

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
2013 AUG 27 AM 11:04

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
Dawson Brothers, Incorporated)
1845 South Sheridan)
Wichita, Kansas 67213)
)
EPA ID No. KSD981149116)
)
Respondents)
)
Proceeding under Section 3008(a) and (g) of the)
Resource Conservation and Recovery)
Act as amended, 42 U.S § 6928 (a) and (g))
_____)

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. RCRA-07-2013-0024

I. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (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), 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 (EPA) 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 Branch Chief of the Waste and Materials Management Branch of the EPA, Region 7, who has been duly delegated the authority to bring this action. The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No 8-009-B, dated June 15, 2005.
3. The Respondent is Dawson Brothers, Incorporated (Dawson), and was a company incorporated under the laws of Kansas at the time of the violations. Respondent's status has been forfeited due to their failure to timely file an annual report,
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 pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter K.A.R. 28-31). 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 thereunder. 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 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 \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004 and January 12, 2009, and penalties of up to \$37,500 per day are authorized for violations that occur after January 12, 2009. Based upon the facts alleged in this 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 in June 2003, and attached hereto. The Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the 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.

II. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

6. Dawson Brothers, Inc. (Dawson or Respondent) conducts business at 1845 South Sheridan in Wichita, Kansas, and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7. At all times relevant to this action, Respondent was the owner and operator of a hazardous waste storage facility located at 1845 South Sheridan in Wichita, Kansas. Respondent conducts cadmium, zinc, copper, nickel and chromium electroplating as well as aluminum chromic and sulfuric acid anodizing, chemical film conversion, color dyeing of sulfuric acid anodizing parts, stainless steel passivating, glass bead and aluminum oxide blasting, and primer

top coat painting resulting in D006 and D007 wastes. This location has five (5) full-time employees and one (1) part-time employee

8. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference the regulations at Title 40 Code of Federal Regulations (40 C.F.R.) Parts 260 and 261. Each of the wastes listed in paragraph 7 is a "solid waste" and all of the wastes except the used oil and universal waste are also "hazardous wastes" within the meaning of these regulations.

9. On or about May 1-2, 2012 (May 2012 Inspection), an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility located in Wichita, Kansas.

10. At the time of the May 2012 Inspection, Respondent had notified as a "Large Quantity Generator" in Kansas. During the inspection, the owner was uncertain of the facility's generator status and provided 2011 manifests for the inspector's review. Based on review of the 2011 manifest the inspector determined that, at the time of the May 2012 inspection, Respondent was a "Kansas Generator" per K.A.R. 28-31-2(d).

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

11. The allegations stated in paragraphs 6 through 10 above are herein realleged and incorporated as if fully set forth herein.

12. K.A.R. 28-31-4(b) incorporating 40 C.F.R. § 262.11 requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

13. K.A.R. 28-31-1(1)(a)(3), incorporating 40 C.F.R. § 261.2(f), requires generators to demonstrate that secondary materials are not solid wastes by showing that the materials are being maintained for future use.

14. At the time of the May 2012 inspection, Respondent had been generating multiple solid waste streams, including spent lamps, Ion Exchange Resin (IER), paint booth filters; aerosol cans; used air compressor filters; and sand from a sand filter.

15. At the time of the May 2012 inspection, Respondent had not conducted a hazardous waste determination on the solid waste streams noted in paragraph 14.

16. At the time of the May 2012 inspection, Respondent had been generating and storing multiple waste streams, including four IER units and a three foot long sand filter.

17. At the time of the May 2012 inspection, Respondent had failed to show that the secondary materials in paragraph 16 were being retained for future use and thus not a solid wastes.

18. Respondent's failure to perform a hazardous waste determination on the above referenced waste streams in paragraph 14 is a violation of K.A.R. 28-31-4(b) incorporating 40 C.F.R. § 262.11.

19. Respondent's failure to demonstrate that the secondary materials in paragraph 16 were not solid waste by showing that the following materials were being maintained for future use is a violation of K.A.R. 28-31-1(1)(a)(3) incorporating 40 C.F.R. 261.2(f).

COUNT 2

OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT RCRA PERMIT OR INTERIM STATUS

20. The allegations stated in paragraphs 6 through 10 above are herein realleged and incorporated as if fully set forth herein.

21. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 65-3437 of the Kansas Statutes Annotated (KSA), require each person constructing, modifying or operating a hazardous waste facility or otherwise dispose of hazardous waste within the State to have a permit for such activities.

22. The regulations at K.A.R. 28-31-4 (h) state that a Kansas generator may accumulate hazardous waste in containers on-site without a permit, interim status, or time restrictions, provided certain conditions are met. These conditions include compliance with other hazardous waste regulatory requirements.

23. At the time of the May 2012 inspection, Respondent was not complying with the following required regulatory requirements to allow for accumulation without a permit, interim status, or time restrictions.

