IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

IN THE MATTERS OF THE
ADMINSTRATIVE INSPECTION OF:

CONTAINER LIFE CYCLE MANAGEMENT,
3950 SOUTH PENNSYLVANIA AVE.,
ST. FRANCIS, WISCONSIN; CONTAINER
LIFE CYCLE MANAGEMENT, 8570 SOUTH
CHICAGO ROAD, OAK CREEK, WISCONSIN;
CONTAINER LIFE CYCLE MANAGEMENT,
2300 W. CORNELL STREET, MILWAUKEE,
WI 53209

***EX PARTE* APPLICATION FOR ADMINISTRATIVE WARRANTS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT AND THE CLEAN AIR ACT**

TO: Magistrate Judge Nancy Joseph
United States District Court
Eastern District of Wisconsin

Introduction

The United States of America, through its undersigned attorneys and on behalf of the United States Environmental Protection Agency, submits this *Ex Parte* Application for Administrative Warrants under Section 3007(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927(a) ("RCRA") and Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a) ("CAA"), to authorize EPA and its representatives to access three facilities operated by Container Life Cycle Management, d/b/a Mid America Steel Drum ("CLCM"). The three CLCM facilities are located at: (a) 3950 South Pennsylvania Avenue, St. Francis, Wisconsin, 53235; (b) 8570 South Chicago Road, Oak Creek, Wisconsin, 53154; and (c) 2300 W. Cornell Street, Milwaukee, Wisconsin, 53209.

As explained below and in the attached Declaration of EPA enforcement officer Brenda Whitney, EPA has reason to believe that CLCM may be violating RCRA by storing, treating, and disposing of hazardous wastes without a permit, and that CLCM may be violating applicable CAA emissions standards for hazardous air pollutants and volatile organic compounds. At these facilities, CLCM reconditions industrial containers, such as barrels and totes, that were previously used to store hazardous chemicals. As part of its reconditioning operations, CLCM cleans or burns out chemical residues in the containers, and then collects and disposes of those chemical residues. The government seeks these administrative warrants in order to conduct unannounced, simultaneous inspections and environmental sampling at the facilities to assess CLCM's compliance with RCRA and CAA.

EPA attempted to inspect the three facilities by requesting that CLCM voluntarily allow EPA access to inspect the facilities. *See* Whitney Declaration at ¶¶ 16, 20, 24-25. Although CLCM granted some access to the facilities, CLCM did not to provide EPA with access to normal operations of the facility. *Id.* Rather, CLCM ceased operations at one facility when notified of the upcoming inspection; at the other two facilities, it conducted operations that appeared to EPA inspectors to be "staged" to create the appearance of compliance with applicable environmental regulations. *Id.* EPA thus believes that the findings made during these prior inspections were not representative of activities and conditions at the facilities. *Id.*

In sum, the government requests administrative warrants for the three CLCM facilities in order to permit EPA to inspect the normal operations at those facilities and to permit EPA to collect environmental samples at the facilities, all in an effort to determine whether CLCM is properly handling hazardous wastes and controlling air emissions at the facilities.

Discussion

RCRA and CAA expressly authorize EPA to inspect businesses to assess their compliance with those statutes. Specifically, RCRA Section 3007(a) provides, as relevant here, that:

> For the purposes of . . . enforcing the provisions of [RCRA], such officers, employees or representatives [of EPA] are authorized (1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from; and (2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

42 U.S.C. § 6927(a). As the Seventh Circuit has explained, RCRA Section 3007(a) "vests broad authority in EPA to inspect and sample any facility at which the agency has probable cause to believe that violations of the statute are occurring." *National-Standard Co. v. Adamkus*, 881 F.2d 352, 361 (7th Cir. 1989).

