

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
) **Confetti String Administrative**
) **Compliance Order**
)
Too, Inc.) **Agreed Order Docket Number** CAA-HQ-2006-002
)
) **FINDINGS AND ORDER**
)
Respondent.)

Pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), and based upon available information, EPA hereby makes and issues the following Order, with the expressed consent of Respondent:

Applicability

This Order shall apply to and be binding upon both EPA and the Respondent, including but not limited to its officers, directors, servants, employees, successors, and assigns. Respondent shall give notice of this Order to any successor ownership interest in any products subject to this Order.

Definitions

For purposes of this Order only, the following definitions shall apply:

"Ozone Depleting Substance" and "ODS" mean any substance that is either a "Class I substance" or "Class II substance" as defined in 40 C.F.R. § 82.104.

Class I substance means any substance designated as class I in 40 C.F.R. Part 82, Appendix A to Subpart A, including but not limited to chlorofluorocarbons.

Class II substance means any substance designated as class II in 40 C.F.R. Part 82, Appendix B to Subpart A, including but not limited to hydrochlorofluorocarbons.

Findings

1. EPA promulgated regulations for the control of Ozone Depleting Substances, appearing in 40 C.F.R. Part 82, Subpart C which prohibit the sale or distribution in interstate commerce of non-essential ODS-containing products. Among the non-essential products listed at 40 C.F.R. Sections 82.66 and 82.70 are string confetti and other aerosol products containing ODS.

2. Between November 3, 2003 and February 24, 2005, Respondent represents that it purchased for re-sale cans of confetti string product known as Party Crazy String ("Confetti String Product"). Respondent removed these products from its shelves and ceased selling them upon learning that the cans may contain ODS as a propellant. An inventory count showed that, as a result of this removal and subsequent recall, it had 1,588 cans returned to its distribution center for destruction.

3. Respondent, is a "person" as defined by 42 U.S.C. Section 7602(e).

4. Respondent is the owner/operator of approximately 670 stores located throughout the United States and Puerto Rico.

5. Respondent represents that the 1,588 remaining cans of Confetti String Product were removed from store shelves and are no longer offered for sale. Respondent further represents that it entered into a contract with Clean Harbors Environmental Services, Inc. ("Clean Harbors") dated March 20, 2006, by which Clean Harbors has or will incinerate all cans of Confetti Sting Product remaining in Respondent's possession which contain ODS. All 1,588 cans were transported to Clean Harbors' facility in LaPorte, Texas on April 18, 2006. Respondent further represents that, based upon its inventory system and its good faith efforts to locate all such cans, these 1,588 cans constitute the entire remaining inventory of Confetti String

Product, and that it has no other orders pending and/or has cancelled any additional orders for Confetti String Product containing ODS.

ORDER

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent shall destroy the remaining cans of ODS-containing Confetti String Product by a process of thermal incineration which shall thoroughly destroy the ODS within these cans at the Clean Harbors incineration facility in LaPorte, Texas. All such cans were transported to the Clean Harbors' facility on April 18, 2006. Incineration by Clean Harbors of all ODS-containing Confetti String Product shall take place promptly, but no later than July 17, 2006.
2. Respondent shall implement procedures to ensure that it will not import or offer for sale any product containing ODS that are not legal for sale, distribution or use in the United States.
3. Respondent shall submit to EPA within 100 days of this Order a certification report ("Report") that shall include the following: (a) a signed statement from Clean Harbors that all cans of Confetti String Product tendered to it for destruction have been incinerated under conditions sufficient to destroy any ODS within the Confetti String Product; and (b) a certification of complete compliance with the terms of this Order signed by a responsible corporate official, including that, based upon its inventory system and its good faith efforts to locate all such cans, Respondent has no knowledge of any other products in its possession or on order containing ODS that are not legal for use, sale or distribution in the United States, that it has implemented procedures to prevent the future import, sale or distribution of ODS containing products in violation of 40 C.F.R. Part 82, Subpart C, and that all cans of ODS-containing

Confetti String Product in the possession of Respondent have been destroyed in accordance with this Order. The certification submitted pursuant to this Paragraph shall contain the following certification:

“I certify under penalty of law that I have personally examined the information contained in this Report, including any and all documents accompanying this certification statement; that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this Report is to the best of my knowledge, true, accurate, and complete; that procedures to maintain compliance with 40 C.F.R. Part 82, Subpart C are in place and will be maintained even if processes or operating procedures change; and that I am fully authorized to make this attestation on behalf of Too, Inc.”

The certified Report shall be submitted to the address identified in Paragraph 5.

4. Pursuant to Section 113(a) of the CAA, for any failure to destroy all cans of ODS-containing Confetti String Product subject to this Order within the time limits of this Order, including paragraph 3, Respondent shall be liable for stipulated penalties of \$1,000 per day and may be subject to a civil or administrative action to obtain compliance. With respect to any product subject to this Order, EPA reserves the right to seek civil penalties in an administrative or civil action for violations of the Clean Air Act or this Order, but will not seek both stipulated penalties and civil penalties for the same violations. To ensure that no ODS-containing Confetti String Product is on order or in the Respondent's inventory, Respondent shall conduct a thorough audit of all ordering records, stores and other facilities to ensure that no such product is in Respondent's possession or on order. A certification of the results of this audit shall be included in the Report specified in Paragraph 3. Additionally, Respondent shall notify all of

Respondent's managers at its stores and other facilities of the requirements of this Order, including a statement that no ODS-containing Confetti String Product may be carried in inventory, sold or offered for sale. Notwithstanding the above, Respondent shall not be liable for penalties if, despite review of its inventory system and its good faith efforts to locate all such cans, it subsequently discovers additional cans of ODS-containing Confetti String Product at any of its stores, provided that it promptly transports such cans to Clean Harbors and causes them to be incinerated in the manner described above. In addition, Respondent shall not be liable for penalties if Clean Harbors fails to incinerate the cans by July 17, 2006, for reasons beyond the reasonable control of Respondent.

5. EPA agrees to accept communications from Respondent by mail with respect to all matters relating to this Order at the address listed below. Electronically preferred: garlow.charlie@epa.gov or Title VI Coordinator, Attention: Charlie Garlow, US EPA Air Enforcement Division, 1200 Pennsylvania Ave NW., Mail Code 2242A, Washington, DC 20460, Tel: 202-564-1088.

6. This Order represents the final form of the agreement between EPA and Respondent. No oral modifications to the Order will be binding upon either party. By its consent to entry of this Order, Respondent does not admit any liability under or violation of the Clean Air Act or its implementing regulations, including but not limited to 40 C.F.R. Part 82, Subpart C.

7. EPA and Respondent represent that they have examined this Order and agree to the terms by signing and dating below. Each person signing this Agreement represents that he or she is authorized to legally bind the party on whose behalf he or she is signing.

8. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act, nor shall this Order affect the right of EPA or the

United States to seek appropriate injunctive relief, other equitable relief, or criminal sanctions for any violations of law.

9. Respondent explicitly waives its right to request a hearing and/or to contest this Order, and waives its right to appeal this Order.

10. Each party shall bear its own costs and attorney fees in connection with this Order.

Issued this 26th day of May, 2006



U.S. ENVIRONMENTAL PROTECTION AGENCY

Too, Inc. consents to the issuance of this Order, agrees to abide by this Order, and further agrees not to contest EPA's authority to issue this Order.

Signed this 18 day of May, 2006



For TOO, INC.

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For TOO, INC.