



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 18 2013

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ridgeway Hall, Esq.  
3500 Ordway St., N.W.  
Washington, D.C. 20016

RE: Perko, Inc.  
Consent Agreement and Final Order (CA/FO)  
Docket No. RCRA-04-2013-4008(b)

Dear Mr. Hall:

Enclosed is a copy of the executed CA/FO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed is a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Perko Inc. on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404)562-8530 or [buso.roberto@epa.gov](mailto:buso.roberto@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob", with a long horizontal flourish extending to the right.

Roberto X. Busó  
Associate Regional Counsel  
Office of Environmental Accountability

Enclosures

cc: Fred Perkins, Perko, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
)  
Perko, Inc. )  
16490 NW 13<sup>th</sup> Avenue )  
Miami, FL 33169-5707 )  
EPA ID No.: FLD 004 117 677 )  
)  
Respondent )  
\_\_\_\_\_ )

DOCKET NO.: RCRA-04-2013-4008(b)  
Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

RECEIVED  
EPA REGION IV  
2013 JUL 18 PM 2:25  
HEARING CLERK

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (F.S.), Sections 403.702 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated r. 62-730 and 62-710 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260-270 & 279]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of Section 403.722, F.S. [Section 3005 of RCRA, 42 U.S.C. § 6925], and Fla. Admin. Code Ann. r. 62-730 and 62-710 [40 C.F.R. Parts 260-270, & 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 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 (CA/FO), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).
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 CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

**II. THE PARTIES**

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.

5. Respondent is Perko, Inc., a corporation organized under the laws of the State of Florida (“State”), doing business at 16490 NW 13<sup>th</sup> Avenue, Miami, Florida 33169-5707.

### III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Sections 403.702 et seq., F.S., and Fla. Admin. Code Ann. r. 62-710 et seq. and 62-730 et seq.
7. 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 regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State’s authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. 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 before issuance of this CA/FO.
11. Section 403.721, F.S. [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in Fla. Admin. Code Ann. r. 62-730.160 [40 C.F.R. Part 262].
12. Section 403.722, F.S. [Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The relevant implementing regulations for these requirements are found in Fla. Admin. Code Ann. r. 62-730.180 (permitted) and 62-730.220 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations.
14. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in this section and is not otherwise excluded from regulation as a hazardous waste by Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)].

15. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.30], a solid waste is a hazardous waste if it is listed in that rule [40 C.F.R. Part 261, Subpart D]. Listed hazardous wastes include the F-Listed and P-Listed wastes identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.31(a) and 261.33(e)].
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.20], a solid waste is a hazardous waste if it exhibits any of the characteristics identified in that rule [40 C.F.R. §§ 261.21 through 261.24]. Characteristic hazardous solid wastes are identified with Hazardous Waste Numbers D001 through D043.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “facility” is defined to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
19. Pursuant to Section 403.703, F.S., [Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)], and Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “person” is defined to include a corporation, partnership, or association.
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “owner” is defined as the person who owns a facility or part of a facility and “operator” is the person responsible for the overall operation of a facility.
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation which is under the control of the generator of the process generating the waste, without a permit or interim status and without complying with Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], provided the generator keeps the containers closed (except when waste is being added or removed), in accordance with Fla. Admin. Code Ann. r. 62-730.220 [40 C.F.R. § 265.173(a)], and marks the containers with the words “Hazardous Waste” or other words that identify the contents, in accordance with Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)(ii)].
22. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(2)], a generator who accumulates hazardous waste in excess of the amounts specified therein [in paragraph 40 C.F.R. § 262.34(c)(1)] in containers at or near the point of generation must, with respect to that amount of excess waste, within three days comply with 40 C.F.R. § 262.34(a), and must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.
23. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], a generator may accumulate hazardous waste on site for 90 days or less without a permit or interim status, provided the generator complies with the management requirements in Fla. Admin. Code Ann.

r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)-(4) (hereinafter referred to as the “LQG permit exemption”).

24. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) [40 C.F.R. §§273.14(a) and 273.15(c)], a small quantity handler of universal wastes is required to contain its universal waste batteries in containers clearly marked with the words “Universal Waste-Battery(ies)” or “Waste Battery(ies),” or “Used Battery(ies),” and is required to be able to demonstrate the length of time that its universal waste has accumulated from the earliest date that any universal waste in the container became a waste or was received.
25. Pursuant to Fla. Admin. Code Ann. r. 62-710.201 [40 C.F.R. § 279.1], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
26. Pursuant to Fla. Admin. Code Ann. r. 62-710.210(2) [40 C.F.R. § 279.22(c)(1)], a generator of used oil is required to mark containers holding used oil with the words “Used Oil,” or “Waste Oil.”
27. Pursuant to the Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4), which incorporates 40 C.F.R. § 265.16] condition of the LQG permit exemption, facility personnel must take part in an annual review of the initial training on proper hazardous waste handling and emergency procedures relevant to their positions and generators must maintain records to document that appropriate training has been given to facility personnel.

