

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF ) EPA Docket No. RCRA-07-2011-0002  
)  
)  
MAGNAGRO CORPORATION ) **COMPLAINT, COMPLIANCE ORDER**  
) **AND NOTICE OF OPPORTUNITY**  
600 East 23<sup>rd</sup> Street ) **FOR HEARING**  
Lawrence, Kansas )  
)  
RESPONDENT )  
)  
Proceeding under Section 3008(a) of the )  
Resource Conservation and Recovery )  
Act, 42 U.S.C. § 6928(a) )

**I. INTRODUCTION**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (“Order”) is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (2009). Respondent, MagnaGro Corporation (“MagnaGro”), is hereby notified that the United States Environmental Protection Agency (“EPA”) alleges that Respondent violated Sections 3002 of RCRA, 42 U.S.C. §§ 6922 and 6938, and the hazardous waste regulations at 40 C.F.R. Parts 261 and 262 and the implementing regulations found at Title 28, Article 31 of the

Kansas administrative regulations (hereinafter K.A.R. 28 – 31) by failing to properly perform hazardous waste determinations. EPA also provides notice of compliance measures that must be undertaken by Respondent to address these violations as well as Respondent’s opportunity to request a hearing.

## **II. NATURE OF ACTION**

2. This action is commenced pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), ordering Respondent to come into compliance with the hazardous waste regulations promulgated pursuant to RCRA.

3. Notice of commencement of this action has been given to the State of Kansas pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **III. STATUTORY AND REGULATORY FRAMEWORK**

4. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. §§ 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270, 273, 279.

5. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are regulated as “hazardous wastes.” These regulations are set forth at 40 C.F.R. Part 261.

6. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded by regulation. Section 3002 of RCRA, 42 U.S.C. § 6922, requires EPA to

establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and include requirements such as determining whether a waste is hazardous, managing waste in proper containers, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.

7. Section 3008 of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*

8. The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air and Waste Management Division of EPA Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Division Director has further delegated this authority to the Chief of Waste Enforcement and Materials Management Branch by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

10. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28 – 31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorized EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder.

11. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce federally-authorized hazardous waste programs by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e.

12. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

#### **IV. GENERAL AND FACTUAL ALLEGATIONS**

13. Respondent, MagnaGro Corporation is a corporation doing business in the State of Kansas. The business is located at 600 East 23<sup>rd</sup> Street, Lawrence, Kansas 66046.

14. Respondent is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

15. MagnaGro is a formulator of specialty agricultural fertilizers and plant growth enhancers. In the past, MagnaGro manufactured 45,000 to 50,000 gallons of humic acid fertilizer, 250 tons of dry plant fertilizer, 5,000 to 10,000 gallons of liquid starter fertilizer, 25,000 gallons of Pow'r Pak fertilizer, and 2,000 gallons of compost tea per year.

16. On June 1, 2010 and July 27-28, 2010, representatives of EPA inspected the MagnaGro facility located at 600 East 23<sup>rd</sup> Street, Lawrence, Kansas 66046.

17. As a result of the inspections, violations of RCRA were cited for failure to make hazardous waste determinations for approximately 163 chemicals, and on July 28, 2010, EPA personnel hand-delivered a Notice of Violation (NOV) and a Request for Information letter.

18. On September 9, 2010, a Letter of Warning/Request for Information was sent to Respondent via certified mail, return receipt requested, which required a written response within ten calendar days of receiving the letter.

19. As of the date of this Order, no response has been received by EPA for either the July 28, 2010, NOV, the July 28, 2010, Request for Information or the September 9, 2010, Letter of Warning/Request for Information.

## V. VIOLATIONS

### COUNT I: Failure to Make a Hazardous Determination

20. Paragraphs 13 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

21. Pursuant to 40 C.F.R. § 262.11, and K.A.R. 28-21-4(b), a generator of “solid waste,” as that term is defined at 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

22. At the time of the June 1, 2010, and the July 27-28, 2010, inspections, Respondent failed to conduct hazardous waste determinations on approximately 163 containers, tanks, totes, carboys, vats, drums, bags, and secondary containment of solid waste as defined at 40 C.F.R. § 261.2.

