

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

Hagerstown Aircraft Services, Inc.

RESPONDENT

Hagerstown Aircraft Services, Inc.
14235 Oak Springs Road
Hagerstown, MD 21742

FACILITY

Docket No. RCRA-03-2011-0112

ADMINISTRATIVE COMPLAINT
AND COMPLIANCE ORDER
AND NOTICE OF RIGHT
TO REQUEST A HEARING

I. PRELIMINARY STATEMENT

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928(a)(1) and (g), as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance and Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator of EPA has delegated this authority under RCRA to the Regional Administrators of EPA, and this authority has been further delegated in U.S. EPA - Region III to, *inter alia*, the Director of the Land and Chemicals Division, U.S. EPA - Region III ("Complainant"). The Respondent in this matter is Hagerstown Aircraft Services, Inc. ("Respondent"). This action concerns Respondent's facility located in Hagerstown, Maryland.

EPA hereby notifies Respondent that EPA has determined that Respondent has violated certain provisions of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the State of Maryland's federally authorized hazardous waste management program.

The State of Maryland Hazardous Waste Management Regulations ("MdHWMR") are set forth at the Code of Maryland Regulations ("COMAR"), Title 26, Subtitle 13 et seq. The MdHWMR were originally authorized by EPA on February 11,

1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the Maryland Hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

EPA has given the State of Maryland notice of the issuance of this Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. Hagerstown Aircraft Services, Inc. ("Respondent") is a Maryland corporation.
3. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and COMAR 26.13.01.03.B (61).
4. From at least December 1, 1997 until the present, Respondent has been the owner and operator of an aircraft inspection maintenance and repair facility located at 14325 Oak Springs Road, Hagerstown, Maryland 21226 (the "Facility").
5. In or about 1980, Respondent's predecessor submitted to EPA a Notification of Hazardous Waste Activity ("Notification") for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying itself as a generator of ignitable and corrosive hazardous wastes at the Facility. The Facility was assigned EPA ID No. MDD046282398.
6. In or about 1997, Respondent purchased the facility and business from Alphin Aircraft, Inc.
7. At the Facility, Respondent is a "generator" of materials described below that are "solid wastes" and "hazardous waste," as those terms are defined in COMAR 26.13.01.03.B (29), (73) and (31).
8. On April 28, 2010, a representative of EPA and a representative of Maryland Department of the Environment conducted a Compliance Evaluation Inspection ("CEI") at the Facility.

Notice of Action to the State of Maryland

9. EPA has given the State of Maryland, through the Maryland Department of the Environment (“MDE”), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

COUNT I
(Failure to Make a Waste Determination)

10. The preceding paragraphs are incorporated by reference.
11. COMAR 26.13.03.02A provides that a person who generates a solid waste as defined in COMAR 26.13.02.02 shall determine if that waste is a hazardous waste using the method set forth in COMAR 26.13.03.02.A-B.
12. As the person who generated the solid waste described in this Count, Respondent was required by COMAR 26.13.03.02A to determine if the solid waste it generated at the Facility was hazardous waste using the method prescribed by COMAR 26.13.03.02A-B.
13. Respondent strips paint from airplanes, which process generates paint waste and spent caustic solution, both of which are solid wastes. The spent caustic solution is collected and treated in an on-site wastewater treatment plant.
14. Respondent paints airplanes, which process generates paint waste and spent solvents, both of which are solid wastes.
15. Respondent repairs airplane engines, which process generates spent solvents, which are solid wastes.
16. At the time of the CEI, Respondent stored four drums of paint waste in an area identified by Respondent as the stripping shop. According to Respondent, the paint waste had been generated at the Facility at least fourteen years prior to the CEI.
17. From at least April 28, 2010 to the present, Respondent generated, and subsequently treated, stored and/or disposed of, a solid waste, *i.e.*, the paint waste described in Paragraphs 13, 14 and 16, without performing a hazardous waste determination on such solid waste.
18. From at least April 28, 2010 to the present, Respondent generated, and subsequently treated, stored and/or disposed of, a solid waste, *i.e.*, the spent solvents referred to in Paragraphs 14 and 15, without performing a hazardous waste determination on such

solid waste.

