



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 05 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry Eagan, Operations Manager
EnviroFocus Technologies, LLC
1901 North 66th Street
Tampa, Florida 33619

SUBJ: Consent Agreement and Final Order
Docket Number: RCRA-04-2008-4017(b)
EPA ID Number: FLD 004 092 839

Dear Mr. Eagan:

Enclosed is a copy of the above-referenced executed Consent Agreement and Final Order (CAFO). Please refer to paragraphs 27, 28, 29 and 39 for the deadlines established in the CAFO. 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: Tim Bahr, Florida Department of Environmental Protection
Jim Dregne, FDEP Southwest District

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2008-4017(b)
)
EnviroFocus Technologies, LLC) Proceeding under Section 3008(a)
1901 North 66th Street) of the Resource Conservation and
Tampa, Florida 33619) Recovery Act, 42 U.S.C. § 6928(a)
)
EPA ID No.: FLD 004 092 839)
)
Respondent.)
_____)

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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 Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403-701 et seq. (LEXIS 2006). 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 270; and Fla. Stat. Sections 403-701 et seq., and regulations promulgated pursuant thereto and set forth at the Florida Administrative Code Annotated Rules (Fla. Admin. Code Ann. r.) 62-730 et seq.
2. 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, 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).

5. Respondent is EnviroFocus Technologies, LLC (“EnviroFocus”) a corporation incorporated under the laws of the State of Florida. Respondent operates a facility at 1901 North 66th Street, Tampa, Florida.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida (the State) received final authorization from EPA to enforce certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in Fla. Stat. § 403.702 et seq. and Fla. Admin. Code Ann. r. 62-730 et seq.
7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, in January 1994 and October 2001, the State received final authorization from EPA to carry out the used oil management program in lieu of the federal program set forth in RCRA. The requirements of the authorized State's used oil management program are found in Fla. Stat. § 403.701 et seq. and Fla. Admin. Code Ann. r. 62-730 et seq.
8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, in June 1997, the State received final authorization from EPA to carry out the universal waste management program in lieu of the federal program set forth in RCRA. The requirements of the authorized State's universal waste management program are found in Fla. Stat. § 403.701 et seq., and Fla. Admin. Code Ann. r. 62-730 et seq.
9. Although EPA has granted the State of Florida 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 Florida.
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 of Florida before issuance of this CA/FO.

IV. EPA ALLEGATIONS AND DETERMINATIONS

11. 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, as adopted by reference in Fla. Admin. Code Ann. r. 62-730.020.
12. Respondent is the "owner" and "operator" of a “facility” located at 1901 North 66th Street, Tampa, Florida as those terms are defined in 40 C.F.R. § 260.10, as adopted by reference in Fla. Admin. Code Ann. r. 62-730.020.
13. Respondent generates hazardous wastes. Respondent stores universal waste lamps and used oil.
14. On September 29, 2006, FDEP issued to Respondent a RCRA storage permit that establishes the conditions required to operate and maintain the Lead Group Storage Building.

15. Pursuant to Permit Condition I.28, storage of hazardous waste in a manner that requires a permit is restricted to the Lead Group Storage Building.
16. Storage of hazardous waste generated at the facility is subject to 40 C.F.R. Part 262, as adopted by reference, in pertinent part, in Fla. Admin. Code Ann. r. 62-730.160.
17. On February 19, 2008, representatives of the EPA and the Florida Department of Environmental Protection (FDEP) performed a RCRA compliance evaluation inspection (CEI) of the Facility.
18. During the CEI, EPA and FDEP representatives noted the following:
 - a. The southeastern corner of the Lead Group Storage Building Unit had a gap between the walls.
 - b. Respondent was storing slag that exhibited the characteristics of toxicity for barium and lead in a bin (designated by the facility as Bin 4 in the Slag Storage Building).
 - c. Bin 4 was not designed or operated in a manner that confined the slag within the containment building.
 - d. Respondent failed to clean oil released both inside the maintenance building, and on a concrete pad behind the maintenance building.
 - e. In the maintenance building Respondent was storing one 55-gallon used-oil container that was leaking used oil.
 - f. Respondent failed to include its EPA identification number on two hazardous waste manifests.
 - g. Respondent failed to provide RCRA training to some of its employees.
19. Complainant alleges that Respondent was in violation of Permit Condition II.2 by operating its Lead Group Storage Unit with a gap between the walls in the southeastern corner of the building.
20. Pursuant to 40 C.F.R. § 262.34(a)(1)(iv), as adopted by reference by Fla. Admin. Code Ann. r. 62-730.160(1), a generator may accumulate hazardous waste in a containment building for ninety days or less without a permit or interim status, provided the containment building, among other requirements, meets the following conditions:
 - a. It is completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of the managed waste as required in 40 C.F.R. § 265.1101(a)(1).
 - b. It is designed and operated in a fashion that assures that wastes will not actually come in contact with the unit's openings, as required in 40 C.F.R. § 265.1101(a)(1)(ii).

