



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2009

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John N. Skoubis, Registered Agent for
1810 W. Grace St., LLC
1300 W. Higgins Rd., Ste. 209
Park Ridge, IL 60068

Re: Administrative Complaint and Compliance Order
1810 W. Grace St., LLC
EPA ID No.: ILD 981 777 998

RCRA-05-2009-0019

Dear Mr. Skoubis:

Enclosed, please find an Administrative Complaint and Compliance Order (Complaint), which specifies the U.S. Environmental Protection Agency's determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 *et seq.*, by 1810 W. Grace St., LLC. EPA based its determination on the April 30, 2007 inspection of the facility located at 1810 W. Grace St., Chicago, Illinois and your EPA files. The general allegations in the Complaint state the reasons for EPA's determination.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for hearing with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Susan Prout, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with Land and Chemicals Division staff, please contact Judith Kriz, United States Environmental Protection Agency, RCRA Branch (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604. She may also be reached at (312) 353-6057.

Sincerely,

A handwritten signature in black ink that reads "Willie H. Harris". The signature is written in a cursive style with a large initial "W".

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosure

cc: Todd Marvel, Illinois Environmental Protection Agency (w/ complaint)
K. Nicholas Kopley (w/ complaint)
William Anaya (w/ complaint)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2009-0019
)	
1810 W. Grace St. LLC)	Proceeding to Assess a Civil Penalty
Chicago, Illinois 60613)	
ILD 981 777 998)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)
<hr/>		

RECEIVED
SEP 25 2009

Complaint and Compliance Order

Preliminary Statement

**REGIONAL HEARING CLERK
USEPA
REGION 5**

1. This is an administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.
5. Respondent is 1810 W. Grace St., LLC, a limited partnership, doing business in the State of Illinois and registered as such with the Illinois Secretary of State.

Statutory and Regulatory Background

6. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279,

governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to sections 3002, 3003, and 3004, of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

8. The allegations listed below occurred in the State of Illinois. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

9. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

10. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment

Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009.

General Allegations

11. Respondent was and is a "person" as defined by 35 IAC § 720.110, 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. Respondent is an "owner" or "operator," as those terms are defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 1810 W. Grace St., Chicago, Illinois.

13. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

14. Respondent's Facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

15. At all times relevant to this Complaint, Respondent held several types of solvents, corrosives, and other hazardous wastes as discarded material, for temporary periods in storage including usage of containers, tanks, drums and other unknown receptacles before the material was shipped from the Facility as hazardous waste for treatment, storage, disposal, burning or incineration elsewhere.

16. Respondent characterized its solvent waste as hazardous waste, specifically D001, and D002. Respondent stored, transported, disposed of, or otherwise handled its D001 and D002 waste in containers and tanks as that term is defined under 35 IAC §720.110 [40 C.F.R. § 260.10].

17. At all times relevant to this Complaint, Respondent's characteristic hazardous waste was a solid waste as that term is defined under 35 IAC 721.102 [40 C.F.R. § 261.2].

18. At all times relevant to this Complaint, Respondent's solid waste was a "hazardous waste" as that term is defined under 35 IAC § 721.103 [40 C.F.R. § 261.3].

19. At all times relevant to this Complaint, Respondent's holding of the aforementioned hazardous waste in containers constituted hazardous waste "storage," as that term is defined under 35 IAC §720.110 [40 C.F.R. § 260.10].

20. Respondent is a "generator," as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

21. Respondent managed hazardous waste at the Facility after November 19, 1980.

22. On April 30, 2007, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the Inspection).

23. On January 23, 2009, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the Inspection.

24. On March 13, 2009, and April 29, 2009, Respondent submitted to U.S. EPA, written responses to the Notice of Violation.

25. At all times relevant to this Complaint, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.

26. At all times relevant to this Complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

27. At all times relevant to this Complaint, Respondent stored during each calendar month, more than 1000 kg of hazardous waste at the Facility.

