

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Spirit AeroSystems, Inc
3810 S. Oliver
Wichita, Kansas 67210

EPA ID Number: KSR000503961

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

AMENDED COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-07-2009-0012

A. PRELIMINARY STATEMENT

1. This Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Amended Complaint") is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA" or "the Act"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's 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 ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of the United States Environmental Protection Agency ("EPA" or "Complainant"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Spirit AeroSystems, Inc., a company incorporated under the laws of Delaware and authorized to conduct business in the State of Kansas ("Spirit AeroSystems" or "Respondent").

3. The authority to execute this Amended 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, RCRA, and Toxic 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 the RCRA Enforcement and State Programs Branch by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

4. 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 Title 28, Kansas Administrative Regulations, Chapter 31 (28 K.A.R. 31). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated there under. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Section 3008(g) of RCRA, U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997, and penalties up to \$32,500 per day for violations occurring after March 15, 2004 through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized. Based upon the facts alleged in this Amended Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, the Complainant proposes that Respondent be assessed a civil penalty of \$249,068 pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Amended Complaint. These factors include the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

B. AMENDED COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

6. Respondent is a Delaware corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7. Respondent's facility is located at 3810 S. Oliver, Wichita, Kansas 67210. Respondent manufactures fuselages, under-wing components, composites, wings and spare parts for large jet engine aircraft. The facility is located in a mixed business and residential area of Wichita,

Kansas. As a result of Respondent's operations, the Respondent generates solid and hazardous waste. Respondent notified as a large quantity generator of hazardous waste on May 16, 2005 under the name Midwestern Aircraft Systems and subsequently changed its name to Spirit AeroSystems on July 19, 2005.

8. The hazardous wastes generated by Respondent's operations include, but are not limited to, D001, D002, D003, D005, D006, D007, D008, D009, D035, D039, D040, D041, F001, F002, F003, F005, F006, F008, F019, P106, U002, U159, U210, U220, U226, U228, U239 hazardous waste, specifically industrial wastewater treatment filter press sludge, primer residue waste containing chromium and cadmium, vapor degreaser tetrachloroethylene and trichloroethylene waste, and hazardous waste oil.

9. Each of the wastes listed in Paragraph 8 is a "solid waste" within the meaning of K.A.R. 28-31-1(a)(2) and (3), which incorporates by reference 40 C.F.R. Parts 260 and 261. These wastes are also "hazardous waste" pursuant to those regulations.

10. Pursuant to K.A.R. 28-31-4(b) and 40 C.F.R. § 262.11, a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

11. At the time of the July 18-21, 2006 RCRA inspection, Respondent did not have a RCRA Permit or RCRA Interim Status to operate as a hazardous waste storage facility in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.A.R. 28-31-4(g).

12. Respondent generates more than one thousand kilograms of hazardous waste per month, and is therefore an "EPA generator" of hazardous waste within the meaning of K.A.R. 28-31-2, which incorporates by reference 40 C.F.R. § 260, Subpart B.

13. On July 18-21, 2006, Complainant conducted a RCRA Compliance Evaluation Inspection at Respondent's facility. At the time of the July 18-21, 2006 inspection, Respondent was an EPA generator of hazardous waste, including but not limited to F006, F007, F008, D001, D002, D006, D007, D008, D009, D035, D039, D040, and D041 hazardous waste. A Notice of Violation was issued to Respondent after the July 18-21, 2006 inspection for ten violations of RCRA. The violations observed during the July 18-21, 2006 inspection form the basis for the allegations below.

COUNT I

OFFERING HAZARDOUS WASTE FOR TRANSPORT WITHOUT A HAZARDOUS WASTE MANIFEST

14. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 13 above, as if fully set forth herein.

15. K.A.R. 28-31-4(d)(1) and 40 C.F.R. § 262.20 require a generator who offers hazardous waste for transportation to an off-site treatment, storage or disposal facility to prepare a hazardous waste manifest.

16. At the time of the July 18-21, 2006 inspection, Respondent had improperly disposed of primer coated machine residue waste into the garbage in four different locations within manufacturing plant buildings: 1-198D, 1-193E, 3-191M, and 3-187S.

17. Information provided by Respondent in response to EPA's March 22, 2007 Information Request indicated the machine residue failed TCLP for chromium and cadmium.

18. Respondent did not prepare a hazardous waste manifest for the disposal of the above mentioned waste in the general trash and transport to the sanitary landfill. Respondent's failure to prepare a hazardous waste manifest when offering hazardous waste for transportation to an off-site disposal facility is a violation of K.A.R. 28-31-4(d)(1).

