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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 FEB -8 AM 11:00
REGION IX

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of	)	U.S. EPA Docket No.
	)	RCRA 09-2007- 0008
	)	
Tony Santillanes doing business as (dba)	)	DETERMINATION OF VIOLATION
Santillanes Towing and Salvage,	)	COMPLIANCE ORDER
	)	AND
	)	NOTICE OF RIGHT TO
Respondent.	)	REQUEST A HEARING

I. DETERMINATION OF VIOLATION

A. INTRODUCTION

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Tony Santillanes ("Respondent"). Mr. Santillanes is an individual doing business as ("dba") Santillanes Towing and Salvage.

2. Respondent operates a vehicle salvage business located at 87-125 Ave. 66, Thermal, California 92274, in Riverside County (the "Facility"). The Facility is located, in part, on land held in trust by the United States of America, within the Torres Martinez Desert Cahuilla Indian Reservation. The Facility is comprised of a fenced lot, approximately 150,000 square feet. EPA is informed that Respondent does not have a lease approved by the Bureau of Indian Affairs for this Facility.

3. On February 1, 2007, EPA learned that Respondent may be relocating his operation to a nearby parcel of land, Allotment 12B, located on land held in trust by the United States of America, within the Torres Martinez Desert Cahuilla Indian Reservation. EPA is informed that Respondent does not have a lease approved by the Bureau of Indian Affairs for this new location.

4. Operations that occur at the Facility include disassembling vehicles, removing parts from vehicles, crushing vehicles, and collecting fluids (e.g., gasoline, oil, antifreeze, and transmission fluid) from vehicles.

5. This Determination of Violation, Compliance Order and Notice of Right to Request a

Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent violated Sections 3002, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, and 6930, and regulations adopted pursuant thereto. This Complaint seeks to establish the amount of civil penalty that Respondent must pay for violations alleged herein, and compel compliance with the compliance tasks described herein.

B. JURISDICTION

6. Respondent Tony Santillanes is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. §§ 260.10 and 270.2.

7. Respondent is the "owner" or "operator" of a "facility" as defined in 40 C.F.R. § 260.10 at the time of the violations alleged in this Complaint.

8. Respondent is the "owner or operator" or a "facility or activity" as defined in 40 C.F.R. § 270.2 at the time of the violations alleged in this Complaint.

9. Respondent generates, generated, or had generated, hazardous waste as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3.

10. Respondent stores, or stored, hazardous waste as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.

11. Respondent stores, or stored, used oil as defined in Section 1004(36) of RCRA, 42 U.S.C. § 6903(36) and 40 C.F.R. §§ 260.10 and 279.1.

12. Respondent is, therefore, subject to the federal regulations adopted pursuant to Sections 3002, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, and 6930.

13. Federal regulations establishing generator standards, 40 C.F.R. Part 262, and establishing owner and operator standards, 40 C.F.R. Part 265, became effective on November 19, 1980.

14. Federal regulations governing the hazardous waste permit program, 40 C.F.R. Part 270, became effective April 1, 1983.

15. On June 28, 2006, EPA conducted a RCRA inspection at the Facility.

16. Based on the June 28, 2006 inspection and information collected by EPA thereafter, EPA determined that Respondents have violated the following regulations: 40 C.F.R. §§ 265.11; 265.31; and 270.1(c).

17. Respondent, in violating the regulations cited above, violated Subtitle C of RCRA, and therefore is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

18. The Facility is primarily located on the Torres Martinez Desert Cahuilla Indian Reservation. The State of California is not authorized to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926 and 40 C.F.R. §271, for facilities or activities in Indian Country.

19. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a penalty and requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq.

20. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, pursuant to Delegation number 8-9-A, who has redelegated this authority to the Director of the Waste Management Division pursuant to Delegation number R9 1280.04.

C. GENERAL ALLEGATIONS

21. Respondent generates, or has generated, spent lead-acid batteries, which are "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3. The lead-acid batteries are a characteristic hazardous waste because of the lead (D008) and acid (D002) content.

