



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

FEB 10 2009

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chris Goeloe
Environmental Manager
Anderson Development Company
1415 E. Michigan Street
Adrian, Michigan 49221

Re: Administrative Complaint and Compliance Order
Anderson Development Company
EPA ID No.: MID 002 931 228
Docket No: **RCRA-05-2009-0005**

Dear Mr. Goeloe:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the U.S. Environmental Protection Agency's determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 et seq., by Anderson Development Company. EPA based its determination on the March 21 and 22, 2007, inspection of the facility located at 1415 E. Michigan Street, and your EPA files. The general allegations in the Complaint state the reasons for EPA's determination.

If you have any questions, please contact Paul Atkociunas, U. S. Environmental Protection Agency, RCRA Branch (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-7502.

Sincerely,

A handwritten signature in cursive script that reads "Willie H. Harris".

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

Enclosure

cc: John Craig, MDEQ (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Anderson Development Company
1415 East Michigan Street
Adrian, Michigan 49921**

U.S. EPA ID: MID 002 931 228

Respondent.

)
) **Docket No. RCRA-05-2009-0005**
)
) **Proceeding to Assess a Civil**
) **Administrative Penalty and Issue a**
) **Compliance Order under Section 3008(a)**
) **of the Solid Waste Disposal Act, as**
) **amended, 42 U.S.C. § 6928(a)**
)
)

RECEIVED
FEB 10 2009

I. COMPLAINT AND COMPLIANCE ORDER

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

A. Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules) at 40 Code of Federal Regulations (C.F.R.) Part 22. A copy of the Consolidated Rules is enclosed with the Complaint served on Respondent.

2. The Complainant is, by lawful delegation, Director, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Anderson Development Company, a company incorporated in the State of Michigan.

4. Anderson Development Company is a wholly owned subsidiary of Mitsui Chemical.

B. Statutory and Regulatory Background

5. Jurisdiction for this action is conferred on U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

6. Pursuant to Sections 3001 through 3005 of RCRA, 42 U.S.C. §§ 6921 through 6925, U.S. EPA promulgated regulations governing generators and transporters of hazardous waste, which are codified at 40 C.F.R. Parts 260 through 279.

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

8. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). U.S. EPA granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on April 23, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996,

effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61175); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); and on March 9, 2006, effective March 9, 2006 (71 FR 12141). The U.S. EPA authorized Michigan regulations are codified at Michigan Administrative Code (MAC) 299.9101 et seq. See 40 C.F.R. § 272.1151 et seq.

9. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements imposed pursuant to HSWA take effect immediately in all states.

10. U.S. EPA has provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

11. The Administrator may assess a civil penalty of up to \$25,000 per day of violation for RCRA violations that occurred prior to January 31, 1997, under Section 3008 of RCRA, 42 U.S.C. § 6928. The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation for RCRA violations that occurred on or after January 31, 1997, and to \$32,500 for RCRA violations that occurred on or after March 16, 2004. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

C. General Allegations

12. The Respondent is Anderson Development Company (“ADC” or “Respondent”), which is, and was at all times relevant to this Complaint, a corporation, incorporated under the laws of Michigan, and the owner and operator of a facility located at 1415 East Michigan Street, Adrian, Michigan 49221.

13. Respondent is a “person” as defined by MAC R 299.9106(i) [40 C.F.R. § 260.10].

14. At all times relevant to this Complaint, Respondent was the “owner” and “operator” of the facility, as defined by MAC R 299.9106(g) and (f), respectively [40 C.F.R. § 260.10].

15. The facility is a “facility,” as defined by MAC R 299.9103(r) [40 C.F.R. § 260.10].

16. On August 11, 1980, ADC submitted to U.S. EPA a Hazardous Waste Notification pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying itself as a generator of hazardous waste and as a facility that treats, stores, or disposes of hazardous wastes. The notification indicated that the facility began operation or the date construction commenced was March 14, 1968.

17. On May 21, 1982, U.S. EPA granted ADC interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

18. On June 14, 1985, ADC submitted a request to U.S. EPA for change in status to a generator which U.S. EPA granted by letter on November 1, 1985.

19. At all times relevant to this Complaint, Respondent did not have a RCRA permit or interim status.

20. At all times relevant to this Complaint, Respondent manufactured specialty chemicals, urethane elastomers, and acrylic resins.