23. Respondent’s failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. § 262.11 and K.A.R. 28 -31-4(b).

## VI. COMPLIANCE ORDER

24. Based on the foregoing findings, Respondent is hereby ordered to achieve and maintain compliance with all applicable requirements of RCRA. Specifically:

- a. Within thirty days (30) days of receipt of this Order, Respondent shall submit to EPA's Project Manager, identified in Paragraph 27 below, a written inventory of all containers, drums, totes, carboys, vats, secondary containment systems, and bags. The description shall include a notation regarding the size of the container, its contents, and quantity thereof. The description shall also include a waste determination in accordance with the requirements of K.A.R. 28-31-4(b). Respondent may elect to utilize the partially completed inventory compiled by EPA's inspector during the July 27-28, 2010, inspection (a copy may be obtained from EPA's Project Manager).
- b. If Respondent claims any of the materials listed in the inventory as a useable or saleable product, the Respondent must identify the material. In addition, Respondent must provide written documentation of how this product was used in the past by Respondent or its customers; any purchase or sale records between Respondent and other parties; the product's intended use in the future; and the Material Safety Data Sheet (MSDS).
- c. As part of the inventory, Respondent shall submit to EPA's representative identified herein, a written plan for immediately shipping all hazardous waste currently located at the facility to an appropriate hazardous waste disposal facility. The plan shall be reviewed by EPA and shall include the following:
  1. Identification for disposal of spent or waste acids, spent or waste bases, solvents, sludges, waste water, outdated and unusable chemicals: The

plan shall identify the disposal facility where Respondent proposes to ship all identified wastes.

2. Disposal of spent or waste acids, spent or waste bases, solvents, sludges, waste water, outdated and unusable chemicals: The plan shall provide that immediately following EPA's approval of the plan, all activities related to the off-site shipment of the spent or waste acids, spent or waste bases, solvents, sludges, waste water, outdated and unusable chemicals will commence and shall continue in accordance with an EPA-approved schedule. The plan shall also provide that the off-site disposal of these materials be completed no later than twenty (20) days of EPA's approval of the plan.
3. Documentation: The plan shall provide that within ten (10) days of completion of off-site disposal of the solid and/or hazardous wastes, Respondent shall provide to the EPA documentation demonstrating that all disposal activities are complete and that all such activities were carried out in accordance with the applicable requirements of RCRA. Documents to be provided shall include all manifests, bills of lading, and other pertinent records.

25. Based on the inventory required in Paragraph 24, Respondent shall immediately determine its hazardous waste generator status and come into compliance with all requirements appropriate for that generator status. If necessary, Respondent shall provide an application to the Kansas Department of Health and Environment for an EPA identification number as required by

K.A.R. 28-31-4(c)(1). A copy of this application shall be sent to EPA's Project Manager identified in Paragraph 27.

26. The Respondent shall not remove any of the containers listed in the July 28, 2010, NOV from the warehouse facility located at 600 East 23<sup>rd</sup> Street, Lawrence, Kansas, without EPA approval.

27. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to: Kevin Snowden, Environmental Scientist, Region 7, AWMD/WEMM, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101 or by email to [snowden.kevin@epa.gov](mailto:snowden.kevin@epa.gov).

28. If Respondent fails to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance, in addition to any other penalties that may be assessed for past or ongoing violations.

29. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a final order, upon receipt by the Respondent unless, no later than thirty (30) days after the Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

## **VII. ASSESSMENT OF PENALTIES**

30. EPA reserves its right to assess penalties and/or seek other injunctive relief for violations of the requirements cited above, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.



### VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

31. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15, Respondent has a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Hearing Clerk within thirty (30) days of service of this Order. In its answer, Respondent may contest any material fact contained in the Order.** The answer shall directly admit, deny, or explain each of the factual allegations contained in the Order and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Order constitutes an admission of that allegation.

### IX. DEFAULT ORDER

32. If Respondent fails to file a timely answer to the Order, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Order.

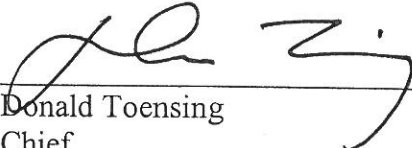
**X. SETTLEMENT CONFERENCE**

33. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the signing of a Consent Agreement and Final Order by the Presiding Officer. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Anne Rauch, Senior Counsel at 913-551-7288.

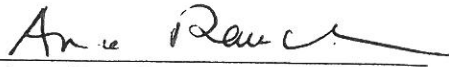
**XI. EFFECTIVE DATE**

34. The "Effective Date" of this Complaint is the date of service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

10-21-2010  
Date

  
Donald Toensing  
Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

10-21-2010  
Date

  
Anne Rauch  
Senior Regional Counsel  
Office of Regional Counsel

IN THE MATTER OF MagnaGro Corporation, Respondent  
Docket No. RCRA-07-2011-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was sent this day in the following manner to the addressees:

Copy by Certified Mail Return Receipt to:

MagnaGro Corporation  
811 East 23<sup>rd</sup> Street, Unit H  
Lawrence, KS 66046

Copy by U.S. Mail to:

MagnaGro International  
600 East 23<sup>rd</sup> Street  
Lawrence, KS 66046

Ray Sawyer, Owner  
MagnaGro Corporation  
P.O. Box 261  
Lawrence, KS 66044

Dated: 10/25/10



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Anne Rauch  
Senior Counsel