22. Respondent stores, or has stored damaged and leaking spent lead-acid batteries at the Facility.

23. Respondent disposed of damaged and leaking spent lead-acid batteries at the Facility.

24. Respondent spilled sulfuric acid from damaged and leaking spent lead-acid batteries into soils at the Facility.

25. Respondent has not generated, collected, or stored spent lead-acid batteries for reclamation.

26. Respondent is a "generator" of hazardous waste as defined in 40 C.F.R. § 260.10.

27. Respondent engaged in the "storage" or "disposal" of hazardous wastes as defined in 40 C.F.R. § 260.10.

D. VIOLATIONS

COUNT I
(Failure to Notify EPA of Waste Activity)

28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.

29. Section 3010 of RCRA, 42 U.S.C. § 6930, requires that any person generating hazardous waste or owning or operating a facility for treatment, storage, or disposal of hazardous waste file a notification with EPA.

30. 40 C.F.R. § 265.11 requires that every owner or operator of a hazardous waste facility apply to EPA for an EPA identification number.

31. On June 28, 2006, EPA's inspector observed that Respondent has been storing and disposing of lead-acid batteries at the Facility.

32. Respondent has never submitted a Notification of Hazardous Waste Activity to EPA or applied for an EPA identification number as required by Section 3010 of RCRA, 42 U.S.C. § 6930.

33. Respondent's failure to notify EPA and to apply for an EPA identification number violated Section 3010 of RCRA, 42 U.S.C. § 6930, and 40 C.F.R. § 265.11.

Count II
(Storage and Disposal of Hazardous Waste Without a Permit)

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were set forth here in their entirety.

35. On the date of the inspection, observations at the Facility made by the Inspector indicated that Respondent was a generator of hazardous waste.

36. 40 C.F.R. § 261.5 provides that the hazardous waste generated by generators who generate less than 100 kilograms of hazardous waste each month are not subject to regulation under parts 262 through 266, 268, and parts 270 and 124 of this chapter, provided the generator complies with the requirements which are set forth by 40 C.F.R. § 261.5 (g). Failure to comply with the treatment or disposal options identified in 40 C.F.R. §261.5 (g)(3) subjects the generator to the permitting requirements of 40 C.F.R. § 270.1.

37. On June 28, 2006, EPA's inspector observed that Respondent was disposing of lead-acid

batteries at the Facility. Six of these lead-acid batteries had open caps and/or broken casings. The lead-acid batteries are a characteristic hazardous waste because of the lead (D008) and acid (D002) content. This practice is not one of the treatment or disposal options identified in 40 C.F.R. § 261.5 (g)(3). Respondent is therefore subject to the permitting requirements of 40 C.F.R. § 270.1.

38. 40 C.F.R. § 270.1(c) requires each person owning or operating a RCRA hazardous waste storage and disposal facility to have a permit.

39. Respondent does not have a permit or grant of interim status to store and dispose of hazardous waste under 40 C.F.R. § 270.1.

40. 40 C.F.R. § 262.34 allows generators of hazardous waste to accumulate hazardous waste onsite for a limited period of time, without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or referenced by 40 C.F.R. § 262.34. Failure to comply with the time limits or any of the requirements set forth in or referenced by 40 C.F.R. § 262.34 subjects the generator to the permitting requirements of 40 C.F.R. § 270.1.

41. 40 C.F.R. § 262.34(a)(2) requires that the date upon which each period of accumulation of hazardous waste begins is clearly marked and visible for inspection on each container. Generators who fail to mark containers of hazardous waste with the date upon which each period of accumulation begins fail to meet the requirements of 40 C.F.R. § 262.34(a)(2) and are subject to the permitting requirements of 40 C.F.R. § 270.1.

42. 40 C.F.R. § 262.34(a)(3) requires that generators label containers with the words "hazardous waste". Generators who fail to label containers of hazardous waste with the words "hazardous waste" fail to meet the requirements of 40 C.F.R. § 262.34(a)(3), and are subject to the permitting requirements of 40 C.F.R. § 270.1.

43. 40 C.F.R. § 262.34(a)(4) requires that generators who accumulate hazardous waste onsite without a permit or grant of interim status comply with the requirements for owners or operators in Subparts C and D in 40 C.F.R. § 265, with § 265.16, and with 40 C.F.R. § 268.7(a)(5).

44. 40 C.F.R. § 265.31 of 40 C.F.R. Part 265, Subpart C, requires that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

45. On June 28, 2006, EPA's inspector observed that Respondent has been storing and disposing of lead-acid batteries at the Facility. Most of the lead-acid batteries which were scattered throughout the Facility were located on the ground. Six of these lead-acid

batteries had open caps and/or broken casings. The lead-acid batteries were not labeled "hazardous waste" and were not marked with the accumulation date. Therefore, EPA alleges that Respondent failed to comply with the conditions of 40 C.F.R. §§ 262.34(a)(2), (3), and (4).

