



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

DEC 26 2006

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

John MacLeod Jr.
Aerosol Packaging, LLC
189 Etowah Industrial Ct.
Canton, GA 30114

Re: Aerosol Packaging, Consent Agreement and Final Order
Docket No. RCRA-04-2007-4251(b)

Dear Mr. MacLeod:

Enclosed, please find the final Consent Agreement and Final Order (CAFO) memorializing our agreement to settle the above referenced matter. Please note that pursuant to paragraph 33, documentation showing Aerosol Packaging is now in compliance with the applicable RCRA regulations, must be sent to EPA within 20 calendar days of the effective date of the CAFO, which is the date that the CAFO is filed with the Regional Hearing Clerk. Thank you for your help in concluding this matter.

Sincerely,

A handwritten signature in cursive script that reads "D. Benjamin".

Deborah Benjamin
Associate Regional Counsel
U.S. EPA, Region 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4251(b)
)	
Aerosol Packaging, LLC)	
d/b/a/ Aerosol Specialties)	
189 Etowah Industrial Court)	Proceeding Under Section 3008(a)
Canton, Georgia 30114)	of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6928(a)
EPA I.D. No.: GAR 000 039 040)	
Respondent.)	

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2006 DEC 26 PM 12:33
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939e, adopted at Title 12, Chapter 8, Article 3 of the Georgia Hazardous Waste Management Act (Ga. Code Ann. § 12-8-60 *et. seq.*) and the Georgia Rules of Hazardous Waste Management, Chapter 391-3-11, of Georgia's Administrative Code (GAC). This action is seeking injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto, and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, and Georgia's regulations promulgated pursuant thereto, and set forth in GAC Chapter 391-3-11.
2. The *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, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA), Region 4.
5. Respondent, Aerosol Packaging, is a Georgia limited liability corporation doing business in the state of Georgia as Aerosol Specialties
6. Aerosol Packaging operates an aerosol product filling facility at 189 Etowah Industrial Court, Canton, Georgia.
7. On June 21, 2006, Aerosol Packaging filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code and is currently operating under Chapter 11.

III. PRELIMINARY STATEMENTS

8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926(g), the State of Georgia (“the State”) is authorized to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in Ga. Code Ann. § 12-8-60 et seq. and GAC Chapter 391-3-11.
9. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the states’ authorization status. On August 21, 1984, the State of Georgia received authorization for its base RCRA program and the State received authorization for its corrective action program on September 18, 1986.
10. Although EPA has granted the State of Georgia the authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State.
11. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Georgia before issuance of this CAFO.
12. Respondent, Aerosol Packaging, is a “person” as defined in 40 C.F.R. § 260.10 and Ga. Code Ann. § 12-8-62(18).
13. Respondent is the “owner” and “operator” of a “facility” located at 189 Etowah Industrial Court, Canton, Georgia, as those terms are defined in 40 C.F.R. § 260.10 and GAC Chapter 391-3-11-.02 which incorporates 40 C.F.R. § 260.10 by reference.

IV. EPA ALLEGATIONS AND DETERMINATIONS

14. EPA inspected the Aerosol Packaging facility on August 30, 2006 (“the inspection”).
15. During the inspection EPA determined that Aerosol Packaging failed to label its containers with the words “hazardous waste,” and with accumulation start dates, in violation of 40 C.F.R. §§ 262.34(c)(1)(ii) and 262.34(c)(2), and GAC Chapter 391-3-11-.08 which incorporates 40 C.F.R. Part 262 by reference.
16. During the inspection EPA determined that Aerosol Packaging failed to train facility personnel to perform job functions in accordance with the regulations, in violations of 40 C.F.R. § 40 C.F.R. 262.34(a)(4) which specifies compliance with 40 C.F.R. § 265.16, and GAC Chapter 391-3-11-.08.
17. During the inspection EPA determined that Aerosol Packaging failed to list the addresses of its emergency coordinators in the facility’s contingency plan, in violation of 40 C.F.R. § 262(a)(4) which specifies compliance with 40 C.F.R. § 265.52(d), and GAC Chapter 391-3-11-.08.
18. During the inspection EPA determined that Aerosol Packaging had failed to keep containers of hazardous waste closed when those containers were not in use, in violation of 40 C.F.R. § 262.34(a)(1)(i) which specifies compliance with 40 C.F.R. § 265.173(a), and GAC Chapter 391-3-11-.08
19. During the inspection EPA determined that Aerosol Packaging had containers of ignitable or reactive waste located less than 50 feet from the facility’s property line in violation of 40 C.F.R. § 262.34(a)(1)(i) which specifies compliance with 40 C.F.R. § 265.176, and GAC Chapter 391-3-11-.08.
20. During the inspection EPA determined that Aerosol Packaging failed to determine if the waste had to be treated before it could be land disposed, in violation of 40 C.F.R. § 268.7(a)(1), and GAC Chapter 391-3-11-.16 which incorporates 40 C.F.R. Part 268 by reference.
21. On September 27, 2006, EPA issued a Notice of Violation letter to Respondent which addressed the violations EPA observed during the inspection.
22. Respondent is a generator of hazardous waste at its facility.
23. EPA alleges that Respondent is in violation of the regulatory requirements cited in paragraphs 15-20 above.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the Parties agree to the following:

24. Respondent neither admits nor denies the factual allegations set out in this CAFO.
25. For the purposes of this CAFO, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, Respondent admits the jurisdictional allegations set out in Paragraphs 1-23 above.
26. Respondent waives any right it may have to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.
27. Respondent waives any right it may have to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.
28. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO.
29. 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 RCRA and the laws and regulations of the State of Georgia.
30. The parties agree that compliance with the terms of this CAFO shall resolve the violations of RCRA and its implementing regulations, and supporting State regulations, alleged in this CAFO.
31. Each party will pay its own costs and attorneys' fees.

INJUNCTIVE RELIEF

32. Within 20 calendar days of the effective date of this CAFO Respondent shall properly manage all hazardous wastes generated at its facility in accordance with the following regulatory requirements: 40 C.F.R. Sections 262.34(c)(1)(ii) and 262.343(c)(2), and GAC Chapter 391-3-11-.08 [container labeling requirements]; 40 C.F.R. Section 265.16 and GAC Chapter 391-3-11-.08 [personnel training requirements]; 40 C.F.R. Section 265.52(d) and GAC Chapter 391-3-11-.08 [contingency plan requirements]; 40 C.F.R. Section 265.173(a) and GAC Chapter 391-3-11-.08 [container management requirements];

40 C.F.R. Section 265.176 and GAC Chapter 391-3-11-.08 [ignitable or reactive waste requirements]; 40 C.F.R. Section 268.7(a)(1) and GAC Chapter 391-3-11-.16 [testing requirements].

33. Respondent shall provide EPA with the appropriate documentation to certify that Respondent has complied with all applicable regulations as stated in Paragraph 32 above within 20 calendar days of the effective date of this CAFO. The certification and supporting documentation should be provided to:

Jeffrey T. Pallas, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Management Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

VI. RESERVATION OF RIGHTS

34. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
35. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.
36. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
37. This CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. OTHER APPLICABLE LAWS

38. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

VIII. PARTIES BOUND

39. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.
40. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
41. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into this CAFO and to execute and legally bind Respondent to this CAFO.

IX. SERVICE OF DOCUMENTS

42. A copy of any document that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Deborah Benjamin
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909
(404) 562-9561

43. A copy of any documents that Complainant files in this action shall be sent to the following individual who is authorized to receive service for the Respondent in this proceeding:

John A. MacLeod Jr., CPA
Chief Operating Officer
Aerosol Packaging LLC
189 Etowah Industrial Court
Canton, GA 30114
(770) 425-0114

X. SEVERABILITY

44. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XI. TERMINATION

45. This CAFO will terminate when EPA certifies that Aerosol Packaging has complied in full with Section V of this CAFO.

XII. EFFECTIVE DATE

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

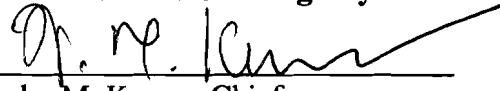
AGREED AND CONSENTED TO:

Aerosol Packaging LLC

By: 
Leigh Fragnoli
President, CEO
Aerosol Packaging, LLC

Dated: November 29, 2006

U.S. Environmental Protection Agency

By: 
Narindar M. Kumar, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Management Division

Dated: 12/7/06

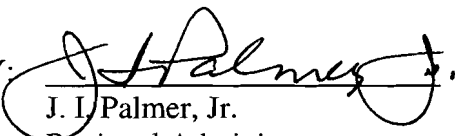
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4215(b)
)	
Aerosol Packaging, LLC)	
d/b/a Aerosol Specialties)	
189 Etowah Industrial Court)	Proceeding Under Section 3008(a)
Canton, Georgia 30114)	of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6928(a)
EPA I.D. No.: GAR 000 039 040)	
Respondent.)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *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. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 15 day of December, 2006.

BY: 
J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day 12/26/06 served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Aerosol Packaging LLC, d/b/a/ Aerosol Specialties, 189 Etowah Industrial Court, Canton, Georgia, 30114, Docket Number: RCRA-04-2007-4215(b), on the parties listed below in the manner indicated:

Patricia A. Bullock, Regional Hearing Clerk Hand Delivery
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303


Deborah Benjamin, Associate Regional Counsel EPA's internal mail
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Jeff Pallas, Chief EPA's internal mail
South Enforcement and Compliance Section
RCRA Enforcement and Compliance Branch
U.S. EPA, Region 4

Daryl Himes EPA's internal mail
South Enforcement and Compliance Section
RCRA Enforcement and Compliance Branch
U.S. EPA, Region 4

John MacLeod, Jr. Certified Mail- Return Receipt Requested
Aerosol Packaging
189 Etowah Industrial Ct.
Canton, Georgia 30144

Date 12/26/06


Sharon Thompson
Legal Technician
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9507