

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

Oil Energy System, Inc.

RESPONDENT

Docket No. RCRA-02-2011-7107

REGIONAL HEARING  
CLERK

2012 OCT -3 P 1:28

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11

**CONSENT AGREEMENT AND FINAL ORDER**

1. This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901, et seq. (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.
2. Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico is a "State" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31), and therefore within the meaning of this provision. The Commonwealth of Puerto Rico, however, is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for the implementation and enforcement of RCRA's hazardous waste regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 C.F.R. Parts 260 through 273.
3. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" ("Complaint") bearing Docket Number RCRA-02-2011-7107, to Oil Energy System, Inc. ("Respondent"), on August 11, 2011, and Respondent served an answer on or about November 7, 2011.
4. The Complaint alleged that Respondent had violated requirements of RCRA and regulations implementing RCRA, concerning the used oil processing at Respondent's Mayaguez facility located at Calle Concordia 256, in Mayaguez, Puerto Rico.
5. 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 the claims raised in the Complaint against Respondent at its facility, without further litigation.

6. This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. The following constitute EPA's Findings of Fact and Conclusions of Law.

**I. EPA's FINDINGS OF FACT**

7. Respondent is a corporation duly authorized to conduct business in the Commonwealth of Puerto Rico.
8. Respondent conducts its business operations at Respondent's Mayaguez Facility located at Calle Concordia 256, in Mayaguez, Puerto Rico.
9. On or about February 13, 1998, Respondent notified EPA that it is a hazardous waste transporter. This notification was made pursuant to Section 3010 of RCRA. EPA issued Respondent with EPA Identification Number PRR000008524 for its Facility.
10. Respondent operates a materials recovery and recycling business. As part of its activities Respondent transports used oil. Respondent stores the used oil in its Facility in approximately five (5) above ground storage tanks.
11. The used oil is placed in the tanks to allow water to separate from the used oil. The resulting water is then directed to the Facility's wastewater treatment system. After treated on site, the wash water is discharged into the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") sewer system. Respondent is authorized to conduct such discharges through a PRASA pretreatment permit.
12. On or about February 2, 2010, duly designated representatives of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations ("the first inspection").
13. On or about March 2, 2011, duly designated representatives of EPA conducted a second inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine if Respondent continued to be in non-compliance with Subtitle C of RCRA and its implementing regulations ("the second inspection").
14. At the end of the first inspection EPA representatives held a closing conference with Respondent's representatives. During the closing conference, EPA discussed the preliminary findings of the compliance evaluation inspection. EPA informed Respondent, among other things, that:
- a. Heating of the used oil is considered used oil processing,
  - b. Facilities that conduct used oil processing need to comply with requirements established in 40 C.F.R. § 279 Subpart F and
  - c. Respondent was processing used oil and was not complying with the requirements in 40 C.F.R. § 279 Subpart F.

## II. EPA'S CONCLUSIONS OF LAW

15. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
16. Respondent's Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
17. Respondent has been and continues to be the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.
18. Respondent operates as a "used oil transporter," as that term is defined in 40 C.F.R. § 279.1. Used oil processing is defined in 40 C.F.R. § 279.1 as "chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining."
19. As set forth in 40 C.F.R. § 279.50(a), Subpart F requirements "apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining."
20. The requirements of Subpart F do not apply to "Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in §279.41". 40 C.F.R. § 279.50(a)(1).
21. As part of its operations at the facility, Respondent at times apparently placed the used oil in a 2000-gallon tank and heated the oil to accelerate the water separation process.
22. Heating of the used oil is not incidental to the storage of the used oil.
23. Heating the used oil is considered as processing the used oil, since a physical separation is involved.
24. The regulations in 40 C.F.R. § 279.50(a)(1), provide an exemption to the requirement. However, Respondent is not covered by the exemption because the processing, heating the used oil, is not incidental to the aggregation. Respondent is required to comply with 40 C.F.R. § 279 Subpart F.
25. Based on EPA's findings, Respondent should have submitted or have available for review the following documents:
  - a. Documentation that supports the fact that Respondent made arrangements to familiarize police, fire departments, and emergency response teams with the layout of the Facility, properties of used oil handled at the Facility and associated hazards, places where Facility personnel would normally be working, entrances to