46. Respondents' failure to comply with the labeling, marking and maintenance requirements set forth in or referenced by 40 C.F.R. § 262.34 subjects the generator to the permitting requirements of 40 C.F.R. § 270.1. Respondent's failure to have a permit or grant of interim status violated 40 C.F.R. § 270.1.

Count III
(Failure to Respond to Request For Information)

47. Paragraphs 1 through 46 above are incorporated herein by this reference as if they were set forth here in their entirety.

48. Under Section 3007 of RCRA, 42 U.S.C. § 6927, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes is required to furnish information relating to such wastes upon the request of any duly designated officer, employee or representative of the EPA.

49. The Branch Chiefs, Section Chiefs and Office Chiefs of the EPA Region IX Waste Management Division are each authorized to request information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

50. In a letter dated August 10, 2006, the Chief of the EPA Region IX, Waste Management Division, RCRA Enforcement Office, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, requested that Respondent submit information related to Respondent's handling, storage, treatment and disposal of hazardous wastes at the Facility.

51. The August 10, 2006 letter to Respondent requesting information was delivered to Respondent's representative at the Facility on September 1, 2006. Respondent's response was due on or before October 2, 2006.

52. Respondent never submitted the information required by the August 10, 2006 Information Request.

53. Respondent's failure to respond to the August 10, 2006 Information Request violated Section 3007 of RCRA, 42 U.S.C. § 6927.

E. CIVIL PENALTY

54. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS ($32,500) per day for each violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to $32,500 per day, as appropriate, for each day during which a violation cited in the above outlined Counts continued.

Count I - Failure to Notify EPA of Waste Activity

This violation continued for at least 215 days, from June 28, 2006 to January 29, 2007. January 29, 2007 is the date that EPA started onsite hazardous substances removal activities in the area around the Facility. This violation presents a major potential for harm to the RCRA program and is a major deviation from the regulatory requirement.

Count II - Storage of Hazardous Waste Without a Permit

This violation continued for at least 215 days, from June 28, 2006 to January 29, 2007. January 29, 2007 is the date that EPA started onsite hazardous substances removal activities in the area around the Facility. This violation presents a moderate potential for harm to the RCRA program and the environment and is a major deviation from the regulatory requirement.

Count III - Failure to Respond to Request For Information

This violation continued for at least 119 days, from October 2, 2006 to January 29, 2007. January 29, 2007 is the date that EPA started onsite hazardous substances removal activities in the area around the Facility. This violation presents a major potential for harm to the RCRA program and is a major deviation from the regulatory requirement.

II. COMPLIANCE ORDER

96. **Stop All Non-Compliant Hazardous Waste Activities.** Respondent shall immediately stop all generation, receipt, storage, disposal, treatment, accumulation or transport of hazardous waste at the Facility, except as provided by Sections 3002, 3004, 3005, 3007, 3010 and 3014 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, 6930, and 6935 and regulations promulgated pursuant to those sections, including 40 C.F.R. Parts 262, 264, 265, 266, 268, 270 and 279.

97. **Do Not Initiate Any Non-Compliant Hazardous Waste Activities at a New Facility.** Respondent shall not initiate any generation, receipt, storage, disposal, treatment, accumulation or transport of hazardous waste at a new facility, except as provided by

Sections 3002, 3004, 3005, 3007, 3010 and 3014 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, 6930, and 6935 and regulations promulgated pursuant to those sections, including 40 C.F.R. Parts 262, 264, 265, 266, 268, 270 and 279.

98. **Submit Waste Determination and Disposal Plan and Schedule.** Respondent shall, within fifteen (15) days after this compliance order becomes a final order pursuant to 40 C.F.R. § 22.37(b), submit to EPA for approval a waste determination pursuant to 40 C.F.R. § 262.11 for each of the waste materials generated and/or stored at the Facility, including damaged or leaking containers and containers of unidentified liquids, and a plan and schedule for disposal of such waste material. Respondent shall conclude whether each material is a RCRA hazardous waste or a non-hazardous waste, and furnish a detailed narrative explanation of how the determination was made, including all supporting information and documentation used to make this determination. Supporting information and documentation may include, but is not limited to laboratory analyses, Material Data Safety Sheets ("MSDS") and detailed process information.

