

RECEIVED

07 NOV 27 AM 8: 21

HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

| | | |
|------------------------|---|-----------------------------------|
| J.K. MERRILL AND SONS, |) | Docket No. RCRA-10-2008-0021 |
| |) | |
| Pocatello, Idaho |) | CONSENT AGREEMENT AND FINAL ORDER |
| |) | |
| Respondent. |) | |
| |) | |
| _____ |) | |

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6928. The Administrator has delegated the authority to negotiate and sign Consent Agreements and to issue compliance orders for RCRA violations to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Director of the Office of Compliance and Enforcement ("Complainant") and his representatives. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and J.K. Merrill and Sons ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. A concise statement of the factual basis for each RCRA violation alleged, together with specific references to the provisions of RCRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

2.3. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA gave notice of this violation, which took place in Idaho, to the State of Idaho, which is authorized to carry out a hazardous waste program under RCRA.

III. ALLEGATIONS

3.1 Under 40 C.F.R. § 279.22(d)(3), a generator of used oil must, upon detection of a release of used oil to the environment, clean up and properly manage the released used oil and other materials.

3.2 Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Idaho final authorization to administer and enforce a hazardous waste program. EPA last approved revisions to Idaho's approved hazardous waste program on February 26, 2007 (72

Fed. Reg. 8283). Before that, EPA approved revisions to Idaho's approved hazardous waste program on July 22, 2005 (70 Fed. Reg. 42273). The Idaho Statutes provide authority for the Idaho hazardous waste regulations. Idaho's regulations incorporate by reference the used oil management provisions of 40 C.F.R. Part 279 in IDAPA 58.01.05.015, and are part of the state program EPA authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926.

3.3 Respondent is the owner and operator of J.K. Merrill and Sons, and a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903.

3.4 At all times relevant to the violations alleged in this action, Respondent was the owner and operator of a "facility," as defined at 40 C.F.R. § 260.10, located at 1302 West Syphon Road in Pocatello, Idaho.

3.5 Respondent is a "used oil generator," as defined at 40 C.F.R. § 279.20(a).

3.6 EPA conducted inspections of the Facility on July 27, 2006; September 17, 2006; and April 13, 2007.

3.7 There was a "release to the environment of used oil," as defined at 40 C.F.R. § 279.22(d), at Respondent's facility prior to July 27, 2006.

3.8 As of April 13, 2007, Respondent had not cleaned up and managed properly the released used oil and other materials in violation of 40 C.F.R. § 279.22(d)(3) as incorporated by reference at IDAPA 58.01.05.015.

3.9 Respondent's failure to comply with 40 C.F.R. § 279.22(d)(3) is a violation of RCRA and the Idaho Statutes and their implementing regulations. EPA issued a Notice of Violation to Respondent, citing this violation, on November 29, 2006.

3.10 When EPA determines that any person has violated or is in violation of Subtitle C of RCRA, EPA may, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issue an order assessing a civil penalty for any past or current violation of Subtitle C of RCRA, and require compliance immediately or within a specified time period.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Pursuant to Section 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), and based on the allegations above, the seriousness of the violations, and any good faith efforts to comply with applicable requirements, Complainant has determined and Respondent agrees that an appropriate penalty to settle this action is NINE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$9250).

4.4. Respondent consents to the issuance of the Final Order set forth in Part V below and agrees to pay the total civil penalty set forth in Paragraph 4.3 above within 30 days of the effective date of the Final Order.

4.5. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.6. Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900 (OCE-127)
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondent fails to pay the penalty assessed, Respondent may be subject to a civil action to collect the assessed penalty, together with interest, fees, costs, and additional penalties described below.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.6, Respondent shall be responsible for payment of the amounts described below:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the

effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described Paragraph 4.3 above, including any additional costs incurred under Paragraph 4.8 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent represents that he or she is duly authorized to enter into the terms and conditions of this CAFO and to bind Respondent to the terms of this CAFO.

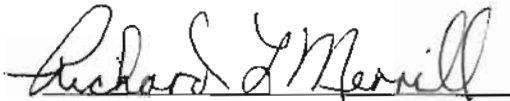
4.11. Except as provided in Paragraph 4.8 above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any rights to contest the allegations and waives any right to appeal the Final Order set forth in Part V. below.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED UPON by Respondent and Complainant.

FOR RESPONDENT J.K. MERRILL AND SONS, INC.


Signature

Dated: 11-13-07

Print Name: RICHARD L. MERRILL

Title: PRESIDENT

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10


Ann E. Prezyna
Deputy Regional Counsel

Dated: 11-21-07

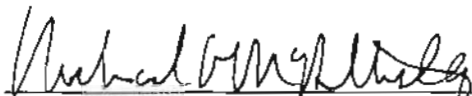
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 26th day of November 2007.



Richard G. McAllister
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: J.K. Merrill and Sons, DOCKET NO.: RCRA-10-2008-0021** was filed with the Regional Hearing Clerk on November 27, 2007.

On November 27, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Ann Prezyna, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, M/S ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 27, 2007, to:

Richard L. Merrill, President
J.K. Merrill and Sons
P.O. Box 4065
Pocatello, ID 83205

DATED this 27th day of November 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10