21. At all times relevant to this Complaint, Respondent generated hazardous waste including, but not limited to, hexane waste (EPA hazardous waste numbers D001), hexane sludge waste (EPA hazardous waste numbers D001, D028, D029, D034, and D040), and acetone/toluene waste (EPA hazardous waste numbers D001, F003, and F005).

22. At all times relevant to this Complaint, Respondent generated more than 1,000 kilograms of hazardous waste per month at the facility.

23. The Respondent is a “generator” as defined by MAC R 299.9104(a) [40 C.F.R. § 260.10].

24. In generating hazardous waste as an incident of conducting its business at the facility, Respondent is subject to the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921-6939e; 40 C.F.R. Part 260 *et seq.*; and MAC R 299.9301 *et seq.*

25. The facility consists of several plants, warehouse buildings, and a pilot plant.

26. On March 21 and 22, 2007, a representative of U.S. EPA conducted a RCRA compliance evaluation inspection at the facility. A representative from Michigan Department of Environmental Quality (MDEQ) assisted with the inspection on March 21, 2007.

27. Based upon the inspection results, U.S. EPA issued ADC a Notice of Violation (NOV) on July 25, 2007.

28. ADC submitted a letter and records to the U.S. EPA in response to the NOV on or about August 24, 2007.

29. On November 26, 2007, U.S. EPA issued a Section 3007 “Request for Information” (“Information Request”) to ADC, which required ADC to submit certain information relating to hazardous waste activities at its facility.

30. On February 15, 2008, ADC submitted responses to U.S. EPA in response to the Information Request.

31. Respondent utilizes hexane in the production of a product.

32. Respondent neutralizes waste hexane which generates hazardous waste hexane and hazardous waste hexane sludge.

33. The hazardous waste hexane (pre-neutralized) contacts pumps, valves and piping used to transfer the hazardous waste from vessel MT-4 to Tank MR-8.

34. The hazardous waste hexane (pre-neutralized) contacts valves, and piping used to transfer the hazardous waste from vessel MR-3 to Tank MR-8.

35. The hazardous waste hexane contacts valves and piping that were used to transfer the hazardous waste hexane from vessels Tank MR-8 to Tank MT-11.

36. Respondent accumulates hazardous waste hexane in Tank MT-11 prior to shipment for off-site disposal.

37. The hazardous waste hexane sludge contacts pumps, valves and piping that were used to transfer the hazardous waste hexane from Tank MR-8 to Tank MR-28.

38. Respondent accumulates hazardous waste hexane sludge in Tank MR-28 prior to shipment for off-site disposal.

39. The hazardous waste hexane and hexane sludge has a volatile organic concentration of at least 10% by weight.

40. The pumps, valves, and equipment associated with the hazardous waste systems for Tank MT-4, MR-8, MT-11 and MR-28 are in light liquid service as defined in 40 C.F.R. § 264.1031.

41. MAC R 299.9212(1)(a) [40 C.F.R. § 261.21] provides that a solid waste exhibits the ignitability characteristic (EPA hazardous waste number D001), if a representative sample has a flashpoint less than 60 degrees Celsius (140 °F).

42. The waste hexane and waste hexane sludge generated by Respondent are hazardous wastes as defined at MAC R 299.9212(1)(a) [40 C.F.R. § 261.21].

43. The waste hexane and waste hexane sludge generated by Respondent are hazardous wastes as defined at MAC R 299.9104(d) and 299.9203 [40 C.F.R. § 261.3].

44. Tanks MT-4, MR-8, MT-11, and MR-28 meet the definition of a tank under MAC R 299.9108(a) [40 C.F.R. § 260.10].

45. The valves and pipes that transferred the hazardous waste hexane from vessels MR-3 to Tank MR-8 are “ancillary equipment” as defined in MAC R 299.9101(r) [40 C.F.R. § 260.10].

46. The pumps, valves and pipes that transferred the hazardous waste hexane from vessels MT-4 to Tank MR-8 are “ancillary equipment” as defined in MAC R 299.9101(r) [40 C.F.R. § 260.10].