Likewise, CAA Section 114(a)(2) provides, in pertinent part, that EPA "shall have a right of entry to, upon, or through any premises of such person [who owns or operates any emission source or who is subject to any requirement of the CAA] . . . and may at reasonable times have access to and copy any records . . . and sample any emissions which such person is required to sample. . . ." 42 U.S.C. § 7414(a). Like RCRA, CAA grants EPA "broad statutory monitoring and inspection powers." *Public Service Co. of Indiana v. EPA*, 509 F. Supp. 720, 723 (S.D. Ind. 1981), *aff'd*, 682 F.2d 626 (7th Cir. 1982).

Where, as here, an operator of a facility does not voluntarily provide EPA with access sufficient to permit EPA to assess the facility's compliance with RCRA and CAA, the government may request, and this Court may issue, an administrative warrant for access and entry. *See, e.g., National-Standard*, 881 F.2d at 361; *Public Service Co.*, 509 F. Supp. at 723. Probable cause exists for the issuance of an administrative warrant when the government proffers

"specific evidence of an existing violation" of the environmental statutes and regulations. *National-Standard*, 881 F.2d at 361. Notably, "administrative warrants do not require the same degree of probable cause as do criminal warrants." *Id.* The government, moreover, is entitled to seek an administrative warrant in an *ex parte* proceeding. Indeed, "*ex parte* proceedings are the normal means by which warrants are obtained in both criminal and administrative actions." *Id.* at 363.

Here, the relaxed probable cause standard for administrative warrants is satisfied because EPA has specific evidence from prior investigation and news reports published in the Milwaukee Journal Sentinel that CLCM may have violated RCRA and CAA. With respect to RCRA, EPA has the following specific evidence of existing violations:

- At the facility located at 2300 W. Cornell Street in Milwaukee, EPA inspectors were not able to view normal operations because CLCM ceased operations after EPA provided notice of the date and time of the inspection. *See* Whitney Dec. at ¶ 16. During the inspection, however, EPA obtained information suggesting that CLCM violated RCRA because it failed to assess properly whether chemical residues present in containers it was reconditioning constituted hazardous wastes. *Id.* at ¶¶ 16-18. Indeed, in response to the inspection, CLCM notified EPA for the first time that it determined that some of the waste collected at this facility was hazardous, suggesting further that CLCM in the past had failed to assess properly its wastes. *Id.* at ¶ 19. Based on these observations, EPA believes that CLCM is likely operating this facility without a required RCRA hazardous waste permit. *Id.*

- At the facility located at 3950 South Pennsylvania Avenue in St. Francis, EPA was again not able to view normal operations because CLCM denied access until its legal counsel was present. *See* Whitney Dec. at ¶ 20. Indeed, EPA believes that CLCM "staged" its operations during the inspection because investigators did not observe the malodorous conditions or visible emissions reported previously by the surrounding community, and because CLCM may have "cherry-picked" drums to process during the inspection that lacked any hazardous waste in them. *Id.* Nonetheless, EPA identified several potential violations of RCRA during its inspection. Most importantly, CLCM employees informed EPA that they determined whether drums are empty by "feel." *Id.* at ¶ 21. RCRA regulations, however, set forth numeric standards based on the weight or volume of chemical residue in a container to determine whether it is empty; reliance on "feel" will likely result in "non-empty" containers being treated as appropriate to recondition, when, in fact, they should be treated as containers of hazardous waste. *Id.* In addition, EPA observed drums that were fuming as well as practices that could likely lead to spills of hazardous chemicals. *Id.* Based on these

observations, EPA believes that CLCM is likely operating this facility without a required RCRA hazardous waste permit. *Id.* at ¶ 23.

- At the facility located at 8570 South Chicago Road in Oak Creek, EPA was also not able to view normal operations. CLCM required EPA investigators to begin their inspection on the periphery of the facility, and when CLCM permitted EPA to enter the operations area of the facility, the furnace on the site was no longer in operation and employees in other areas were not following their normal practices. *See* Whitney Dec. at ¶ 25. Again, EPA identified potential violations of RCRA notwithstanding the limitations on its inspection. As at the Pennsylvania Avenue facility, employees informed EPA that they determined whether drums are empty by "feel," which likely results in "non-empty" containers being improperly treated as appropriate to recondition, rather than as containers of hazardous waste. *Id.* at 26. EPA also learned that CLCM employees engage in practices that could ignite hazardous chemicals. *Id.* Based on these observations, EPA believes that CLCM is likely operating this facility without a required RCRA hazardous waste permit. *Id.* at 28.