- c. It must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed, as required in 40 C.F.R. § 265.1101(a)(4).
 - d. The generator has a certification from a professional engineer indicating that the building complies with the design standards specified in 40 C.F.R. § 265.1101.
- 21. Complainant alleges that Respondent failed to contain the slag within Bin 4 of the Slag Storage Building, an area not subject to Respondent's RCRA storage permit, in violation of the requirements in 40 C.F.R. § 262.34(a)(1)(iv). By failing to meet the requirements for the exemption to a storage permit, Respondent was storing hazardous without a permit or interim status.
 - 22. Complainant alleges that Respondent was in violation of 40 C.F.R. § 279.22(d)(3) by failing to clean oil released both inside the maintenance building, and on a concrete pad behind the maintenance building.
 - 23. Complainant alleges that Respondent was in violation of 40 C.F.R. § 279.22(b)(2) by storing used oil in a container that was leaking.
 - 24. Complainant alleges that Respondent was in violation of 40 C.F.R. § 273.13(d)(1) and (2) by failing to store spent fluorescent lamps in containers.
 - 25. Complainant alleges that Respondent was in violation of 40 C.F.R. § 262.20(a)(1) by failing to include the facility's identification number on two hazardous waste manifests.
 - 26. Complainant alleges that Respondent was in violation of Permit Condition I.14, by failing to provide RCRA training to some of its employees.

V. TERMS OF AGREEMENT

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

- 27. Within thirty (30) calendar days of receipt of the executed copy of this CA/FO, Respondent shall submit to EPA and FDEP a certification signed by a professional State of Florida certified-engineer stating that the Slag Storage Building complies with the design standards specified in 40 C.F.R. § 265.1101.
- 28. Within thirty (30) calendar days of receipt of the executed copy of this CA/FO, Respondent shall submit to EPA and FDEP a certification signed by a professional State of Florida certified-engineer stating that the structural integrity of the Lead Group Storage Building has not been compromised. This certification should be based on standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM).
- 29. Within ten (10) calendar days of receipt of a final copy of this CA/FO, Respondent shall submit to EPA a certification signed by a responsible corporate representative stating that the

facility is in compliance with 40 C.F.R. § 279.22, 40 C.F.R. § 273.13(d), 40 C.F.R. § 262.20(a), and Permit Condition I.14. This certification shall be as follows:

“I certify under penalty of law, to the best of my knowledge and belief, that, upon Respondent’s full implementation of the actions required in this CA/FO, EnviroFocus Technologies, LLC located at 1901 North 66th Street, Tampa, Florida, which was the subject of Consent Agreement and Final Order, Docket No. RCRA-04-2008-4017(b) (CA/FO) is in compliance with: the used oil storage requirements in 40 C.F.R. § 279.22, the universal waste lamps requirements in 40 C.F.R. § 273.13(d), the manifest requirements in 40 C.F.R. § 262.20(a), and the training requirements in our RCRA Permit Condition I.14.