COUNT II

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

19. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18 above, as if fully set forth herein.

20. Pursuant to K.A.R. 28-31-4(b), a generator of solid waste, as defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

21. According to 40 C.F.R. § 261.3(a)(2)(iv), mixtures of solid waste and listed hazardous waste are not listed hazardous waste if the generator can demonstrate that the mixture consists of wastewater subject to the Clean Water Act and that the maximum total weekly usage of various solvents divided by the average weekly flow of wastewater into the headworks of the facility's pretreatment facility does not exceed 1 ppm or 25 ppm, depending on the solvent.

22. At the time of the July 18-21, 2006 inspection, Respondent was generating tetrachloroethylene and trichloroethylene waste from stills connected to vapor degreasers. This waste entered a wastewater stream that subsequently entered the industrial wastewater treatment plant (IWTP).

23. At the time of the July 18-21, 2006 inspection, Respondent had not made a hazardous waste determination for the tetrachloroethylene and trichloroethylene in the waste water.

24. Respondent's failure to make a hazardous waste determination is a violation of K.A.R. 28-31-4(b), which incorporates by reference 40 C.F.R. § 262.11.

COUNT III

OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS

25. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 24 above, as if fully set forth herein.

Failure to Meet Generator Requirements

26. The regulations at 40 C.F.R. § 262.34(a), as incorporated by reference at K.A.R. 28-31-4(g), state that a generator may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without having interim status, provided conditions listed in K.A.R. 28-31-4(g) are met.

27. At the time of the July 18-21, 2006 inspection, Respondent was not complying with the following conditions:

Failure to maintain facility to minimize the possibility of fire or release to the environment Inadequate secondary containment system

28. The regulations at 40 C.F.R. § 265.31, which are incorporated by reference at K.A.R. 28-31-4(g)(4), require Respondent to maintain the facility to minimize the possibility of fire and unplanned sudden or non-sudden releases of hazardous waste to the environment.

29. The regulations at 40 C.F.R. §§ 265.193(e)(1)(iii) and 265.193(b), which are incorporated by reference at K.A.R. 29-31-4(g)(1)(B), require Respondent to maintain a secondary containment system that is designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system. Any secondary containment system must be free of cracks and gaps.

30. During the July 18-21, 2006 inspection, the inspector observed primer spilled on the ground outside building 2-309. The primer failed TCLP for chromium and cadmium and is thus a hazardous waste.

31. During the July 18-21, 2006 inspection, the inspector observed a half inch gap between the concrete and steel plate in the walls of the storage bunker used to store IWTP sludge. At the time of the inspection, the sludge was piled approximately ten feet high in this area.

32. During the July 18-21, 2006 inspection, the inspector observed cracks and gaps in the secondary containment for the IWTP sludge storage tank. Many cracks and gaps had been previously repaired, but new cracks and gaps along the concrete seam were observed. The inspector observed releases of the hazardous waste IWTP sludge in the secondary containment. Respondent's daily inspection reports for this area indicate that these cracks and gaps went unrepaired from June 28, 2005 until at least June 20, 2007.

33. At the time of the July 18-21, 2006 inspection, Respondent cleaned releases in the secondary containment area with a power washer, forcing the material into a drain. This drain connects to the adjacent containment area for the sludge holding tanks prior to the filter press. That containment area is connected to the IWTP. Since there are cracks and gaps in the seams, when the containment area is cleaned there are releases into the cracks and gaps. The inspector observed sludge in the cracks and gaps during the July 18-21, 2006 inspection. Additionally, there is no liner under the concrete to prevent entry of this hazardous waste into to the environment.

34. During the July 18-21, 2006 inspection, the inspector observed many cigarette butts near three flammable hazardous waste container storage cabinets in Building 3-191M. Drums of flammable liquid hazardous paints and thinners were stored in the nearby cabinets.

35. During the July 18-21, 2006 inspection, the inspector observed cigarette butts at the inlet and outlet areas of the hazardous waste oil tanks.

36. Respondent failed to maintain the facility to minimize the possibility of fire and unplanned sudden or non-sudden releases of hazardous waste to the environment, in violation of K.A.R. 28-31-4(g)(4) and K.A.R. 23-31-4(g)(1)(B), incorporating by reference 40 C.F.R. 265.193(e)(1)(iii) and 265.193(b).