19. From at least April 28, 2010 to the present, Respondent generated, and subsequently treated, stored and/or disposed of, a solid waste, *i.e.*, the spent caustics referred to in Paragraph 13, without performing a hazardous waste determination on such solid waste.
20. Respondent failed to perform hazardous waste determinations as required by COMAR 26.13.03.02A, on solid wastes it generated at the Facility as described in this Count I.
21. Respondents violated COMAR 26.13.03.02A by failing to perform a hazardous waste determination on solid waste generated at the Facility, for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT II
(Failure to Respond to an Information Request Letter)

22. The preceding paragraphs are incorporated by reference.
23. On May 28, 2010, a duly designated employee of EPA sent to Respondent, via UPS next day delivery, an Information Request Letter (“IRL”) pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), regarding the management of hazardous waste at the Facility.
24. The IRL required Respondent to provide a response to the IRL within twenty (20) calendar days after receipt of the letter.
25. On August 10, 2010, Complainant sent a follow up letter to Respondent requesting a response to the May 28, 2010 IRL.
26. Respondent has not submitted a response to the May 28, 2010 EPA IRL or the August 10, 2010 follow-up letter.
27. Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), provides that for the purposes of, *inter alia*, enforcing the provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921 *et seq.*, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request *inter alia*, of a duly designated EPA employee, furnish information relating to such wastes.
28. Respondent violated Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), by failing to submit a response to an IRL and follow-up letter issued by EPA to Respondent pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

III. COMPLIANCE ORDER

29. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to submit a complete response to the IRL within ten business days of the date on which this Compliance Order becomes a Final Order pursuant to the Consolidated Rules at 40 C.F.R. § 22.31 and .37.
30. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to identify all solid wastes generated at the facility in accordance with COMAR 26.13.03.02.A-B and submit the results of such identification and all relevant documentation to EPA and the Maryland Department of the Environment to the addressees listed in this Compliance Order within 30 days after the date on which this Compliance Order becomes a Final Order pursuant to the Consolidated Rules at 40 C.F.R. § 22.31 and .37.
31. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order shall be certified by a responsible representative of Respondent, as described in 40 C.F.R. § 270.11(a).
32. The certification of the responsible representative required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

33. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

- a. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to the attention of:

Kenneth Cox
Environmental Engineer
Office of Land Enforcement (3LC70)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Sr. Assistant Regional Counsel (3RC30)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- b. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Harold Dye, Administrator
Waste Management Administration
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Boulevard
Baltimore, MD 21230-1701

34. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rules, codified in 40 C.F.R. Part 19.

35. The term "days" as used herein shall mean calendar days unless specified otherwise.

IV. PROPOSED CIVIL PENALTY

36. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1) and (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (3), and (g),

Complainant proposes the assessment a civil penalty against Respondents per day of non-compliance for each violation. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, increased the maximum amount of civil penalties which can be assessed by EPA for each day of a violation of RCRA Subtitle C occurring on or after January 30, 1997 from \$25,000 to \$27,000 after March 15, 2004 but before January 12, 2009 to \$32,500, and after January 12, 2009 to \$37,500.

37. For the purpose of determining the amount of a civil penalty to be assessed under RCRA, RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by Respondents to comply with applicable requirements (i.e., the "statutory factors"). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Enclosure A). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases. As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.14(a)(4), Complainant will also consider, among other factors, Respondents' inability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondents. In addition, to the extent that the facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for increasing or decreasing the civil penalty, as appropriate.
38. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. § 22.19(a)(4).
39. Nothing in this Complaint shall be construed to constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to Section 22.14(a)(4)(ii) of the Consolidated Rules of Practice, an explanation of the number and severity of violations is given below concerning the aforesaid Counts alleged in this Complaint.