- roads inside the Facility, and possible evacuation routes. 40 C.F.R. § 279.52(a)(6)(i)(A).
- b. Documentation that supports the fact Respondent made arrangements to familiarize local hospitals with the properties of used oil handled at the Facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the Facility. 40 C.F.R. § 279.52(a)(6)(i)(D).
  - c. A Facility contingency plan. 40 C.F.R. § 279.52(b).
  - d. A Facility analysis plan. 40 C.F.R. § 279.55.
  - e. A written operating record of the Facility. 40 C.F.R. § 279.57(a).
  - f. Copies of Biennial reports submitted to EPA. 40 C.F.R. § 279.57(b).
26. EPA determined that Respondent's Facility was in violation of RCRA and its regulations at 40 C.F.R. § 279, Subpart F for its failure to comply with the above requirements and issued the present Complaint.
27. Respondent neither admits nor denies the foregoing Findings of Fact and Conclusions of Law.
28. Respondent alleges that it is currently in compliance with 40 C.F.R. § 279 Subpart F requirements and all other applicable regulations.

#### **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 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the allegations set forth in the Complaint; (c) neither admits nor denies the above "EPA's Findings of Fact" and/or "EPA's Conclusions of Law"; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; (f) consents to comply, to the extent that it has not already done so, with the terms and conditions of the Compliance Order that was issued as part of the Complaint, Compliance Order and Notice of Opportunity for Hearing to Respondent, on this matter, bearing Docket Number RCRA 02-20011-7107; and (g) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that the parties shall comply with the following terms and conditions:

1. Respondent shall submit payment of a civil penalty in the total amount of FIFTEEN THOUSAND AND FOUR HUNDRED AND NINETY DOLLARS (\$15,490) by cashier's or certified check, or wire transfer, in the following manner:

Three payments to be paid as follows:

- i. The First payment of \$5,190 within sixty (60) days from the effective date of the Order,
- ii. The Second payment of \$5,150 within one hundred and twenty (120) days from the effective date of the Order and
- iii. The Third and Final payment of \$5,150 within one hundred and eighty (180) days from the effective date of the Order.

2. Respondent shall make the payments by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document or by wire transfer. The date by which each of the payments must be received shall hereafter be referred to as the "due date". Respondent shall perform the payments pursuant to the following:

#### **CHECK PAYMENTS**

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

#### **WIRE TRANSFERS**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Peterson  
314-418-4087

Respondent shall also send copies of the payment to each of the following:

Jesse Aviles  
Response and Remediation Branch  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Agency  
City View Plaza II, Suite 7000  
48 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
48 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. further, if the payments are not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 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 30 day period (or any portion thereof) following the due dates in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due dates;

- c. the civil penalty provided for in this paragraph constitutes a penalty within the meaning of 26 U.S.C. § 162(f); and
- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

#### **GENERAL PROVISIONS**

The Respondent waives any right 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 Director or the 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 accompanying Final Order.

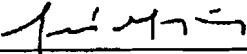
Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

This Consent Agreement and Final Order constitute a Settlement by EPA of all claims for civil penalties pursuant to RCRA, for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

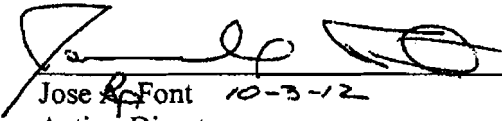
**RESPONDENT:**

  
\_\_\_\_\_  
José González Amador  
President  
Oil Energy System, Inc.

DATE: Sept. 7-12



**COMPLAINANT:**



---

Jose Font 10-3-12  
Acting Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

DATE: 10-3-2012

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Energy System, Inc., bearing Docket Number RCRA-02-2011-7107. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under the authority of Section 3008 of RCRA, 42 U.S.C. § 6928.

DATED: October 3, 2012

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency,  
Region 2  
Office of the Regional Counsel  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

IN THE MATTER OF:

Oil Energy System, Inc.

CONSENT AGREEMENT AND  
FINAL ORDER  
Docket No. RCRA-02-2011-7107

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Consent Agreement and Final Order, bearing docket number RCRA-02-2011-7107, as follows:

Copy by UPS:

Administrative Law Judge:  
The Honorable M. Lisa Buschmann  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005

[Phone: (202) 564-6262 Att: Knolyn Jones,  
Legal Staff Assistant]

Copy by Certified Mail:

Attorney for Respondent:  
Jose Javier Lugo Toro, Esq.  
PMB 171  
400 Calaf Street  
San Juan, PR 00918

Original and copy, UPS to:

Karen Maples  
Regional Hearing Clerk  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

Dated:

October 3, 2012

  
ORC, Guaynabo, Puerto Rico