Failure to Label Satellite Accumulation Containers with the Words "Hazardous Waste"

24. The regulations at K.A.R. 28-31-4(j)(1)(B) incorporating 40 C.F.R. § 262.34(c)(1)(ii) require that a Kansas generator mark containers with the words "Hazardous Waste."

25. At the time of the May 2012 inspection, there were numerous hazardous waste satellite accumulation containers that were not labeled with the words "Hazardous Waste." The satellite accumulation containers held various wastes and were located in various areas of the facility and

included one half-full drum of spent paint booth filters (D007 and potentially F005) in the paint drying room; a trash can with floor sweepings to be placed in a hazardous waste container (D006/D007); two sand bags with paint overspray located in the paint room (D007); one small pile of contaminated wires (D006/D007); and ten spent filters used to strain/filter paint (D007).

26. Respondent's failure to mark containers with the words "Hazardous Waste" is a violation of K.A.R. 28-31-4(j)(1)(B) incorporating 40 C.F.R. § 262.34(c)(1)(ii).

Failure to Document Weekly Inspections

27. The regulations at K.A.R. 28-31-4(k) incorporating 40 C.F.R. 265.15(d) require a Kansas generator to document weekly inspections of hazardous waste storage areas.

28. At the time of the May 2012 inspection, the inspector reviewed weekly inspection records and determined that the following four inspections were not documented: January 23-27, 2012; March 7-11, 2011; March 14-18, 2011; March 21-26, 2011.

29. Respondent's failure to document weekly inspections is a violation of K.A.R. 28-31-4(k) incorporating 40 C.F.R. 265.15(d).

Failure to Provide Adequate Aisle Space

30. The regulations at K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.35 require Kansas Generators to provide adequate aisle space.

31. At the time of the May 2012 inspection, there was limited space around the drums in the hazardous waste accumulation area which created insufficient space for the unobstructed movement of emergency equipment in those areas.

32. Respondent's failure to provide adequate aisle space is a violation of K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.35.

Failure to Operate to Minimize a Fire

33. The regulations at K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.31 require, in part, that facilities be maintained and operated to minimize the possibility of a fire or explosion.

34. At the time of the May 2012 inspection, there were six drums of hazardous waste in the hazardous waste accumulation area (including one drum of methyl ethyl ketone (MEK)/Toluene).

35. There were also cigarette butts around the hazardous waste accumulation area.
36. There were no designated smoking areas on-site and no "No Smoking" signs posted.
37. The facility representative stated that he believes that the cigarette butts are blown by the wind into the hazardous waste accumulation area. The fact that the cigarette butts are allowed to blow into the area presents a significant risk of fire.
38. Respondent's failure to operate in a manner to minimize a fire is a violation of K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.31.

Failure to Make Arrangements with Police Department

39. The regulations at K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.37(a)(2) require, in part, that arrangements with the police and fire department are made for the appropriate type of waste handled at the facility.
40. At the time of the 2012 inspection, Respondent stated that arrangements had not been made with the police.
41. Respondent's failure to make arrangements with the police and fire department is a violation of K.A.R. 28-31-4(h)(5) incorporating 40 C.F.R. 265.37(a)(2).

Count 3

FAILURE TO INCLUDE MANIFEST NUMBER ON LDR NOTICE

42. The allegations stated in paragraphs 6 through 10 above are herein realleged and incorporated as if fully set forth herein.
43. The regulations at K.A.R. 28-31-1(a)(6), incorporating 40 C.F.R. 268.7(a)(2), require, in part, generators to include the manifest number on the Land Disposal Restriction (LDR) notices.
44. At the time of the May 2012 Inspection, there were two LDR notices in the facility's records that did not include a manifest number.
45. Respondent's failure to include manifest numbers on all LDR notices is a violation of K.A.R. 28-31-1(a)(6), incorporating 40 C.F.R. 268.7(a)(2).

Count 4

FAILURE TO RESPOND TO INFORMATION REQUEST

46. The allegations stated in paragraphs 6 through 10 above are herein realleged and incorporated as if fully set forth herein.
47. Pursuant to Section 3007(a) of the Solid Waste Disposal Act (SWDA), EPA may require a person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes to furnish information, relating to such wastes, to EPA.
48. Section 3008 of RCRA, 42 U.S.C. 6928, authorizes EPA to pursue penalties for failure to comply with or respond adequately to an information request under Section 3007(a) of RCRA.
49. Following the May 2012 Inspection, the EPA sent an information request to Respondent on December 5, 2012, and sent the same request again on January 18, 2013. The letters were received on December 10, 2012, and January 22, 2013, according to the certified mailing receipts. Respondent has not responded to these information requests.
50. Respondent's failure to respond to the information requests sent by EPA is in violation of the Solid Waste Disposal Act (SWDA) § 3007(a).

