

# Drum Reconditioning Facility/RCRA/Clean Air Act: U.S. District Court (Wisconsin) Approves Entry of Consent Decree



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The United States District Court (Eastern District Wisconsin) (“Court”) addressed in a July 27th Order a request by the United States Department of Justice (“DOJ”) acting on behalf of the United States Environmental Protection Agency (“EPA”) a request for entry of a consent decree with Container Life Cycle Management, LLC (“CLCM”). See *U.S. v. Container Life Cycle Management, LLC*, 2023 WL 4826472.

DOJ filed a complaint on November 30, 2022, against CLCM facilities in St. Francis and Oak Creek, Wisconsin, alleging:

1. RCRA violations for mishandling and engaging in the unlicensed storage of hazardous waste
2. Clean Air Act violations by failing to properly seek or comply with permits for, and failing to control, emissions of volatile organic compounds (“VOC”) and hazardous air pollutants (“HAP”)

A CLCM facility is also stated to have formerly operated in Milwaukee, Wisconsin.

The State of Wisconsin subsequently filed a motion to intervene in the case along with a proposed Complaint in Intervention.

The CLCM facilities recondition or refurbish large industrial containers (i.e., steel and plastic drums and plastic and metal totes) for reuse.

DOJ lodged a proposed consent decree containing the terms of the settlement between the parties which had resolved CLCM’s civil liability. Both the State of Wisconsin and CLCM did not oppose and supported approval and entry of the consent decree.

One public comment is stated to have been made in opposition to the proposed consent decree.

The DOJ submitted a brief in support of its motion for entry of the consent decree arguing:

1. the proposed consent decree is fair, reasonable, in the public interest, and consistent with the purposes of RCRA and the CAA, and
2. the points the commenter raises do not undermine the conclusion or preclude entry of the consent decree.

The commenter is described as formerly working as a safety consultant inspecting CLCM and allegedly observed systemic violations of RCRA that were built into the standard operating processes and whose disclosure led directly to the investigation and findings of environmental and other violations that are the basis of the case and proposed consent decree.

The commenter argued that the consent decree was inadequate.

The Court examined the relevant factors for approving the consent decree:

- Procedural Fairness
- References extensive settlement negotiations between the parties over the course of four years
- Terms of the proposed consent decree were available in full to the public, facilitating examination and comment by anyone living near the facilities
- Finds no specific challenges to procedural fairness in the opposition comment
- Substantive Fairness
- A penalty of \$1,600,000 is assessed to be split evenly between the United States and the State of Wisconsin
- Requires CLCM to implement emission control measures as well as a container management plan for hazardous wastes
- Monetary and injunctive relief adequately reflect the strength of the case that the United States and State of Wisconsin could present in trial while avoiding the risks and expenses associated with litigating such claims
- Reasonableness
- Reflects the seriousness of the alleged violations and responds to the hazards posed by CLCM's conduct with a detailed plan of action
- Any remedy the Court can fashion can only address the violations alleged in the pleadings as opposed to those alleged by the commenter to have taken place in past decades
- DOJ contemplated CLCM's economic benefit of compliance in negotiating the penalty amount
- Consistency with Statutory Aims
- The referenced remedial measures and monetary penalty meet the aims of the Clean Air Act and RCRA by ensuring CLCM is held accountable for past violations alleged in the complaint and for preventing future violations
- The Court will not displace DOJ's judgment that the consent decree is consistent with statutory aims including those expressed in a prior EPA Drum Conditioner Damage Case report

The DOJ's motion for entry of the consent decree is granted.

A copy of the order can be downloaded [here](#).