



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

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BY CERTIFIED MAIL
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SEP 27 2002

Laurel Lockett, Esq.
Carlton Fields
One Harbour Place
777 S. Harbour Island Blvd.
Tampa, FL 33602-5730

SUBJ: In the Matter of: Hagan Holding Company d/b/a
Howco Environmental Services
Consent Agreement and Final Order;
Docket No. RCRA-04-2002- 4008(b)

Dear Ms. Lockett:

Enclosed please find a copy of the signed and filed above referenced Consent Agreement and Final Order (CAFO). Please note that the first payment is not due until thirty (30) days after the CAFO is filed with the Regional Hearing Clerk.

Thanks for your cooperation. If you have any questions please call me at (404) 562-9532.

Sincerely,

Frank S. Ney
Associate Regional Counsel

Enclosure

cc: Tim Hagan

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D.E.P. - South District

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEAR

IN THE MATTER OF:

) DOCKET NO.: RCRA-04-2002-4008(b)

)

Hagan Holding Company d/b/a
Howco Environmental Services
2650-A Edison Avenue
Fort Myers, Florida

) PROCEEDING UNDER SECTION
) 3008(a) OF THE RESOURCE
) CONSERVATION AND RECOVERY
) ACT, 42 U.S.C. § 6928(a)

)

EPA ID No.: FL0 001 000 611

)

)

RESPONDENT.

)

)

CONSENT AGREEMENT AND FINAL ORDERI. 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, Sections 403.702 et seq. 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 279; and Fla. Stat. § 403-702 and regulations promulgated pursuant thereto and set forth at the Florida Administrative Code Annotated (Fla. Admin. Code Ann. R.), Chapter 62-710 and 730. Complainant is the Chief of the RCRA Enforcement and Compliance Branch, Waste Management Division, Region 4, United States Environmental Protection Agency. Respondent is Howco Environmental Services (Howco).

2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits 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 (CAFO). 40 C.F.R. § 22.13(b) & 22.18(b)(2).

3. Complainant and Respondent have conferred for the purposes 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 CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENTS

4. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, on February 12, 1985, the State of Florida (the State) received final authorization from EPA to carry out certain portions of the State's 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. §§ 403.701 et seq. and F.A.C. Ann. R. 62-710.

5. 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. §§ 403.702 et seq. and F.A.C. Ann. R. 62-730.

6. Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and Florida.

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 before issuing this Order.

III. ALLEGATIONS AND DETERMINATIONS

8. Respondent is Hagan Holding Company incorporated and doing business in the State of Florida.

9. 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, and F.A.C. Ann R. 62-730.020.

10. Respondent is the "operator" of a "facility," as those terms are defined in 40 C.F.R. § 260.10, and F.A.C. Ann R. 62-730.020, and an operator of a "used oil transfer facility" as that term is defined at 40 C.F.R. § 279.1 and 62-710, F.A.C., located at 2650-A Edison Avenue, Fort Myers, Florida.

11. The Respondent leases the facility from Ryan Tire and Petroleum, Incorporated.

12. On or about February 6, 1995, Respondent notified the Florida Department of Environmental Protection (FDEP) as the operator of a used oil transfer facility.

13. At the facility, Respondent operates four 20,000-gallon aboveground storage tanks. Two tanks (Tanks 1 and 2) are registered to store used oil and are labeled "used oil." One tank (Tank 3) is registered as storing "miscellaneous petroleum products" that include petroleum contaminated wastewater and used oil and is labeled "used oil/water." One tank (Tank 4) is registered as storing "miscellaneous petroleum products" that include used oil and used antifreeze and is labeled "used oil/anti-freeze."

14. Respondent collects used oil, petroleum contaminated wastewater and used antifreeze from various customers within FDEP's South District. These materials are brought to the facility for temporary storage.

15. On April 26, 2001, Respondent generated nineteen 55-gallon drums containing "tank bottoms," removed from Tank 3.

16. The tank bottoms from Tank 3 "contain or otherwise are contaminated with used oil." Respondent alleges that these materials were intended to be recycled at Respondent's used oil processing facility.

17. According to analysis results obtained by Respondent, the tank bottoms exceeded the toxicity levels for benzene and tetrachloroethylene.

18. On September 26, 2001, FDEP visited Howco and observed two containers holding the tank bottoms leaking.

19. On October 11, 2001, FDEP visited Howco and observed that some containers leaked when moved, because their lids were not properly sealed.

20. On October 11, 2001, Howco shipped the nineteen drums to a hazardous waste facility. The waste stream was manifested as D018/D039 hazardous waste.

