

IN THE MATTER OF: )  
)  
American Railcar Industries, Inc. ) Docket No. RCRA-07-2006-0282  
)  
100 Clark Street )  
St. Charles, Missouri 63301 )  
)  
EPA ID# MOT300010022 )  
)  
Respondent. )  
)

**COMPLAINANT'S PREHEARING EXCHANGE**

Comes now the United States Environmental Protection Agency, Region 7 (EPA or Complainant), and respectfully submits the following Prehearing Exchange pursuant to 40 C.F.R. Part 22 and the November 30, 2006 Order Setting Prehearing Procedures (Prehearing Order) issued by Administrative Law Judge Carl C. Charneski.

**I. EXPECTED WITNESSES**

**EPA Witnesses**

1. Michael J. Martin: Mr. Michael J. Martin is a Life Scientist in the Air & RCRA Compliance Branch of EPA's Environmental Services Division. As part of his duties, Mr. Martin performs RCRA compliance evaluation inspections which may generate, treat, store, and/or dispose of hazardous waste. Mr. Martin was the lead inspector for the RCRA compliance evaluation inspection at the American Railcar Industries, Inc. (ARI or Respondent) facility on

March 15 through 17, 2005 to determine Respondent's compliance with the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6901 *et seq.* Mr. Martin will testify about his observations while at the ARI facility, documents he examined and copied at the facility and his conversations with ARI personnel and his findings.

2. Dedriel Newsome: Ms. Newsome is an Environmental Engineer with the Air & RCRA Compliance Branch, Environmental Services Division, EPA Region 7. Her duties include conducting RCRA compliance evaluation inspections at facilities which may generate, treat, store, and/or dispose of hazardous waste. Ms. Newsome co-inspected the ARI facility with Mr. Martin, and will testify as to her observations during the March 15 through 17, 2005 inspection, as well as statements made by Respondent's representatives during said inspection.

3. Marc Matthews: Mr. Matthews is an Environmental Engineer with the RCRA Enforcement and State Programs Branch, Air, RCRA and Toxics Division, EPA, Region 7. His duties include serving as a Compliance Officer in the follow-up to RCRA compliance evaluation inspections. Mr. Matthews will testify as to his review of the evidence compiled as a result of EPA's investigations of Respondent's facility and the factual basis for his determination that Respondent is in violation of RCRA and the regulations promulgated thereunder. He will also testify regarding how the penalty proposed in the referenced Complaint was calculated applying the statutory penalty factors set forth within Section 3008(a) of RCRA, as explained by EPA's RCRA Civil Penalty Policy. He will testify to the appropriateness of the penalty proposed in the Complaint, considering the seriousness of the violations, any good faith efforts on the part of the facility to comply with RCRA, Respondent's history of noncompliance and the potential for harm caused by the violations.

4. Donald Toensing: Mr. Toensing is the Branch Chief of the RCRA Enforcement and State Programs Branch in the Air, RCRA and Toxics Division, EPA, Region 7. He supervises Mr. Matthews and can testify regarding the purposes of the RCRA Civil Penalty Policy and its application to the violations at the ARI facility.

5. Gary Witkovski: Mr. Witkovski is an inspector with EPA's Environmental Services Division. Mr. Witkovski performed an inspection of the ARI facility on September 12 and 13, 2000. Mr. Witkovski will testify regarding his observations and findings during that inspection.

#### **Missouri Department of Natural Resources Witnesses**

6. Denise Beck: Ms. Beck is an Environmental Specialist in the Kansas City Regional Office of the Missouri Department of Natural Resources (MDNR). She is one of the inspectors who did an inspection of the ARI facility on November 27, 2001. Ms. Beck will testify regarding her observations and findings from that inspection.

7. Mark Vrlenich: Mr. Vrlenich is an Environmental Specialist in the Kansas City Regional Office of the MDNR. He is one of the inspectors who did an inspection of the ARI facility on November 27, 2001. Mr. Vrlenich will testify regarding his observations and findings from that inspection.

#### **ARI Witnesses**

In the event that the following witnesses are not identified in Respondent's Prehearing Exchange, Complainant would like to request that the Administrative Law Judge issue administrative subpoenas prior to any hearing in this matter to compel the testimony of the following ARI employee(s):

8. Joe Gatens: Mr. Gatens is the General Foreman at the ARI facility and accompanied the EPA inspection team on this inspection. Complainant will seek Mr. Gatens's testimony regarding statements made to EPA personnel about the off-specification and/or outdated paint stored at the facility, in addition to Mr. Gatens' testimony regarding how the facility generally disposes of outdated or off-specification paint. Complainant also seeks Mr. Gatens's testimony regarding correspondence sent to EPA in response to the violations noted in the Notice of Violation provided to the facility at the conclusion of the inspection. In addition, Complainant seeks Mr. Gatens's testimony regarding the facility contingency plan onsite at the time of the inspection.

9. Bill Bennet: Mr. Bennet is a Utility Man/Exterior Painter at ARI. Complainant will seek Mr. Bennet's testimony regarding statements made to EPA personnel about the solvent rags observed during the inspection.

10. Steve Kosa: Mr. Kosa is the Plant Manager at the ARI facility. Complainant will seek Mr. Kosa's testimony regarding the facility's general practices with respect to handling hazardous waste, making waste determinations, and disposal of off-specification and expired paint. In addition, Complainant will seek Mr. Kosa's testimony with respect to the facility's contingency plan onsite at the time of the inspection.

## **II. DOCUMENTS AND EXHIBITS**

Copies of documents and exhibits which Complainant intends to introduce into evidence at the hearing are numbered and attached hereto as Complainant's Exhibits, and are numbered sequentially with "Complainant's Ex.":

Complainant's Ex. 1: RCRA Compliance Evaluation and Sampling Inspection Report, with attachments and photographs, for a RCRA compliance evaluation inspection conducted at Respondent's facility on March 15, 16 and 17, 2005, by Mr. Michael Martin and Ms. Dedriel Newsome.

