



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
April 20, 2022

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Adam Bates
Global Director of EHS and Regulatory Compliance
Vertellus Zeeland, LLC
215 North Centennial Street
Zeeland, Michigan 49464
abates@vertellus.com

Re: Consent Agreement and Final Order
Facility: Vertellus Zeeland, LLC
EPA ID No.: MID083684290
Docket No.: RCRA-05-2022-0009

Dear Mr. Bates:

Attached, please find a signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The CAFO was filed on April 20, 2022, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$55,564 in the manner prescribed in paragraphs 57-62 of the CAFO, and reference all checks with the docket number RCRA-05-2022-0009. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Brenda Whitney, of my staff, at whitney.brenda@epa.gov or 312-353-4796.

Sincerely,

MARK
RESTAINO

Digitally signed by MARK
RESTAINO
Date: 2022.04.11 12:37:39
-05'00'

Mark Restaino, Acting Manager
Compliance Section 2

Attachment

cc: Anne Frye – Vertellus Holdings, LLC (afrye@vertellus.com)
Phil Roycraft – MI EGLE (roycraftp@michigan.gov)
Alexandra Clark – MI EGLE (clarka37@michigan.gov)
Lonnie Lee – MI EGLE (leel@michigan.gov)
Elizabeth Browne – MI EGLE (browne@michigan.gov)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2022-0009
)	
Vertellus Zeeland, LLC, Zeeland, Michigan, EPA ID No.: MID083684290,)	Proceeding to Commence and Conclude an Action to Assess a Civil Penalty Under Section 3008(a) of the Resource Conservation and Recovery Act,
)	
Respondent.)	42 U.S.C. § 6928(a)
)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of 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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Vertellus Zeeland, LLC, a limited liability corporation doing business in the State of Michigan.

5. 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).

6. 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.

7. 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

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

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

10. 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

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939(e)) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil

penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986).

15. On June 6, 2019, pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), U.S. EPA authorized revisions to the State of Michigan's hazardous waste management program. 84 Fed. Reg. 26359 (June 6, 2019).

16. On August 3, 2020, the State of Michigan promulgated revised and renumbered hazardous waste management program regulations. U.S. EPA has not yet authorized the State's revised regulations, therefore, the regulations U.S. EPA authorized on June 6, 2019 remain in effect.

17. Generally, an owner or operator of a facility that stores hazardous waste must obtain a RCRA Hazardous Waste Storage License (RCRA License). Mich. Admin. Code Parts 5, 6, and 7.

18. An owner or operator of a facility who is also a generator of hazardous waste may qualify for a conditional exemption from the RCRA License and Storage Operation requirements of Mich. Admin. Code Parts 5, 6, and 7 for its generated wastes if it complies with all applicable conditions for such an exemption, where said requirements are not themselves incorporated into the conditions. Mich. Admin. Code r. 299.9503(1)(b).

19. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$102,638 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 and that was assessed on or after December 23, 2020, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. At all times relevant to this CAFO, Respondent has been a limited liability corporation.

21. Therefore, Respondent is a “person” as defined by Mich. Admin. Code r. 299.9106(i).

22. At all times relevant to this CAFO, Respondent used organic solvents and other materials in manufacturing and cleaning processes.

23. At all times relevant to this CAFO, Respondent produced unwanted used organic solvents.

24. At all times relevant to this CAFO, Respondent’s unwanted used organic solvents were “waste” as that term is defined under Mich. Admin. Code r. 299.9109(jj).

25. Respondent’s waste was “hazardous waste” as that term is defined under Mich. Admin. Code r. 299.9104(f).

26. Therefore, Respondent was a “generator” of hazardous waste as that term is defined under Mich. Admin. Code r. 299.9104(a).

27. At all times relevant to this CAFO, Respondent collected and held its hazardous waste for temporary periods in drums, totes, and above-ground storage tanks.

28. Therefore, Respondent collected and held hazardous waste in “containers” and “tank systems” as those terms are defined under Mich. Admin. Code r. 299.9102(s) and 299.9108(b), respectively.

29. Therefore, Respondent held its hazardous waste in “storage” as that term is defined under Mich. Admin. Code r. 299.9107(gg).

30. The Facility began generating and managing hazardous waste prior to November 19, 1980.

31. On or about August 13, 1980, Respondent submitted to U.S. EPA and the State of Michigan a Hazardous Waste Notification first indicating that it was a large quantity generator of hazardous waste.

32. Therefore, Respondent was an “Existing Facility” as that term is defined by Mich. Admin. Code r. 299.9103(m).

33. Respondent’s Existing Facility was located at 215 North Centennial Street in Zeeland, Michigan, and included at least one building structure and equipment for treating storing or disposing of hazardous waste.

34. Therefore, Respondent’s Existing Facility was a “facility” as defined under Mich. Admin. Code r. 299.9103(s) (“the Facility”).

35. At all times relevant to this CAFO, Respondent owned and operated the Facility.

36. Therefore, Respondent was an “operator” or “owner,” of the Facility as those terms are defined under Mich. Admin. Code r. 299.9106(f) and (g), respectively.

37. On February 27, 2020, Respondent notified the State of Michigan that it was operating as a large quantity generator in the year 2020.

38. On July 15, 2020, U.S. EPA emailed a Request for Information (RFI) dated July 13, 2020 to Respondent.

39. On September 18, 2020, Respondent emailed to U.S. EPA a written response (“Response 1”) to the RFI.

40. On October 14, 2020, U.S. EPA emailed a Notice of Potential Violations and Area of Concern Letter (“Notice”) alleging certain violations of RCRA discovered upon review of Response 1.