Failure to properly close and label hazardous waste accumulation containers

37. The regulations at 40 C.F.R. Part 265.173, as incorporated by reference at K.A.R. 28-31-4(j)(1)(A), require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

38. At the time of the July 18-21, 2006 inspection, at a time when waste was not being added or removed, Respondent had accumulated hazardous waste in satellite accumulation containers which were not properly closed during storage. These open satellite accumulation containers were located in 1-198D, BB4 Paint Mix Room; 2-309, Paint Mix Room; Plant II, Factory 297, Post U7B.

39. The regulations at K.A.R. 28-31-4(j)(1)(B), require that while being accumulated on-site, each hazardous waste container is labeled or marked clearly with the words, "Hazardous Waste."

40. At the time of the July 18-21, 2006 inspection, the inspector observed that Respondent had accumulated numerous satellite accumulation containers containing hazardous waste which were not labeled with the words "Hazardous Waste." These unlabeled satellite accumulation containers were located in Building 1-198D, Drivematic Department Post NNS5 and BB4 Paint Mix Room; 2-309, Paint Hanger; Plant II, Factory 297, Bulkhead 747 Section 41, Post U7B, Post E11, Post Q21; 2-278M, Jeff Harington Area.

Failure to properly label, date and close hazardous waste storage containers

41. The regulations at 40 C.F.R. § 262.34(a)(1)(i), as incorporated by reference at K.A.R. 28-31-4(g)(1)(A), require that while being accumulated on-site, the hazardous waste is placed in containers and that the generator complies with the applicable requirements of Subparts I, AA, BB, CC of 40 C.F.R. Part 265.

42. The regulations at 40 C.F.R. Part 265.173, as incorporated by reference at K.A.R. 29-31-4(g)(1)(A), require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

43. At the time of the July 18-21, 2006 inspection, at a time when a waste was not being added or removed, Respondent had accumulated hazardous waste in storage containers which were not closed. These open hazardous waste storage containers were located in Buildings 2-309, outside; Camo II, Paint Hanger; Plant II, Post JA36; and in the Outside Berm Area.

44. The regulations at 40 C.F.R. § 262.34(a)(2), as incorporated by reference at K.A.R. 28-31-4(g)(2), require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection on each container.

45. At the time of the July 18-21, 2006 inspection, the inspector observed that Respondent had accumulated several storage containers containing hazardous waste which were not labeled with the accumulation start date. These containers were located in the Outside Berm Area, and Buildings 255G and 258.

46. The regulations at 40 C.F.R. § 262.34(a)(3), as incorporated by reference at K.A.R. 28-31-4(g)(3), require that while being accumulated on-site, each hazardous waste container is labeled or marked clearly with the words, "Hazardous Waste."

47. At the time of the of the July 18-21, 2006 inspection, the inspector observed that Respondent had accumulated numerous storage containers containing hazardous waste which were not labeled with the words "Hazardous Waste." These unlabeled satellite accumulation containers were located in the Outside Berm Area and in Buildings 255G and 258.

Failure to Maintain Overfill Prevention Controls

48. The regulations at 40 C.F.R. 265.194(b), as incorporated by reference at K.A.R. 28-31-4(g)(1)(b), sets forth the general operating requirements for owners and operators of hazardous waste tanks or secondary containment systems.

49. The regulation at 40 C.F.R. § 265.194(b) requires that an owner or operator must use appropriate controls and practices to prevent spills and overflows from a tank or secondary containment system, including, at a minimum, overfill prevention controls.

50. At the time of the July 18-21, 2006 inspection, Respondent was storing hazardous waste in the industrial wastewater treatment plant (IWTP) sludge tank. The IWTP storage tank did not have overfill prevention controls, as required by 40 C.F.R. § 265.194(b)(2).

Failure to Update Contingency Plan

51. The regulations at 40 C.F.R. §265.52(c) and (e), as incorporated by reference at K.A.R. 28-31-4(g)(4), require a generator to comply with the requirements of owners or operators in Subparts C and D of 40 C.F.R. Part 265.

52. The regulations at 40 C.F.R. § 265.54 state in pertinent part that a contingency plan must be reviewed, and immediately amended if necessary, if a facility changes—in its design, construction, operation, maintenance, or other circumstances, in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

53. At the time of the July 18-21, 2006 inspection, Respondent failed to include a list of emergency equipment used at the facility and failed to describe arrangements made with the local police, following the transfer of responsibilities from Boeing Aircraft to Respondent's operation. Respondent failed to update the contingency plan as required by 40 C.F.R. § 265.54.

*Failure to document training
Failure to provide introductory and continuing trainings*

54. The regulations at 40 C.F.R. §§ 265.16(a) and 265.16(d)(4), as incorporated by reference at K.A.R. 28-31-4(g)(4), require a generator to comply with the requirements of owners or operators in Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and 40 C.F.R. § 268.7(a)(5).

55. The regulations at 40 C.F.R. § 265.16 require that Respondent maintain documents and records on-site describing the job title of each employee engaged in hazardous waste management and the name of the employee filling each job, the specific written job description of each such employee (including the requisite qualifications and duties of each employee), a written description of the type and amount of introductory and continuing training to be given to employees engaged in hazardous waste management and documented proof of completion of training or job experience by such employees.

56. At the time of the July 18-21, 2006 inspection, Respondent failed to provide documentation that the RCRA Administrator and an Environmental Engineer had received training.

57. At the time of the inspection, EPA observed that employees handling hazardous waste in Building 2-278M had not received RCRA training as required pursuant to K.A.R. 28-31-4(g)(4).

58. Respondent's failure to comply with the conditions set forth in K.A.R. 28-31-4(g)(4), which incorporates by reference 40 C.F.R. § 265.16(d)(4), subjects Respondent to the

requirement to have a permit or interim status for its storage of hazardous waste. At the time of the inspection, Respondent did not have a RCRA Permit or RCRA Interim Status, in violation of Section 3005 of RCRA and K.A.R. 28-31-4(g)(4).

C. COMPLIANCE ORDER

59. IT IS HEREBY ORDERED that:

60. Within thirty (30) days of receipt of this Order, the Respondent shall pay a penalty of \$240,167.00.

61. Within ninety (90) days of the effective date of this Amended Complaint, Respondent shall repair all cracks and gaps in the secondary containment unit observed during the July 18-21, 2006 inspection, as identified in Paragraph 32. Respondent shall demonstrate to EPA that cracks and gaps have been sufficiently repaired to be in compliance with 40 C.F.R. 265.193, as incorporated by reference in K.A.R. 29-31-4(g)(1)(B). Such demonstration shall include, but not be limited to, invoices, photographs, and contracts. Information shall be submitted to EPA's representative identified in Paragraph 65 below.

62. Respondent shall prepare a Sampling Plan to identify potential contamination resulting from cracks and gaps in the secondary containment unit observed during the July 2006 inspection, as identified in Paragraph 32. Within thirty (30) days of the effective date of this Amended Complaint, Respondent shall submit a Sampling Plan to EPA for EPA's review and approval. The Sampling Plan, at a minimum, shall include the following:

- a. The Sampling Plan shall provide that Respondent will notify EPA's representative identified in Paragraph 65 below fourteen (14) days prior to initiating sampling activities.
- b. The Sampling Plan must set forth a plan for sampling of soil and groundwater under and surrounding the secondary containment unit where cracks and gaps were observed during the July 2006 inspection, as identified in Paragraph 32. At a minimum, the Sampling Plan shall provide for a representative number of samples and shall specify the type(s) of soil samples that will be taken from around and underneath the IWTP sludge secondary containment units referenced in Paragraph 32. In addition, sufficient groundwater samples shall be collected to identify potential contamination in groundwater from cracks and gaps from the secondary containment area.
- c. The Sampling Plan shall contain a Quality Assurance Plan for sampling and analysis of the samples and provide that the samples will be analyzed for chromium, cadmium, and volatile organic compounds using EPA-approved sampling methods. In developing the Quality Assurance Plan, Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001).

d. The Sampling Plan shall contain a statement of the qualifications for any consultant retained to perform the work required by this Amended Complaint.

e. The Sampling Plan shall contain a schedule for completion of all activities, and shall provide a schedule for submission of a final Sampling Report at the completion of all sampling activities. This final Sampling Report shall be submitted for EPA's review and approval and, at a minimum, shall include a written description of the type of sampling (wipe sampling, core sampling, soil sampling, etc), a map of the location of each sample, and a table of the analytical results for all samples taken pursuant to the approved Sampling Plan.

63. Respondent shall submit a Health and Safety Plan for EPA review and comment (but not EPA approval) for the work to be completed pursuant to the Sampling Plan. The Health and Safety Plan shall comply with applicable OSHA regulations. The Sampling Plan and Sampling Report shall comply with applicable OSHA regulations.

64. Within thirty (30) days of EPA's approval of the Sampling Plan, Respondent shall implement the Sampling Plan in accordance with the schedules contained therein as approved by EPA.

65. All documents required to be submitted to EPA pursuant to this Amended Complaint shall be sent to:

Edwin G. Buckner, P.E., AWMD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101
E-mail: buckner.edwin@epa.gov.

66. All documents, plans or other submittals requiring EPA review and approval shall be reviewed pursuant to the procedures outlined in this Paragraph. EPA's representative will review the document, plan or other submittal and provide comments to Respondent regarding any deficiencies or lack of information in the document. Respondent shall make all necessary corrections to the document based upon EPA's comments within fifteen (15) days of the receipt of EPA's comments. Upon resubmittal, if the EPA's comments have not been adequately addressed, EPA may unilaterally modify the document, plan or other submittal and return it to Respondent. Once a document, plan or other submittal has been approved or modified by EPA, Respondent shall implement the plan or submit any documents required as set forth in the modified submittal. All references to "days" shall mean calendar days for the purposes of this Amended Complaint.

67. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

or by wire transfer, directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The check must reference the EPA Docket Number of this Amended Complaint and the Respondent by name. A copy of the check or confirmation of the wire transfer shall also be mailed to EPA's representative identified in Paragraph 65, Edwin G. Buckner, P.E., and to:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

68. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.37(b), the Compliance Order section of this Amended Complaint shall become final unless Respondent requests a public hearing in writing to contest the appropriateness of the Compliance Order in accordance with the requirements of 40 C.F.R. § 22.15 no later than thirty (30) days after service of this Amended Complaint.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

69. Respondent may request a hearing to contest any material fact contained in the Amended Complaint, or to contest the appropriateness of the proposed penalty and/or Compliance Order, by filing an answer in accordance with the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is enclosed hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk at:

Regional Hearing Clerk
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Ms. Kristen Nazar, Office of Regional Counsel, at the same address.

70. Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Amended Complaint will constitute a binding admission of all allegations contained in the Amended Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

71. Respondent's failure to request a public hearing in writing to contest the appropriateness of the Compliance Order within thirty (30) days after service of this Amended Complaint shall automatically cause the Compliance Order section of this Amended Complaint to become final.

72. The total proposed penalty for Counts I, II and III is \$240,167.00. This proposed penalty is based on the best information available to EPA at the time that the Amended Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

E. SETTLEMENT CONFERENCE

73. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Ms. Kristen Nazar, Office of Regional Counsel, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7450.

74. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

75. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, U.S. EPA Region VII.

76. If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Amended Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Amended Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

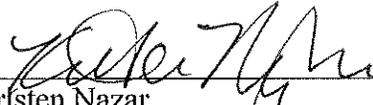
F. EFFECTIVE DATE

77. This Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing shall become effective on the date signed by the Chief of the RCRA Enforcement and State Programs Branch, EPA Region VII.

78. The Compliance Order section of this Amended Complaint shall only be terminated upon receipt of written notice from EPA that all requirements herein have been satisfied.

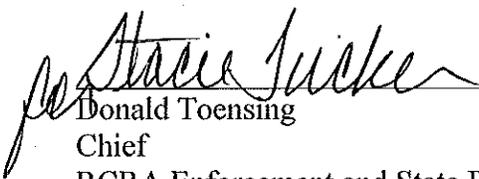
IT IS SO ISSUED AND ORDERED:

12/23/09
Date



Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

12/23/2009
Date

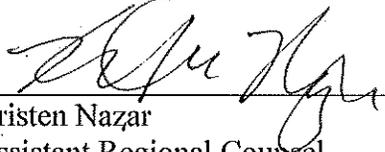


Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
U.S. Environmental Protection Agency
Region VII

Attachments: 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

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by FedEx®, signature required, to: Ms. Sybil Anderson, Headquarters Hearing Clerk, Mail Code 1900L, Office of Administrative Law Judges, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460; Mr. Charles Efflandt, Foulston & Siefkin LLP, 1551 N. Waterfront Parkway, Suite 100, Wichita, KS 67206-4466; with a copy sent certified mail, return receipt requested, to Mr. Frederick Dodds, Spirit AeroSystems, Inc., P.O. Box 780008 MC K11-60, Wichita, Kansas 67278-0008 on this 23rd day of December, 2009.



Kristen Nazar
Assistant Regional Counsel
U.S. EPA, Region 7