47. The valves and pipes that transferred the hazardous waste hexane from Tank MR-8 to Tank MT-11 are “ancillary equipment” as defined in MAC R 299.9101(r) [40 C.F.R. § 260.10].

48. The pumps, valves and pipes that transferred the hazardous waste hexane sludge from Tank MR-8 to Tank MR-28 are “ancillary equipment” as defined in MAC R 299.9101(r) [40 C.F.R. § 260.10].

49. Tank MT-4 and its associated ancillary equipment and containment system is a “tank system” as defined in MAC R 299.9108(b) [40 C.F.R. § 260.10].

50. Tank MR-8 and its associated ancillary equipment and containment system is a “tank system” as defined in MAC R 299.9108(b) [40 C.F.R. § 260.10].

51. Tank MT-11 and its associated ancillary equipment and containment system is a “tank system” as defined in MAC R 299.9108(b) [40 C.F.R. § 260.10].

52. Tank MR-28 and its associated ancillary equipment and containment system is a “tank system” as defined in MAC R 299.9108(b) [40 C.F.R. § 260.10].

53. The tank systems referenced in paragraphs 51 and 52 were installed in 2002 and therefore, were “new tank systems” as defined in MAC R 299.9105(x) [40 C.F.R. § 260.10].

54. The MT-4 tank system was installed in 1972, with a major repair completed in 1985. Therefore, the MT-4 tank system is an “existing tank system” as defined in MAC R 299.9103(n).

55. MAC R 299.9301 to 299.9312 [40 C.F.R. Part 262] sets forth the standards applicable to generators of hazardous waste.

56. Pursuant to MAC R 299.9306(1) [40 C.F.R. § 262.34(a)], generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status, provided that the generator complies with the provisions of 40 C.F.R. § 262.34(a).

57. Under MAC R 299.9306(1), generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a construction permit or operating license, provided that the generator complies with the provisions of MAC R 299.9306.

58. At the time of the inspection, Respondent had not applied for or received a variance from the secondary containment requirements for its tank system as provided for by MAC R 299.9306(1)(a)(ii) and 40 C.F.R. § 265.193(g).

59. Any generator storing hazardous waste without a construction permit or operating license that fails to fully comply with the provisions of MAC R 299.9306, as applicable, is

storing hazardous waste in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a), and corresponding state and federal regulations.

COUNT 1: STORAGE OF HAZARDOUS WASTE WITHOUT A CONSTRUCTION PERMIT OR OPERATING LICENSE AND FAILURE TO OBTAIN A TANK ASSESSMENT / CERTIFICATION AND FAILURE TO PROVIDE SECONDARY CONTAINMENT WITH AN IMPERVIOUS COATING

60. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

61. Pursuant MAC R 299.9306(1)(a)(ii), a generator may accumulate hazardous waste on-site without obtaining a construction permit or operating license if the hazardous waste is placed in tanks and the generator complies with 40 C.F.R. Part 265, subpart J (40 C.F.R. §§ 265.190 through 265.202).

Failure to Obtain a Tank Assessment and Certification

62. 40 C.F.R. § 265.192(a) requires that for each new tank system, the owner or operator must determine that the tank is not leaking or unfit for use. The owner and operator must obtain a written assessment reviewed and certified by a qualified, registered professional engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity.

63. At the time of the U.S. EPA and MDEQ inspection, Respondent did not have an assessment of the Tank Systems MT-11, and MR-28, reviewed and certified by an independent, qualified, registered professional engineer.

64. Because Respondent did not have an assessment of the tank system's integrity reviewed and certified by an independent, qualified, registered professional engineer, Respondent did not comply with 40 C.F.R. § 265.192(a).

65. By failing to comply with 40 C.F.R. § 265.192(a), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

Respondent did not meet all of the requirements of 40 C.F.R. Part 265, Subpart J; therefore, Respondent did not satisfy the conditions at MAC R 299.9306(1)(a)(ii) necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

Failure to Provide a Secondary Containment with an Impervious Coating

66. 40 C.F.R. § 265.193(e)(2)(iv) requires that the owner or operator provide the secondary containment system for a hazardous waste tank system with an impermeable coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete.

67. At the time of the inspection, Respondent failed to provide the secondary containment system for hazardous waste tank systems MT-4, MT-11, and MR-28 with an impermeable coating or lining that was compatible with the stored waste and that will prevent migration of waste into the concrete.