41. On November 12, 2020, Respondent emailed to U.S. EPA a supplemental written response to the Notice (“Response 2”).

42. At all times relevant to this complaint, the State of Michigan had not issued a license to Respondent to treat, store, or dispose of hazardous wastes at its Facility.

43. At all times relevant to this complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

Count 1

Violation of RCRA Air Emissions Requirements – 40 C.F.R. Part 265, Subpart BB

44. Paragraphs 1-43 are incorporated by reference as if fully presented in this Count.

45. A generator may accumulate hazardous waste on-site for 90 days or less without a license or without having interim status, provided that the generator places hazardous wastes in containers or tanks in compliance with, among other things, 40 C.F.R. Part 265, Subpart BB, enumerated from 40 C.F.R. §§ 265.1050 through 265.1064. See Mich. Admin. Code r. 299.9306(1)(a)(i) and (ii).

46. Respondent failed to mark each piece of equipment in such a manner that they can be distinguished readily from other pieces of equipment, in violation of 40 C.F.R. § 265.1050(c).

47. Respondent failed to monitor monthly each pump in light liquid service to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b), in violation of 40 C.F.R.

§ 265.1052(a)(1).

48. Respondent failed to monitor monthly each valve in gas/vapor or light liquid service to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b), in violation of 40 C.F.R.

§ 265.1057(a).

49. Respondent failed to comply with the record-keeping provisions of 40 C.F.R. Part 265, Subpart BB, in violation of 40 C.F.R. § 265.1064(a).

50. Therefore, Respondent failed to meet the conditions that allow for accumulation of hazardous waste on-site for 90 days or less without a license or without having interim status, through violation of applicable requirements of 40 C.F.R. Part 265, Subpart BB, listed above, and violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

Count 2

Violation of RCRA Air Emissions Requirements – 40 C.F.R. Part 265, Subpart CC

51. Paragraphs 1-43 are incorporated by reference as if fully presented in this Count.

52. A generator may accumulate hazardous waste on-site for 90 days or less without a license or without having interim status, provided that the generator places hazardous wastes in containers or tanks in compliance with, among other things, 40 C.F.R. Part 265, Subpart CC, enumerated from 40 C.F.R. §§ 265.1080 through 265.1090. See, Mich. Admin. Code r. 299.9306(1)(a)(i) and (ii).

53. Respondent failed to determine the average volatile organic (VO) concentration of a hazardous waste at the point of waste origination, in violation of 40 C.F.R. § 265.1084(a).

54. Respondent failed to determine the maximum organic vapor pressure of a hazardous waste that is stored in a hazardous waste tank storage system, in violation of 40 C.F.R.

§ 265.1084(c).

55. Respondent failed to maintain records required under 40 C.F.R. Part 265, Subpart CC, in violation of 40 C.F.R. § 265.1090(a).

56. Therefore, Respondent failed to meet the conditions that allow for accumulation of hazardous waste on-site for 90 days or less without a license or without having interim status, through violation of the applicable requirements 40 C.F.R. Part 265, Subpart CC, listed above, in violation Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

Civil Penalty

57. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$55,564. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$55,564 civil penalty for the RCRA violations by wire transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the wire transfer, state "Vertellus Zeeland, LLC"

and the docket number of this CAFO.

59. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the payment and transmittal letter to:

Regional Hearing Clerk
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Brenda Whitney
Land Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
Whitney.brenda@epa.gov and
r5lecab@epa.gov

Thomas Martin
Office of Regional Counsel
U.S. EPA, Region 5
Martin.thomas@epa.gov

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

61. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

62. 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 payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

63. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: martin.thomas@epa.gov (for Complainant), and afrye@vertellus.com and abates@vertellus.com (for Respondent).

64. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

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

66. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

67. Respondent certifies that it is complying fully with the statutory and regulatory citations subject to this CAFO.

68. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

70. 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.

71. Each party agrees to bear its own costs and attorney's fees in this action.

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

Vertellus Zeeland, LLC, Respondent

03/30/2022

Date

**Adam L.
Bates**

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Adam L. Bates
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Adam L. Bates
Global Director of EHS & Regulatory Compliance
Vertellus Zeeland, LLC

United States Environmental Protection Agency, Complainant

4/11/22

Date

**MICHAEL
HARRIS**

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MICHAEL HARRIS
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division


In the Matter of:
Vertellus Zeeland, LLC
Docket No. RCRA-05-2022-0009

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

**ANN
COYLE**

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COYLE
Date: 2022.04.14
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Vertellus Zeeland, LLC
Docket Number: RCRA-05-2022-0009

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 20, 2022, this day in the following manner to the addressees:

Copy by email to Respondent's Representatives: (Delivery Receipt Requested)	Adam Bates Global Director of EHS and Regulatory Compliance Vertellus Zeeland, LLC 215 North Centennial Street Zeeland, Michigan 49464 abates@vertellus.com
	Anne Frye Vice President, General Counsel, Secretary and Compliance Officer Vertellus Holdings, LLC 201 North Illinois Street, Suite 1800, Indianapolis, IN 46204 afrye@vertellus.com
Copy by email to Attorney for Complainant:	Thomas Martin Martin.thomas@epa.gov
Copy by email to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 5