Likewise, EPA has the following specific evidence of potential violations of CAA:

- At the 2300 W. Cornell Street facility in Milwaukee, EPA's air quality inspector was not able to view normal operations because the facility was not operating at the time of the inspection. CLCM employees, however, were not able to provide information or documentation to demonstrate compliance with certain CAA requirements, including whether the facility was required to have obtained a construction or operating permit under Wisconsin's CAA State Implementation Plan. *See* Whitney Dec. at ¶ 42. EPA thus seeks to investigate whether CLCM has violated the CAA for the construction or operation of this facility. *Id.* at ¶ 43.

- At the 3950 South Pennsylvania Avenue facility in St. Francis, CLCM conducts operations that make it subject to CAA regulations governing hazardous air pollutant emissions as well as air emissions standards for volatile organic compounds contained in Wisconsin's State Implementation Plan. *See* Whitney Dec. at ¶ 36. CLCM, however, was unable to provide records required to be maintained under CAA to demonstrate compliance with these regulations and standards. *Id.* at ¶ 38-39. EPA thus seeks to investigate whether CLCM has violated the CAA standards for volatile organic compounds and hazardous air pollutant emissions. *Id.* at ¶ 40.

- At the 8570 South Chicago Road facility in Oak Creek, CLCM conducts operations that make it subject to CAA regulations governing hazardous air pollutant emissions. *See* Whitney Dec. at ¶ 32. During the inspection, however, CLCM's consultant admitted that CLCM did not maintain records required to demonstrate compliance with these regulations. *Id.* at ¶ 34. EPA thus seeks to investigate whether CLCM has violated the CAA standards for hazardous air pollutant emissions. *Id.* at ¶ 45.

In sum, EPA has specific evidence that CLCM may have and continue to violate RCRA and CAA at the three facilities for which it seeks administrative warrants. As documented in

EPA's interviews with residents in the communities surrounding these facilities, moreover, these are not idle violations. Rather, local residents report numerous instances of chemical and bad odors and irritants emanating from the facilities. *See* Whitney Dec. at ¶ 29. In addition, the EPA investigators who conducted these community interviews personally developed difficulty breathing, headaches, and other symptoms after spending time near the facilities. *Id.* at ¶ 30.

Conclusion

The government requests that the Court issue three administrative warrants under RCRA and CAA to permit EPA investigators to conduct simultaneous, unannounced inspections at the CLCM facilities located at 2300 W. Cornell Street in Milwaukee, 3950 South Pennsylvania Avenue in St. Francis, and 8570 South Chicago Road in Oak Creek. Due to the limited availability of certain specialized equipment necessary for the inspections as well as the need for EPA to wait for appropriate weather conditions, EPA intends to conduct the inspections during either the period of May 2 through May 12, 2017 or the period of June 5 through June 9, 2017. *See* Whitney Dec. at ¶¶ 44-45. The inspections will involve observation of CLCM's normal operations, collection of samples of the chemical residues contained in the drums and totes present at the facilities, and use of air emissions monitoring and sampling equipment such as optical gas imagine equipment, toxic vapor analysis equipment, and canisters to capture air samples for laboratory analysis. *Id.*

Dated this 27th day of April, 2017.

GREGORY J. HAANSTAD
United States Attorney

By: _____
Michael A. Carter
Chris R. Larsen
Assistant United States Attorneys
Eastern District of Wisconsin

Wis. Bar Nos. 1090041 and 1005336
517 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-4101
Fax: (414) 297-4394
Michael.A.Carter@usdoj.gov
Chris.larsen@usdoj.gov