68. By failing to comply with 40 C.F.R. § 265.193(e)(2)(iv), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

Failure to Obtain a Tank Certification and Assessment

69. 40 C.F.R. § 265.191(a) requires that for each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use; the owner or

operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer attests that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.

70. At the time of the inspection, ADC failed to provide secondary containment for Tank MT-4 with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of the waste into the concrete.

71. ADC failed to obtain the assessment / certification that attested to the MT-4 tank system's integrity.

72. By failing to comply with 40 C.F.R. § 265.191(a) [or 40 C.F.R. § 265.192(a) if the tank system meets the definition of a new tank system] Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

73. Respondent did not meet all of the requirements of 40 C.F.R. Part 265, Subpart J; therefore, Respondent did not satisfy the conditions at MAC R 299.9306(1)(a)(ii) necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

**COUNT 2: STORAGE OF HAZARDOUS WASTE WITHOUT A
CONSTRUCTION PERMIT OR OPERATING LICENSE AND
FAILURE TO COMPLY WITH AIR EMISSION CONTROL
REQUIREMENTS.**

74. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

75. Pursuant to MAC R 299.9306(1)(a)(ii) [40 C.F.R. § 262.34(a)(1)(ii)], a generator may accumulate hazardous waste on-site without obtaining a construction permit or operating license if the hazardous waste is placed in tanks and the generator complies with 40 C.F.R. part 265, subpart BB (40 C.F.R. §§ 265.1050 through 265.1079).

Failure to comply with recordkeeping requirements for 40 C.F.R. Part 265, Subpart BB

76. 40 C.F.R. § 265.1064(b) requires that each owner or operator subject to the Subpart BB provisions comply with the following recordkeeping requirements for each piece of equipment subject to Subpart BB:

- i. The owner and operator must record the equipment identification number and hazardous waste management unit identification.
- ii. The owner and operator must record the approximate locations within the facility.
- iii. The owner and operator must record the type of equipment.
- iv. The owner and operator must record the percent-by-weight total organics in the hazardous waste stream at the equipment.
- v. The owner and operator must record the state of the hazardous waste at or in the equipment (gas/vapor or liquid).
- vi. The owner and operator must record the method of compliance with the standard (e.g., “monthly leak detection standard” or “equipped with dual mechanical seal”).

77. At the time of the inspection, ADC failed to comply with the recordkeeping requirements listed above for the hazardous waste tank systems MT-4, MR-8, MT-11, and MR-28, which stored hazardous waste hexane and hazardous waste hexane sludge, respectively.

78. By failing to comply with 40 C.F.R. § 265.1064(b), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

Failure to Mark Equipment

79. 40 C.F.R. § 265.1050(c) requires each piece of equipment which is subject to the monitoring requirements of 40 C.F.R. §§ 265.1052 and 265.1057 be marked so that it can be distinguished from other pieces of equipment.

80. At the time of the inspection, ADC failed to comply with the marking requirement for each piece of equipment subject to 40 C.F.R. §§ 265.1052 through 265.1057 for the MT-4, MR-8, MT-11 and MR-28 hazardous waste tank systems.

81. By failing to comply with 40 C.F.R. § 265.1050(c), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

Failure to Monitor Equipment

82. 40 C.F.R. § 265.1057(a) requires that each valve in gas/vapor or light liquid service be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b), unless exempted by 40 C.F.R. §§ 265.1057(f), (g), or (h).

83. At the time of the inspection, ADC failed to conduct monthly monitoring on each valve in light liquid service.

84. By failing to comply with 40 C.F.R. § 265.1057(a), Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(a)(ii).

85. ADC did not meet all of the requirements of 40 C.F.R. Part 265, Subpart BB; therefore, ADC did not satisfy the conditions at MAC R 299.9306(1)(a)(ii) necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. ADC stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

**COUNT 3: STORAGE OF HAZARDOUS WASTE WITHOUT A
CONSTRUCTION PERMIT OR OPERATING LICENSE AND
FAILURE TO PROPERLY LABEL TANKS AND CONTAINERS
OF HAZARDOUS WASTE**

86. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

Failure to Label Tanks and Containers with the Words “Hazardous Waste”

87. Pursuant to MAC R 299.9306(1)(c) [40 C.F.R. § 262.34(a)(3)], a generator may accumulate hazardous waste in tanks and containers if the each container and tank is labeled or marked clearly with the words “Hazardous Waste.”