21. Respondent failed to use protective measures such as keeping the containers in good condition and properly closed (sealed).

22. Therefore, Complainant alleges Respondent violated Section 3005(a) of RCRA by failing to maintain and operate the facility in a manner that minimizes the possibility of release of hazardous waste or hazardous waste constituents as required in 40 C.F.R. § 265.31 and F.A.C. Ann. R. 62-730.180.

23. On May 7, 2002, Respondent's contractor, HSA, sent an "Additional Assessment Report" to FDEP for the soil and groundwater in the area where the container leaks were cleaned up. The Report concluded that no soil or groundwater volatile or semi-volatile impacts were detected above Florida's Soil Cleanup Target Levels (SCTLs) for direct exposure or protection of groundwater. The analytical results were attached to the letter. EPA will not require any further

cleanup associated with the leaks referred to in paragraphs 18 and 19 above.

IV. CONSENT AGREEMENT

24. For the purpose of this CAFO, Respondent admits the jurisdictional allegations set out above.

25. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations contained in this CAFO.

26. 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 CAFO.

27. Respondent waives its right to challenge the validity of this CAFO and the settlement of the violations alleged herein, on the basis of any issue related to the Paperwork Reduction Act:

28. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent agrees to pay the civil penalty set forth below.

29. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.

30. The parties agree that they will pay their own costs and attorney's fees.

31. Notwithstanding anything herein to the contrary, the facility shall not be construed as having been seeking or as currently seeking a permit under 40 C.F.R. Parts 264 & 270 or as having been subject to or as currently being subject to interim status under 40 C.F.R. Part 265 as a result of the allegations alleged in this CAFO.

V. PARTIES BOUND

32. This CAFO 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 CAFO.

33. 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 CAFO.

34. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to this CAFO.

VI. FINAL ORDER

35. Based upon the foregoing, the parties agree to the entry of the following Final Order in this matter:

36. Pursuant to Section 3008(a) of RCRA, the nature of the alleged violations, and other relevant factors, Respondent shall pay a civil penalty in the amount of Four Thousand Dollars (\$4,000) within thirty (30) calendar days of the effective date of this CAFO.

37. Payment shall be made by cashier's or certified check payable to: **Treasurer, United States of America**. The facility name and docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
Region 4
P.O. Box 100142
Atlanta, Georgia 30384.

Respondent shall submit a copy of the check to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

and to:

Jeffrey T. Pallas, Chief
South Enforcement and Compliance Section
RCRA Enforcement and Compliance Branch
Waste Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909.

38. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 *et seq.*, if EPA does not receive payment of the penalty assessed by this CAFO in full within thirty (30) calendar days of the effective date of this CAFO, interest shall accrue on the unpaid balance from the due date through date of payment at an annual rate equal to the rate of the current value of funds to the

United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis a six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

39. Nothing in this CAFO 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 CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in the Complaint and Compliance Order.

VII. RESERVATION OF RIGHTS

40. 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 CAFO.

41. Except as expressly provided herein, nothing in this CAFO 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.

42. Notwithstanding any other provisions of the CAFO, 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 and the environment.

43. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

44. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

45. The provisions of this CAFO shall be deemed satisfied upon a determination by Complainant that Respondent has fully implemented the actions required in this CAFO.

XI. EFFECTIVE DATERECEIVED
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46. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Hagan Holding Company d/b/a
Howco Environmental Services

By: Jim HaganName: Tim HAGANTitle: PRES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

By: Jewell GrubbsDated: 9/25/02

Jewell Grubbs, Chief

RCRA Enforcement and Compliance Branch
Waste Management Division

IT BEING AGREED, IT IS SO ORDERED, this 26th day of September, 2002.

J. I. Palmer, Jr.

Regional Administrator
EPA, Region 4

CERTIFICATE OF SERVICE

I hereby certify that on the date specified below the original and a copy of the foregoing Consent Agreement and accompanying Final Order (CA/FO) were hand-delivered to the Regional Hearing Clerk, EPA, Region 4, and that a true and correct copy was mailed U.S. Mail (Certified Mail, Return Receipt Requested) in an envelope addressed to:

Laurel Lockett, Esq.
Carlton Fields
One Harbour Place
777 S. Harbour Island Blvd.
Tampa, FL 33602-5730

These are said person's last known address to subscriber.

Dated this 27th day of September, 2002.

Joan L. Huffstetter
Compliance Clerk
South Enforcement Compliance Section
RCRA Enforcement and Compliance Branch
Waste Management Division

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