



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 3 0 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Les Oakes, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E
Atlanta, GA 30309-3521

SUBJ: Consent Agreement and Final Order
RCRA Docket No.: RCRA-04-2009-4252(b)
Zep Inc.
EPA ID Number: GAD 003 267 192

Dear Mr. Oakes:

Enclosed is a copy of the executed above referenced Consent Agreement and Final Order (CA/FO). If you have any questions or comments, please contact Javier García of my staff, at (404) 562-8616, or me (404) 562-8976.

Sincerely,

A handwritten signature in cursive script that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

cc w/enclosure: Mark Smith, GAEPD
David Korn, Zep, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|-----------------------------|---|---|
| IN THE MATTER OF: |) | Docket Number: RCRA-04-2009-4252(b) |
| |) | |
| Zep Inc., |) | Proceeding under Section 3008(a) of the |
| Atlanta, Georgia |) | Resource Conservation and Recover Act, |
| |) | 42 U.S.C. § 6928(a) |
| |) | |
| EPA ID No.: GAD 003 267 192 |) | |
| |) | |
| Respondent. |) | |

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MELANIE CLERMONT

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 et seq., and the Georgia Hazardous Waste Management Act (GHWMA), Ga. Code Ann. § 12-8-60 et. seq. (LEXIS 1995). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged 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 279; and the GHWMA and regulations promulgated pursuant thereto and set forth at the State of Georgia (Ga. Comp. R & Regs. r.) Chapter 391-3-11. For purposes of this Order, citations herein to the requirements of 40 C.F.R. Parts 124 and 260 through 270 shall constitute a citation to the equivalent requirements of the Official Compilation Rules and Regulations of the State of Georgia.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this procedure 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. 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). Respondent is Zep Inc. (Respondent), a corporation incorporated under the laws of the State of Delaware. Respondent operates a facility at 1310 Seaboard Industrial Boulevard, Atlanta, Georgia.

III. PRELIMINARY STATEMENTS

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 21, 1984, EPA authorized the State of Georgia to administer its hazardous waste program in lieu of the federal program, and has authorized numerous revisions to the Georgia program since then. Georgia has incorporated by reference, EPA's RCRA regulations in Chapter 391-3-11 .08(1) of the Georgia Department of Natural Resources Environmental Protection Rules. The requirements of the authorized State program are found in the GHWMA and Ga. Comp. R & Regs. r. Chapter 391-3-11. Therefore, for the purpose of this CA/FO, a citation hereinafter to the requirements of 40 C.F.R. Parts 124, and 260 - 279 shall also constitute a citation to the equivalent requirements of the Official Compilation Rules and Regulations of the State of Georgia.
6. Although EPA has granted the State of Georgia authority to enforce its own hazardous waste program, 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 EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Georgia.
7. 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 CA/FO.
8. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), requires the Administrator to promulgate regulations establishing the standards applicable to generators of hazardous waste. Pursuant to that provision, EPA promulgated 40 C.F.R. Part 262. The regulations became effective on November 19, 1980.
9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. Pursuant to that provision, EPA promulgated 40 C.F.R. Parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. These regulations became effective on May 19, 1980.
10. At the facility, Respondent blends raw materials in kettles for the manufacture of a wide variety of cleaning products, hand soaps, and aerosol products for use in both industrial and residential applications. The products are either water-based or solvent-based.
11. In the Aerosol Building and the Solvent Compounding Room, Respondent manufactures solvent-based products.

12. As part of its manufacturing activities, Respondent cleans the kettles between production batches and generates a liquid waste.
13. Respondent cleans the aerosol compounding room kettles with water and acetone.
14. Respondent cleans the solvent blending kettles with solvents and water.
15. Respondent uses the indoor trenches to collect floor and kettles washing residues, residues from the raw material delivery system to the filling lines, drips from hoses and piping used to introduce raw materials into the product mixing kettles and other spills in the manufacturing area.
16. Prior to December 2004, the trench drains in the Solvent Compounding Room were connected directly to Respondent's wastewater pretreatment plant. On or about December 2004, Respondent converted the drains into self-contained trenches by plugging the discharge line that connected the trenches into the wastewater pretreatment plant. In March 2006, Respondent disconnected the trench drains in the Aerosol Building from the wastewater pretreatment plant as part of the company's Aerosol Waste Minimization Project.
17. Pursuant to 40 C.F.R. § 261.2, the liquids accumulated in the aerosols and solvent blending manufacturing area trench systems are solid wastes.
18. Pursuant to 40 C.F.R. § 261.21(b), a solid waste that exhibits the characteristic of ignitability is as a D001 hazardous waste
19. Pursuant to 40 C.F.R. § 261.30, a solid waste that is listed in Subpart D, of 40 C.F.R. Part 260, is a listed hazardous waste.
20. The liquids accumulated in the aerosols and solvent blending manufacturing area trench systems exhibit the characteristic of ignitability (hazardous waste code D001), and meet the listing criteria for spent solvent (hazardous waste code F003) included in 40 C.F.R. § 261.30(a).
21. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii), a generator may accumulate hazardous waste on-site in tanks for 90 days or less without a permit or interim provided, the generator complies with the applicable requirements of subparts J, AA, BB, CC of 40 C.F.R. Part 265.
22. Pursuant to 40 C.F.R. § 262.34(a)(2) a generator may accumulate hazardous waste on site in containers for 90 days or less without a permit or interim status, provided the generator marks each hazardous waste container with the date accumulation begins.

IV. EPA ALLEGATIONS AND DETERMINATIONS

23. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10. (Ga. Comp. R & Regs. r Chapter 391-3-11).
24. Respondent is the "operator" of a "facility" located in Atlanta, Georgia, as those terms are defined in 40 C.F.R. § 260.10.
25. On June 18 - 19, and October 11, 2007, EPA a conducted a RCRA compliance evaluation inspection (CEI) at the facility, and made the following observations:
 - a. Respondent had two hazardous waste containers that were not marked with the accumulation start date.
 - b. Outside the Aerosol Building, Respondent had an above ground 400-gallon tank with wastewater from the QA/QC lab that eventually was to be transferred to 275-gallon tote containers. Respondent stated that the operator marked the tote containers with the date the waste is transferred to the container, instead of using the date when accumulation in the tank started.
 - c. Respondent was operating the trench systems in the aerosol and solvent compounding rooms as hazardous waste storage tanks and not as emergency containment units.
26. Pursuant to 40 C.F.R § 262.34(a)(2), a generator may accumulate hazardous waste on site for ninety days or less without a permit or interim status, provided the generator marks each hazardous waste container with the date accumulation of the waste begins. Respondent failed to mark two hazardous waste tote containers with the accumulation start date. Furthermore, Respondent failed to mark the QA/QC hazardous waste tote containers with the actual accumulation start date. As such, Respondent was in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.
27. Pursuant to 40 C.F.R § 262.34(a)(3), a generator may accumulate hazardous waste on site for ninety days or less without a permit or interim status, provided the generator marks each hazardous waste tank with the words "Hazardous Waste." Respondent failed to mark the aerosol and solvent compounding room trenches with the words "Hazardous Waste." Therefore, Respondent was in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.
28. Pursuant to 40 C.F.R § 262.34(a)(1)(ii), a generator may accumulate hazardous waste in tanks for ninety days or less without a permit or interim status, provided the generator complies with all applicable requirements in Subpart J of 40 C.F.R. Part 265. Respondent failed to provide secondary containment for the aerosol and solvent compounding room trenches as required in 40 C.F.R. § 265.193(a). Therefore, Respondent was in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.
29. Pursuant to 40 C.F.R § 262.34(a)(1)(ii), a generator may accumulate hazardous waste in tanks for ninety days or less without a permit or interim status, provided the generator complies with all applicable requirements in Subpart CC of 40 C.F.R. Part 265.

Respondent failed to control the air emissions from the aerosol and solvent compounding room trenches, as required in 40 C.F.R. § 265.1085(b). Therefore, Respondent was in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

30. In a document dated August 2008, Respondent certified to EPA that the trench system was decontaminated and filled with concrete and tested for leaks. No leaks were detected.

V. TERMS OF AGREEMENT

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

31. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
32. The Respondent neither admits nor denies EPA's factual allegations and EPA's preliminary statements set out above.
33. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.
34. 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.
35. 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.
36. 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.
37. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
38. Each party will pay its own costs and attorney's fees.

A. PAYMENT OF CIVIL PENALTY

39. Respondent consents to the payment of a civil penalty in the amount of SEVENTY-TWO THOUSAND AND TWO HUNDRED FIVE Dollars (\$72,205).
40. Payments shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket

number for this matter shall be referenced on the face of each check. Payments shall be tendered to:

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

Respondent shall submit a copy of each payment to the following addressees:

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

and to:

Frank Ney, Acting Chief
 South Section - RCRA and OPA Enforcement and Compliance Branch
 RCRA Division
 U.S. EPA - Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

41. If Respondent fails to remit the civil penalty as agreed to herein, 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 thirty (30) calendar days of receipt of a final copy 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 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 \$15.00 on any late payment, with an additional charge of \$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 more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent 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).

42. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

B. INJUNCTIVE RELIEF

43. Respondent shall address releases from the facility pursuant to the Consent Order with the Georgia Environmental Protection Division, EPD-HSR-532.

VI. RESERVATION OF RIGHTS

44. 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 facilities may present an imminent and substantial endangerment to human health or the environment.
45. If EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this CA/FO for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
46. 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.
47. Except as expressly provided herein, nothing in this CA/FO 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 facilities.
48. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. OTHER APPLICABLE LAWS

49. All actions required to be taken pursuant to this CA/FO 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

50. This CA/FO 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 CA/FO.
51. 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.
52. 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.

IX. SERVICE OF DOCUMENTS

53. A copy of any documents 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:

Mita Ghosh, Chief
 Office of RCRA, OPA and UST Legal Support
 OEA – 13th Floor
 U.S. EPA – Region 4
 Sam Nunn Atlanta Federal Center
 61 Forsyth Street, SW
 Atlanta, Georgia 30303
 (404) 562-9568

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

Les Oakes, Esq.
 King & Spalding, LLP
 King & Spalding
 1180 Peachtree Street, N.E
 Atlanta, GA 30309-3521

X. SEVERABILITY

55. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO 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 CA/FO shall remain in force and shall not be affected thereby.

XI. EFFECTIVE DATE

56. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

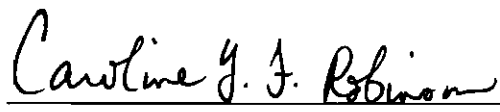
AGREED AND CONSENTED TO:

Zep

By: 
Chief Compliance Officer

Dated: 3-12-09

U.S. Environmental Protection Agency

By: 
Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 3/17/09

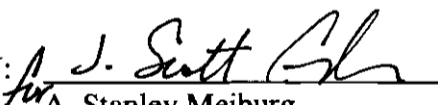
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

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| IN THE MATTER OF: |) | Docket Number: RCRA-04-2009-4252(b) |
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| Zep Inc., |) | Proceeding under Section 3008(a) of the |
| Atlanta, Georgia |) | Resource Conservation and Recover Act, |
| |) | 42 U.S.C. § 6928(a) |
| |) | |
| EPA ID No.: GAD 003 267 192 |) | |
| |) | |
| 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 20TH day of March, 2009.

BY: 
A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

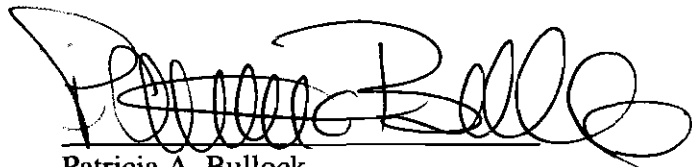
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Zep , Docket Number: RCRA-04-2009-4252(b) on the parties listed below in the manner indicated:

Mita Ghosh, Chief
Office of RCRA, OPA and UST Legal Support (Via EPA's internal mail)
OEA - 13th Floor
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9568

Les Oakes, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E
Atlanta, GA 30309-3521

(Via Certified Mail- Return Receipt Requested)

Date 3-30-09



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511