#### IV. EPA ALLEGATIONS AND DETERMINATIONS

28. Respondent is a “person” as defined in Section 403.703, F.S. [Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)], and Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
29. Respondent is the “owner” and “operator” of a “facility” located at 16490 NW 13<sup>th</sup> Avenue, Miami, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
30. Respondent manufactures marine lights, hardware, and accessories. Facility operations include sand casting, die casting, electroplating, machining, plastic injection molding, painting, and equipment maintenance.
31. Hazardous wastes generated by the Respondent include: solvent waste (D001, D035, F003, F005) from painting process; plating waste sludge (F006) from its wastewater treatment plant; waste chromic acid solution (D002, D007), waste bright nickel bath solutions (D007, D008), and Cyanide waste (D003, D005, D007 and F006) from the plating processes.
32. On March 9, 2010, representatives of the EPA performed a RCRA compliance evaluation inspection (CEI) at the Facility.
33. At the time of the CEI, the EPA observed various containers of hazardous waste in the Paint Booth Area satellite accumulation area that were not closed and were not properly labeled with the words “Hazardous Waste” or other words that identify the contents, as required by Fla.

Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(1)], in violation of Section 403.722, F.S. [Section 3005 of RCRA, 42 U.S.C. § 6925].

34. At the time of the CEI, the EPA observed that a container of excess hazardous waste located in the Paint Booth Area was not marked with the date the excess amount of hazardous waste began accumulating, as required by Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(c)(2)], in violation of Section 403.722, F.S. [Section 3005 of RCRA, 42 U.S.C. § 6925].
35. At the time of the CEI, the EPA observed certain containers of chemical substances which EPA alleges were hazardous wastes that were not being managed in accordance with the Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)-(4)] LQG permit exemption, in violation of Section 403.722, F.S. [Section 3005 of RCRA, 42 U.S.C. § 6925].
36. At the time of the CEI, the EPA observed a 30-gallon universal waste battery container that was not labeled with the words “Universal Waste-Battery(ies)” or “Waste Battery(ies),” or “Used Battery(ies),” and for which Respondent was unable to demonstrate the length of time that the universal waste had accumulated, in violation of Fla. Admin. Code Ann. r. 62-730.185(1), [40 C.F.R. §§ 273.14(a) and 273.15(c)].
37. At the time of the CEI, the EPA observed that a 55-gallon used oil container that was not labeled with the words “Used Oil,” or “Waste Oil,” in violation of Fla. Admin. Code Ann. r. 62-710.210(2) [40 C.F.R. § 279.22(c)(1)].
38. At the time of the CEI, the EPA noted that the Facility did not have records to document that appropriate training had been given to certain facility personnel and had failed to maintain a written job description for each position related to hazardous waste management at the Facility, as required by Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4), which incorporates 40 C.F.R. § 265.16], in violation of Section 403.722, F.S. [Section 3005 of RCRA, 42 U.S.C. § 6925].

## **V. TERMS OF AGREEMENT**

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

39. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
40. For the purposes only of this CA/FO, and accomplishing the settlement which is set forth herein, Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
41. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

42. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
43. For the purposes only of this CA/FO, and accomplishing the settlement which is set forth herein, 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 CA/FO.
44. For the purposes only of this CA/FO, and accomplishing the settlement which is set forth herein, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
45. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
46. The parties agree that compliance with the terms of this CA/FO shall resolve the facts and violations alleged in this CA/FO.
47. Each party will pay its own costs and attorneys' fees.

#### VI. PAYMENT OF CIVIL PENALTY

48. Respondent consents to the payment of a civil penalty in the amount of THIRTY FIVE THOUSAND ONE HUNDRED DOLLARS (\$35,100.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
49. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**

1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 418-1028

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

50. Respondent shall submit a copy of the payment to the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and to:

Larry Lamberth, Chief  
South Compliance and Enforcement Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division, US EPA Region IV  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

51. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30

calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

52. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

#### **VII. PARTIES BOUND**

53. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees and agents acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

54. 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 CA/FO.

55. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

#### **VIII. RESERVATION OF RIGHTS**

56. Notwithstanding any other provision of this CA/FO, 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.

57. 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 CA/FO.