99. **Disposal Upon Written EPA Approval.** Respondent shall, within ten (10) days of EPA written approval of the waste determination and disposal plan and schedule, properly dispose of the waste material generated and/or stored at the Facility, including damaged or leaking containers. Respondent shall not initiate any disposal activities without prior written approval by EPA.

100. **Submit Work Plan to Investigate and Remediate.** Respondent shall, within fifteen (15) days after this compliance order becomes a final order pursuant to 40 C.F.R. § 22.37(b), submit to EPA for approval a Work Plan to investigate and remediate effects of the releases of sulfuric acid, lead, and any other hazardous waste at the Facility. The Work Plan shall also include a proposed schedule for completion of all tasks described in the Work Plan.

101. **Investigate and Remediate Upon EPA Approval.** Upon written approval by EPA, and in accordance with a compliance schedule approved by EPA, Respondent shall complete all tasks set forth in the EPA-approved Work Plan.

102. Respondent shall send any submittals regarding compliance with this Order by email, fax, hand delivery, overnight express or certified mail to:

Kaoru Morimoto (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

103. To the extent the Facility or other property subject to or affected by this Order is owned

or leased in whole or in part by parties other than those bound by this Order, Respondent will use his best efforts to obtain site access agreements from the present owner(s) and/or lessees as necessary. Such efforts must be made within thirty (30) days of the Effective Date of this Order, if the need for site access is known as of the Effective Date of the Order, or, if not known as of the Effective Date of this Order, within thirty (30) days of EPA approval of any work plan, report or document pursuant to this Order which requires work on such property. "Best efforts" as used in this paragraph shall include, at a minimum, but shall not be limited to: (a) a certified letter from Respondent to the present owner(s) and/or lessee(s) of the property requesting access agreements to permit Respondent, EPA and their authorized representatives access to such property, and (b) the payment of reasonable compensation in consideration for such access.

104. All site access agreements entered into pursuant to paragraph 102 of this Section shall provide access for EPA, its contractors and oversight officials, and Respondent and Respondent's authorized representatives and contractors. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, his officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under Respondent's control, in carrying out activities pursuant to this Order. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities.

105. If access agreements are not obtained within the time set forth above, Respondent shall immediately notify EPA, in writing, of the failure to obtain access, specifying the efforts undertaken to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access as necessary for implementation of response actions taken pursuant to this Order. EPA may also perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property, and shall reimburse EPA to the full extent allowed by law for all response costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

106. In the event Respondent is unable to complete a specific compliance action identified in this Order prior to the deadline provided in the Order, Respondent may request a one-time extension, not to exceed thirty (30) days, for that activity. At the time of the request, Respondent shall submit a description of the work that requires the extension, provide a detailed justification for the extension, including an explanation why Respondent is or

was unable to complete the action in a timely manner, and a schedule for completion of the action. Any request for extension shall be filed as early as practicable, but in no event later than fifteen (15) days prior to the deadline provided in the Order. Whether or not to grant the extension shall be within Complainant's discretion.

III. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

107. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Compliance Order set forth herein shall become final unless Respondents file an Answer and a request for public hearing in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Letitia Moore (ORC-3), Assistant Regional Counsel at the same address.

108. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. Where Respondent has no knowledge of a particular factual allegation and so state, the allegation is deemed denied. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent intends to place at issue, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested.

109. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.

110. If Respondent requests a public hearing, it will be held in a location determined in accordance with 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, a copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §552 et seq., and 40 C.F.R. Part 22. Respondent may request a hearing on any material fact alleged in the Complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order.

111. Pursuant to 40 C.F.R. § 22.7(c) of the Consolidated Rules of Practice, where a pleading

or document is served by first class mail or commercial delivery service, but not by overnight or same-day service, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

B. INFORMAL SETTLEMENT

112. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

113. In addition to the compliance schedule set forth in the Order above, any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent stipulated.

114. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.

115. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Letitia Moore, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 972-3928.

EFFECTIVE DATE

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).

02 03 07

Date

Jeff Scott
Director
Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 C.F.R. Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:

Mr. Tony Santillanes
dba Santillanes Towing and Salvage
87-125 Ave 66
Thermal, CA 92274

2/8/07

Date

Rhonda Smith

Hazardous Waste Management Division