Count 5

**FAILURE TO COMPLY WITH RCRA CONSENT AGREEMENT
AND FINAL ORDER**

51. The allegations stated in paragraphs 6 through 10 above are herein realleged and incorporated as if fully set forth herein.
52. Respondent had previously been inspected on May 17, 2007. This inspection documented violations and resulted in Respondent entering into a Consent Agreement and Final Order (Order), Docket Number: RCRA-07-2009-0008, with EPA on September 28, 2009. The Order required sampling of the released hazardous waste. Respondent submitted a sampling plan that was reviewed, but not approved, by the EPA. The EPA has sent multiple comment letters and communications to the Respondent in an effort to have Respondent comply with the Order. At present, Respondent has still not revised its sampling plan as required by the Order and is therefore in violation of the Order.

53 Respondent's failure to comply with the RCRA Consent Agreement and Final Order (CAFO) Docket Number: RCRA-07-2009-0008 is a violation of the SWDA § 3008(c).

III. COMPLIANCE ORDER

54. Within sixty (60) days of receipt of this Order, Respondent shall provide the requested information, in Paragraph 55, to:

Deborah Bredehoft
AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

55. Respondent shall:

- a. Complete a waste inventory and complete a solid and hazardous waste determination on each of the wasted on the inventory and submit the information to EPA.
- b. Provide the following documentation to EPA:
 - 1) Photographic documentation showing containers are appropriately labeled, closed, and dated per regulations;
 - 2) Photographic documentation showing adequate aisle space is present in the container accumulation area; and
 - 3) Documentation of weekly inspections via copies of weekly inspection logs.
- c. Provide documentation showing Dawson has coordinated with the police and fire department as part of its preparedness and prevention planning.
- d. Provide documentation of the steps that have been taken to minimize the possibility of fire at the facility.
- e. Provide documentation that Dawson has corrected LDR notice forms and indicate how the facility will avoid similar violations in the future.
- f. Provide responses to the January 18, 2013 Request for Information.
- g. Provide documentation that addresses comments outlined in EPA's September 18, 2012 comment letter and submit a revised Quality Assurance Project Plan (QAPP), Sampling Plan, and Health and Safety Plan (HASP).

IV. PROPOSED CIVIL PENALTY

56. Based upon the facts alleged in this Complaint and upon those factors which 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 in June 2003, the Complainant proposes that Respondents be assessed a civil penalty of \$207,387.00 pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

57. Unless Respondent files an Answer to this Complaint in accordance with 40 C.F.R. § 22.15, payment shall be made within 30 days of receipt of this Complaint by certified or cashier's check payable to "Treasurer of the United States" and remitted to:

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

A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Deborah Bredehoff
AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Wire transfers shall be 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, New York 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 Complaint and Respondent by name.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

58. In accordance with Section 3008(b) or RCRA, 42 U.S.C. §6928(b) the Compliance Order shall become final unless Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of this Complaint.

59. A written answer to the Complaint must satisfy the requirements of 40 C.F.R. §22.15 of the Consolidated Rules of Practice, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Jennifer Trotter, Office of Regional Counsel, at the same address.

60. Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the 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.

61. The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, and 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. In accordance with the RCRA Civil Penalty Policy, EPA prepared a penalty calculation summary explaining the reasoning behind the penalty proposed for the violations alleged herein. The summary provided is an attachment to this Complaint and is adopted and incorporated by reference as if herein set forth.

VI. SETTLEMENT CONFERENCE

62. 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 Jennifer Trotter, Office of Regional Counsel, U.S. EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551-7180.

63. 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.

64. 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 7.

65. If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this 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 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.

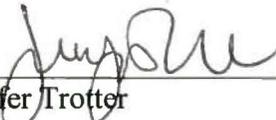
VII. EFFECTIVE DATE

66. This Complaint, Compliance Order, and Notice of Opportunity for Hearing shall become effective on the date signed by the Chief of the Waste Enforcement and Materials Management Branch of the Air and Waste Management Division, EPA Region 7.

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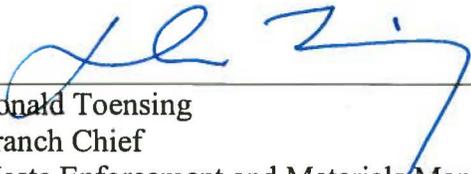
IT IS SO ISSUED AND ORDERED:

8-21-13
Date



Jennifer Trotter
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7

8-21-13
Date



Donald Toensing
Branch Chief
Waste Enforcement and Materials Management Branch
U.S. Environmental Protection Agency
Region 7

Attachments: Penalty Calculation Summary
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
RCRA Civil Penalty Policy (June 2003)
Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

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CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint, Compliance Order and Notice of Opportunity for Hearing; a copy of 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 the RCRA Civil Penalty Policy (October 26, 1990); and a copy of the Civil Penalty Calculation Summary; and a copy of the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings to the following registered agent for **Dawson Brothers, Incorporated**:

**David L. McCullough and/or Richard Jacks
Dawson Brothers, Incorporated
1845 South Sheridan
Wichita, Kansas 67213**

Dated this 27th day of August, 2013.

John H. Byrd
Name