88. At the time of the inspection, ADC failed to label tanks MT-4, MR-8, MT-11 and MR-28, which stored and/or treated hazardous waste , with the words “Hazardous Waste.”

89. ADC also stored twenty-two 55-gallon drums located in Building 17 that were not labeled with the words “Hazardous Waste.” An ADC representative stated that the drums contained hazardous waste flammable liquids.

90. By failing to label tanks and containers with the words “Hazardous Waste,” Respondent failed to meet a condition for an exemption from licensing provided under MAC R 299.306(1)(c) [40 C.F.R. § 262.34(a)(3)].

Failure to Label Containers with the Accumulation Start Date

91. Pursuant to MAC 299.9306(1)(b) [40 C.F.R. § 262.34(a)(2)] a large quantity generator may accumulate hazardous waste on-site if the generator marks the date upon which each period of accumulation begins without obtaining a construction permit or operating license.

92. At the time of the inspection, ADC failed to mark twenty-two 55-gallon containers located in Building 17 with the accumulation start date. An ADC representative stated that the drums contained hazardous waste flammable liquids.

93. Respondent did not satisfy the conditions at MAC R 299.9306(1)(b) and (c) necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

**COUNT 4: STORAGE OF HAZARDOUS WASTE WITHOUT A
CONSTRUCTION PERMIT OR OPERATING LICENSE AND
FAILURE TO MAINTAIN AISLE SPACE.**

94. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

95. Pursuant to MAC R 299.9306(1)(d) [40 C.F.R. § 262.34(a)(4)], a generator may accumulate hazardous waste on-site without obtaining a construction permit or operating license if the generator complies with 40 C.F.R. Part 265, Subpart C.

96. 40 C.F.R. § 265.35 requires that the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency.

97. At the time of the inspection, ADC failed to maintain adequate aisle space in the 90-day accumulation area. Fifteen containers of hazardous waste were not accessible during the inspection.

98. ADC did not meet all of the requirements of 40 C.F.R. Part 265, Subpart C; therefore, ADC did not satisfy the conditions at MAC R 299.9306(1)(d) [40 C.F.R. §

262.34(a)(4)] necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. ADC stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

**COUNT 5: STORAGE OF HAZARDOUS WASTE WITHOUT A
CONSTRUCTION PERMIT OR OPERATING LICENSE AND
FAILURE TO MAINTAIN CONTAINERS OF HAZARDOUS
WASTE STORED CLOSED.**

99. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

100. Pursuant to MAC R 299.9306(1)(a)(i) [40 C.F.R. 262.34(a)(1)(i)], a generator may accumulate hazardous waste on-site without obtaining a construction permit or operating license if the hazardous waste is placed in tanks and the generator complies with 40 C.F.R. Part 265, Subpart I.

101. 40 C.F.R. § 265.173(a) requires that the owner or operator must store containers of hazardous waste in a closed condition, except when necessary to add or remove waste.

102. At the time of the inspection, ADC failed to maintain a container of hazardous waste – mixed solvent located outside the Building 1 in a closed condition. Waste was not being added to, or removed from, the container.

103. ADC did not meet all of the requirements of 40 C.F.R. Part 265, Subpart I therefore, ADC did not satisfy the conditions at MAC R 299.9306(1)(a)(i) [40 C.F.R. § 262.34(a)(1)(i)] necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. ADC stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

COUNT 6: STORAGE OF HAZARDOUS WASTE WITHOUT A CONSTRUCTION PERMIT OR OPERATING LICENSE AND FAILURE TO ACCUMULATE SATELLITE CONTAINERS OF HAZARDOUS WASTE AT OR NEAR THE POINT OF GENERATION.

104. Complainant incorporates paragraphs 1 through 59 of this Complaint as though set forth fully in this paragraph.

105. Pursuant to MAC R 299.9306(2) [40 C.F.R. § 262.34(c)(1)] a large quantity generator may accumulate as much as 55-gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the hazardous waste on-site without obtaining a construction permit or operating license.