Complainant's Ex.1.1 : Multimedia Screening Checklist

Complainant's Ex.1.2 : MDNR LQG Inspection Checklist

Complainant's Ex.1.3 : RCRA Info handler information report

Complainant's Ex.1.4 : MDNR Notification and Waste Stream Information Report

Complainant's Ex.1.5 : Confidentiality Notice

Complainant's Ex.1.6: Document Receipt

Complainant's Ex.1.7: Notice of Preliminary Findings (NOPF) and NOPF Continuation Sheets

Complainant's Ex.1.8: Chart of ARI Quarterly Reports for 3 years

Complainant's Ex.1.9: ARI Facility Layout

Complainant's Ex.1.10: ARI Emergency and Disaster Plan

Complainant's Ex.1.11: ARI Spill Contingency Plan

Complainant's Ex.1.12: Wastewater Discharge Permit

Complainant's Ex.1.13: Notification of Regulated Waste Activity

Complainant's Ex.1.14: Analytical Report (Sludge)

Complainant's Ex.1.15: Special Waste Disposal Authorization Sheet

Complainant's Ex. 1.16: MDNR Generator's Summary Report (December 31, 2004)

Complainant's Ex. 1.17: MDNR Generator's Summary Report (September 30, 2004)

Complainant's Ex. 1.18: MDNR Generator's Summary Report (June 30, 2004)

Complainant's Ex. 1.19: MDNR Generator's Summary Report (March 31, 2004)

Complainant's Ex. 1.20: MDNR Generator's Summary Report (December 31, 2003)

Complainant's Ex. 1.21: MDNR Generator's Summary Report (September 30, 2003)

Complainant's Ex. 1.22: Analytical Report, December 20, 2004 (water)

Complainant's Ex. 1.23: Analytical Report, December 21, 2004 (water)

Complainant's Ex. 1.24: Analytical Report, December 29, 2004 (water)

Complainant's Ex. 1.25: Analytical Report, January 7, 2004 (water)

Complainant's Ex. 1.26: Analytical Report (Bag House Dust and Trash Shutz Particulates)

Complainant's Ex. 1.27: Analytical Report (Bag House Dust and Trash Shutz Particulates)

Complainant's Ex. 1.28: Analytical Report (Bag House Dust and Trash Shutz Particulates)

Complainant's Ex. 1.29: Analytical Report (Fine and Coarse Bag House Dust)

Complainant's Ex. 1.30: Analytical Report (Dust)

Complainant's Ex. 1.31: Analytical Report (Spent Blast Abrasive and Bag House Dust)

Complainant's Ex. 1.32: Analytical Report (Sand House Dust)

Complainant's Ex. 1.33: Analytical Report (Paint Shop Filters)

Complainant's Ex. 1.34: Hazardous Waste Manifest 0129 with Generator's Profile and LDR Notices

Complainant's Ex. 1.35: Material Safety Data Sheet for Methyl Ethyl Ketone

Complainant's Ex. 1.36: Material Safety Data Sheet for Methyl Ethyl Ketone

Complainant's Ex. 1.37: Semi-Annual Report for sampling and testing of waste water

Complainant's Ex. 1.38: Water Pollution Control Semi-Annual Report

Complainant's Ex. 2: Photo Log with 20 photographs

Complainant's Ex. 3: Letter from James J. Gatens, ARI Administrative General Foreman, dated April 12, 2005

Complainant's Ex. 4: Letter from James J. Gatens, ARI Administrative General Foreman, dated June 6, 2005

Complainant's Ex. 5: EPA Compliance Evaluation Inspection report dated January 4, 2001

Complainant's Ex. 6: MDNR Inspection report, dated December 5, 2001

Complainant's Ex. 7: Penalty Calculation Narrative

### **III. JUDICIAL NOTICE OF DOCUMENTS**

Complainant hereby requests the Presiding Officer to take judicial notice of the following:

1. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 United States Code (U.S.C.) § 6901 et seq., and the regulations promulgated thereunder.

2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, found at 40 C.F.R. Part 22, as amended.

### **IV. LENGTH, LOCATION, AND DATE OF HEARING**


Complainant estimates that it will require approximately eight (8) hours to present its direct case. Complainant requests that the hearing in this matter be held in or near Kansas City, Kansas, or Kansas City, Missouri. Respondent's facility is located in North Kansas City, Missouri. However, Complainant is also aware that 40 C.F.R. § 22.21(d) states that the location of the hearing may be held in the county where the Respondent resides or conducts the business in which the hearing concerns. Thus, because Respondent's corporate headquarters is located in

St. Charles, St. Charles County, Missouri, Complainant would not object to conducting the hearing in or near St. Charles, Missouri.

Further, Complainant suggests that the hearing be held during the week of April 9, 2007, but not to include April 13.

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

Belinda L. Holmes  
Senior Assistant Regional Counsel  
US. Environmental Protection Agency Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101  
(913) 551-7714  
ATTORNEY FOR COMPLAINANT



CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of January, 2007, I filed the Original of this Prehearing Exchange, along with the exhibits, with the Regional Hearing Clerk, EPA, Region 7, 901 North Fifth Street, Kansas City, Kansas, 66101. I also delivered copies of this document and exhibits to the following:

VIA POUCH MAIL:

The Hon. Carl C. Charneski  
Administrative Law Judge  
United States Environmental Protection Agency  
Office of the Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Ave. N.W.  
Washington, D.C. 20460

VIA OVERNIGHT EXPRESS:

Julie O'Keefe, Esq.  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, MO 63102

  
Name