Count 1: Storage of Hazardous Waste without a Permit or Interim Status

28. Complainant incorporates paragraphs 1 through 27 of this Complaint as though set forth in this paragraph.

29. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

30. Pursuant to 35 IAC § 722.134, and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134, and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators.

31. An owner and operator of a facility and generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC § 724 [40 CFR § 264] and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121; unless the owner and operator and generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the owner and operator of a facility and generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

32. At all times relevant to this Complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

33. Similarly, the failure to comply with any of the conditions of 35 IAC § 722.134, subjects the owner and operator of a facility and generator of hazardous waste to the

requirements of 35 IAC 724 and/or 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

34. In order for an owner and operator of a facility and large quantity generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must not store hazardous waste for more than 90 days

35. At the time of the inspection on April 30, 2007, Respondent was storing hazardous waste without obtaining or applying for a permit.

36. Respondent continued to store the waste until it was transported as hazardous waste to a disposal facility on September 28, 2007, which is 151 days from the date of the inspection.

37. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

38. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134 [40 CFR § 262.34], Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

39. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, and 705.121; 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Civil Penalty

40. Complainant proposes that the Administrator assess a civil penalty of \$81,235 against Respondent for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheet."

41. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider the seriousness of the violation and any good faith efforts to comply with applicable requirements. *See* Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

COMPLIANCE ORDER

42. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b) to comply with the following requirements immediately upon the effective date of this Order:

43. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 44 of this Order.

44. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by 35 IAC §722 [40 C.F.R. § 262].

45. Respondent shall notify U.S. EPA in writing within [15] days of the effective date of this Order either certifying compliance with the Order or explaining why it is not in compliance and proposing a date to achieve compliance.

46. Respondent shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Judith Kriz (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the U.S. EPA Regional Hearing Clerk, the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan Prout to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Susan Prout at (312) 353-1029. Her address is:

Susan Prout (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must include the case name, docket number and the billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and to Susan Prout at the addresses given above, and to:

Judith Kriz (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Judith Kriz at (312) 353-6057.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with RCRA and any other applicable federal, state or local law.

9/24/09
Date

Margaret M. Guerriero
for Margaret M. Guerriero
Director
Land and Chemicals Division

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Attachment A
PENALTY SUMMARY SHEET
1810 W. Grace St. LLC

NATURE OF VIOLATION DATE OF VIOLATION	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY- BASED PENALTY	MULTI-DAY PENALTY	ADJUSTMENTS	ECONOMIC BENEFIT	TOTAL PENALTY
Count 1: Storage of Hazardous Waste without a Permit or Interim Status	40 CFR 262.34(a); 40 CFR 270.10(a) and (d); 40 CFR 270.13	Moderate/ Moderate	\$6,835	\$74,400	\$0	\$0	\$81,235
Subtotals			\$6,835	\$74,400	\$0	\$0	\$81,235

Note: The gravity-based penalty amount is determined using the Revised Penalty Matrices for the RCRA Civil Penalty Policy, dated January 11, 2005. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix outlined in the Revised Penalty Matrices for the RCRA Civil Penalty Policy, dated January 11, 2005. Policy adjustments and economic benefit (BEN) are as explained in the 2003 RCRA Civil Penalty Policy. Finally, the gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996.

CASE NAME: 1810 W. Grace St., LLC
DOCKET NO: RCRA-05-2009-0019

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

John N. Skoubis, Registered Agent for
1810 W. Grace St., LLC
1300 W. Higgins Rd., Ste. 209
Park Ridge, IL 60068
Certified Mail #

K. Nicholas Kopley
1810 W. Grace St., LLC
5206 N. Sheridan Rd.
Chicago, IL 60640
Certified Mail #

William Anaya
Arnstein & Lehr LLP
120 South Riverside Plaza,
Suite 1200
Chicago, IL 60606-3910
Certified Mail #

Dated: September 25, 2009


Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency

Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590

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