COUNT I - Failure to perform Hazardous Waste Determinations

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent's failure to perform hazardous waste determinations on solid wastes generated at the Facility is major. The performance of hazardous waste determinations is the initial trigger for the implementation of the RCRA Subtitle C regulations and the authorized MdHWMR at a facility for the safe handling and management of hazardous wastes. Respondent's failure to perform such determinations resulted in solid wastes that are potentially hazardous wastes not being identified as such and as a consequence not being properly managed and handled at the Facility, thereby, posing a risk to human health and the environment. Additionally, the failure to perform such determinations

poses a substantial potential for harm to the RCRA program which relies upon members of the regulated community, like Respondent, to identify hazardous wastes and institute those practices and procedures deemed necessary under RCRA for their safe handling, storage, treatment and/or disposal.

Respondent failed to perform waste determinations on each separate waste streams. Accordingly, the extent of deviation from the regulatory requirements presented by Respondent's activities is "major."

Economic Benefit of Non-Compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent as a result of its failure to perform hazardous waste determinations.

COUNT II Failure to Respond to an Information Request Letter

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent's failure to respond to an Information Request Letter is major. Substantial government resources were expended attempting to elicit Respondent's response to the Information Request Letter. Moreover, Respondent's failure to respond has delayed regulatory efforts to ensure the solid waste generated at Respondent's facility is properly identified and managed, thereby posing a risk to human health and the environment. Additionally, the failure to respond to an Information Request Letter poses a substantial potential for harm to the RCRA program which relies upon members of the regulated community, like Respondent, to comply with the statutory requirements that enable the program to be effectively implemented.

Respondent failed to respond to an Information Request Letter despite two separate written requests. Accordingly, the extent of deviation from the regulatory requirements presented by Respondent's failure to respond is "major."

Economic Benefit of Non-Compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent as a result of its failure to respond to EPA's Request Letter.

V. OPPORTUNITY TO REQUEST A HEARING

40. Pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any material fact set forth in this Complaint, contest the appropriateness of an Compliance Order or proposed penalty, and/or assert that Respondent is entitled to judgment as a matter of law. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, within (30) thirty days of receipt of this Complaint, at the following

address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

In addition, please send a copy of any request for a hearing to the attention of:

Joyce A. Howell (MC3RC30)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

41. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.
42. **Failure of the Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.**
43. Pursuant to Section 22.37 of the Consolidated Rules of Practice, 40 C.F.R. § 22.37, this Compliance Order shall automatically become a Final Order unless, no later than 30 days after this Compliance Order has been served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.
44. Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.
45. A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Joyce A. Howell (MC3RC30)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

VI. SETTLEMENT CONFERENCE

46. Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the relief described therein. A request for a settlement conference does not relieve a Respondent of its responsibility to file a timely Answer.
47. The Quick Resolution settlement procedures set forth at 40 C.F.R. § 22.18 of the Consolidated Rules of Practice do not apply to this case because the Complaint contains a compliance order and does not plead a specific penalty. 40 C.F.R. § 22.18(a).
48. In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the Respondent's right to contest the allegations in the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.
49. If you wish to arrange a settlement conference or have legal questions concerning this matter, please contact Joyce A. Howell, Senior Assistant Regional Counsel, at (215) 814-2644. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Compliance Order.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

50. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Order, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with,

among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Order.

Dated: 3/23/11



Abraham Ferdas
Director
Land and Chemicals Division
U.S. EPA Region III

- A. June 2003 - RCRA Civil Penalty Policy (enclosed).
- B. Consolidated Rules of Practice - 40 C.F.R. Part 22 (enclosed).
- C. 40 C.F.R. § 19.4 (chart) (enclosed).
- D. Maryland Hazardous Waste Management Regulations COMAR, Title 26, Subtitle 13 et seq. (applicable excerpt)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
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CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Federal Express, a copy of the ADMINISTRATIVE COMPLAINT, AND COMPLIANCE ORDER AND NOTICE OF RIGHT TO REQUEST A HEARING to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Tracey Potter
President
Hagerstown Aircraft Services, Inc.
14235 Oak Springs Road
Hagerstown, MD 21742

Dated: March 14, 2011


Joyce A. Howell