106. At the time of the inspection, ADC representatives indicated that they managed a 55-gallon container of hazardous waste (mixed solvent) located outside Building 1 – as a satellite container of hazardous waste. The container was not at or near the point of generation where the wastes initially accumulate (the waste was generated in laboratories inside the buildings), nor was the waste under the control of the operator of the process generating the hazardous waste.

107. ADC did not satisfy the conditions at MAC R 299.9306(2) [40 C.F.R. § 262.34(c)(1)] necessary to exempt it from the requirement to obtain construction permit or operating license for the storage of hazardous waste. Anderson Development Company stored hazardous waste without a permit or interim status in violation of Section 3004(a) of RCRA, 42 U.S.C. § 6924(a).

II. PROPOSED CIVIL PENALTY

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for each violation of Subtitle C of RCRA that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$27,500 per day of violation for RCRA violations that occur on or after January 31, 1997, and to \$32,500 per day for violations that occur after March 15, 2004.

Section 3008(a)(3) of RCRA requires the Administrator to consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements” in assessing an administrative penalty. 42 U.S.C. § 6928(a)(3). Based on an evaluation of the facts alleged in this Complaint and the requirements of Section 3008 of RCRA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$221,200 as further explained in Attachment 1, “Penalty Summary Sheet.”

Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy. A copy of the June 2003 RCRA Civil Penalty Policy is enclosed.

Complainant determined the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty’s appropriateness.

III. COMPLIANCE ORDER

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

1. Respondent may not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 2 of this Order.
2. Respondent must achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by MAC R 299.9306 and 40 C.F.R. Part 262.
3. Respondent must notify U.S. EPA in writing upon achieving compliance with this Order with 15 calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent must notify U.S. EPA of the failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.
4. Respondent must submit all reports, submissions, and notifications required by this Order to:

Paul Atkociunas
RCRA Branch (LR-8J)
Land and Chemicals Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

IV. FILING AND SERVICE OF DOCUMENTS

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

Regional Hearing Clerk (E-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Thomas Martin, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. Respondent may telephone Mr. Martin at (312) 886-4273. Mr. Martin's address is:

Thomas Martin
Associate Regional Counsel
U.S. EPA Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

V. PENALTY PAYMENT

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

CHECK PAYMENTS

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check.

WIRE TRANSFERS

Wire transfers should be directed to the Federal Reserve Bank of New York

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

OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, D.C. 20074
Contact: Jesse White
301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter 'sfo 1.1' in the Search Public Forms field.

Open form and complete required fields.

Respondent simultaneously must send copies of the check or proof of transfers and transmittal letter to Mr. Atkociunas and Mr. Martin at the addresses stated above in Parts III and IV, respectively.

VI. OPPORTUNITY TO REQUEST A HEARING

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and in accordance with the Consolidated Rules, codified at 40 C.F.R. Part 22.

Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in Part VII below.

VII. ANSWER

Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in Part IV above and must serve copies of the written answer on the other parties.

If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving this Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-

day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

Respondent's answer must also state:

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

If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations.

Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

VIII. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement

conference, Respondent may contact Mr. Martin at the address or phone number specified in Part IV above.

Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this Complaint. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference.

The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Administrator, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

IX. CONTINUING OBLIGATION TO COMPLY

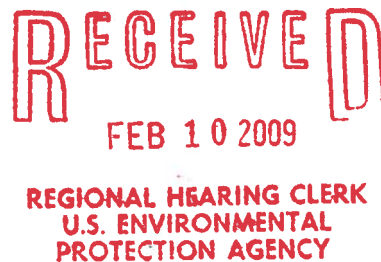
Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with RCRA and any other applicable federal, state, or local law.

Dated this 5th day of February, 2009



Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

Complaint Docket No.



CASE NAME: Anderson Development Company
DOCKET NO: RCRA-05-2009-0005

CERTIFICATE OF SERVICE


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

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Mr. Chris Goeloe
Environmental Manager
Anderson Development Company
1415 E. Michigan Street
Adrian Michigan 49221

Return Receipt # 7001 0320 0006 1448 7333

Dated: 2/10/09


Katrina D. Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard – LR-8J
Chicago, IL 60604-3590
(312) 886-2871

RECEIVED
FEB 10 2009
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY