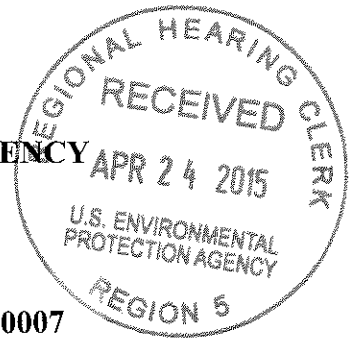
Sincerely,

A handwritten signature in cursive script that reads "Kenneth Zolnierczyk".

Kenneth Zolnierczyk
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
Excel Environmental, Inc.)
River Forest, Illinois,)
)
Respondent.)
_____)

Docket No. TSCA-05-2015-0007
Administrative Proceeding Pursuant to
Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a).

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Excel Environmental, Inc., of River Forest, Illinois, a corporation operating under the laws of the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCB) Disposal and Marking regulations were lawfully promulgated pursuant to section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Federal Register 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (the PCB Rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB Rule was subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. The PCB Rule at 40 C.F.R. § 761.1(b)(1) states, in part, that the regulations at 40 C.F.R. Part 761 apply to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.

11. The PCB Rule at 40 C.F.R. § 761.2(a) states that oil filled electrical equipment manufactured before July 2, 1979, where PCB concentration is not established, is assumed to contain PCBs at a concentration greater than or equal to 50 ppm but less than 500 ppm.

12. The PCB Rule at 40 C.F.R. § 761.20(c) requires that no person may distribute in commerce any PCB, or PCB Item, regardless of concentration, for use within the United States without an exemption. "Introduction into commerce" is, by definition, "distribution in commerce." See 40 C.F.R. § 761.3.

13. The PCB Rule at 40 C.F.R. § 761.207(a) requires that a generator who relinquishes control of bulk PCB waste must prepare a manifest that identifies the PCB waste.

General Allegations

14. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

15. Respondent is the owner and operator of a facility at 400 Ashland Avenue in River Forest, Illinois (the Facility).

16. On March 16, 2012, an EPA representative inspected Respondent's Facility.

Specific Allegations

17. On February 2, 2012, Respondent was storing approximately 6,300 gallons of used oil in a tanker, known as Tanker No. 31, at its Facility.

18. On February 2, 2012, Respondent relinquished control of Tanker No. 31 and directed that Tanker No. 31 be used to transport these 6,300 gallons of used oil to an off-site facility, using manifest No. 009697362.

19. The 6,300 gallons of used oil in Tanker No. 31 contained PCBs at a concentration of 982 ppm.

20. Respondent did not have an exemption to distribute PCBs into commerce.

21. Manifest No. 009697362 did not identify the presence of PCBs in this used oil.

22. Respondent's distribution in commerce of PCBs, without an exemption, constitutes a violation of 40 C.F.R. § 761.20(c) and section 15 of TSCA, 15 U.S.C. § 2614.

23. Respondent's failure to identify the presence of PCBs on manifest No. 09697362 constitutes a violation of 40 C.F.R. § 207(a) and section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

24. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the EPA Administrator to assess a civil penalty of up to \$25,000 for each unlawful act committed under section 15 of TSCA, 15 U.S.C. § 2614. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *note*, EPA increased the maximum penalty to \$32,500 for each violation occurring after March 15, 2005 (see 40 C.F.R. § 19.4). In determining the amount of any civil penalty, section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

25. EPA calculates penalties by applying its “Polychlorinated Biphenyls (PCBs) Penalty Policy,” dated April 9, 1990” (PCB Penalty Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases.

26. By letter dated July 20, 2012, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of the PCB Rule and that section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint and, if Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

27. Pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a), the PCB Penalty Policy, and the “The Enforcement Response Policy for Reporting and Recordkeeping Rules and

Requirements for TSCA Sections 8, 12 and 13” (effective June 1, 1999), Complainant has determined that an appropriate civil penalty to settle this action is \$5,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and Respondent’s ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent’s efforts to correct the alleged violations.

28. Respondent agrees to pay a \$5,000 civil penalty for the TSCA violations alleged herein, within thirty (30) days after the effective date of this CAFO, by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent’s name and the docket number of this CAFO.

29. Respondent agrees to also send a notice of their payment that states Respondent’s name, complete address, the amount paid and the case docket number, to the following EPA addressees when it pays the penalty (a copy of the check bearing this information would suffice):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

Ken Zolnierczyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action, under section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in such a collection action.

32. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondent must pay a six (6) percent per year penalty on any principal amount ninety (90) days past due.

General Provisions

33. This CAFO only resolves Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

34. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

35. This CAFO does not affect Respondent's responsibility to comply with the PCB Rule and other applicable federal, state and local laws.

36. Respondent certifies that, to the best of its knowledge, it is currently complying with the PCB Rule.

37. The terms of this CAFO bind Respondent, and its successors and assigns.


38. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

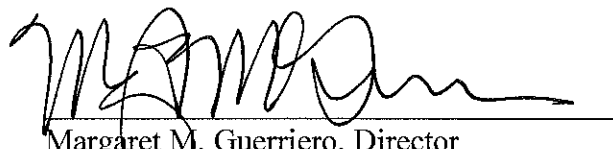
For Excel Environmental, River Forest, Illinois, Respondent

3-10-15
Date


Kenneth B. Petruck, President
Excel Environmental, Inc.
River Forest, Illinois

For the United States Environmental Protection Agency, Complainant

4/16/2015
Date

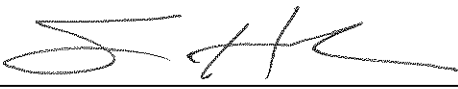

Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

In the Matter of: Excel Environmental, Inc., River Forest, Illinois
Docket No. TSCA-05-2015-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/21/2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Excel Environmental, Inc.
Docket Number: TSCA-05-2015-0007

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on April 24, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Lou Filosa
Effluent Technology, Inc.
21123 Prestancia Dr.
Mokena, Illinois 60448

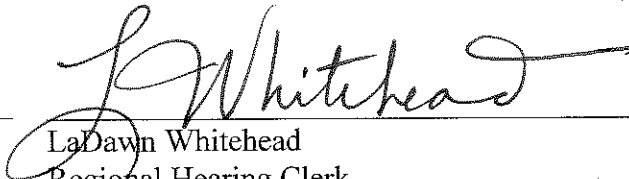
Copy by E-mail to
Attorney for Complainant:

Terence Stanuch
Stanuch.terence@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: April 24, 2015



LaDawn Whitehead
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8432