All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

30. The certifications required to be submitted under this CA/FO shall be mailed to:

Frank Ney, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Tim Bahr, Administrator, Hazardous Waste Programs
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

31. For the purpose of this CA/FO, Respondent admits the jurisdictional allegations set out above.
32. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations contained in this CA/FO.
33. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations contained herein, and its right to appeal this CA/FO.
34. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the violations alleged herein, on the basis of 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 they will pay their own costs and attorney's fees.
38. The parties agree that compliance with the terms of this CA/FO shall resolve the alleged violations of RCRA in this CA/FO.

VI. CIVIL PENALTY

39. Respondent consents to the payment of a civil penalty in the amount of FIFTEEN THOUSAND NINE HUNDRED EIGHTY TWO DOLLARS (\$15,982) within thirty (30) calendar days of the effective date of this CA/FO.
40. Payment 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 the check. Payment 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. See 40 C.F.R. § 13.11 (b) and (c). 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 after the effective date of this CA/FO. 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).

VII. PARTIES BOUND

43. This CA/FO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, and 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.
44. 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.
45. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to this CA/FO.

VIII. RESERVATION OF RIGHTS

46. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to raise any and all applicable defenses to any

enforcement action for alleged future violations of RCRA. If Respondent is charged with violation of this CA/FO, Respondent does not waive its right to prove compliance with the terms 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 claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.
48. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future 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.
49. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
50. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
51. The provisions of this CA/FO shall be deemed satisfied upon Respondent's full implementation of the actions required in this CA/FO.

IX. OTHER APPLICABLE LAWS

52. 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.

X. SERVICE OF DOCUMENTS

53. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Deborah S. Benjamin, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9561

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

Larry G. Eagan, Operations Manger
EnviroFocus Technologies, LLC.
1901 North 66th Street
Tampa, Florida 33619

XI. SEVERABILITY

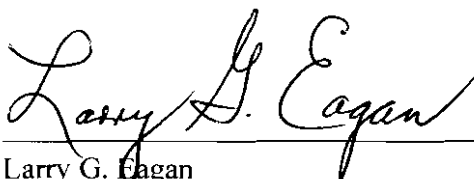
55. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. 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.

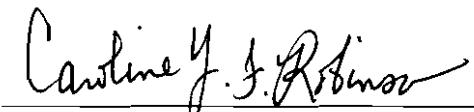
AGREED AND CONSENTED TO:

EnviroFocus Technologies, LLC

By: 
Larry G. Eagan
Operations Manger

Dated: 09-03-08

U.S. Environmental Protection Agency

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

Dated: 10-31-08

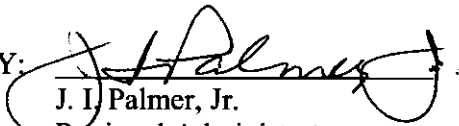
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4017(b)
)	
EnviroFocus Technologies, LLC)	Proceeding under Section 3008(a)
1901 North 66th Street)	of the Resource Conservation and
Tampa, Florida 33619)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: FLD 004 092 839)	
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 4 day of November, 2008.

BY: 
J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

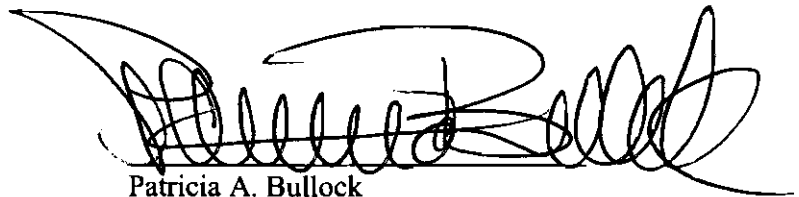
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of EnviroFocus Technologies, LLC, Docket Number: RCRA-04-2008-4017(b), on the parties listed below in the manner indicated:

Deborah Benjamin, (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

EnviroFocus Technologies, LLC
Larry G. Eagan
Operations Manger
1901 N. 66th Street
Tampa, Florida 33619

(Via Certified Mail- Return Receipt Requested)

Date 11-5-08



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