



U. S. ENVIRONMENTAL PROTECTION AGENCY – NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100 (OES04-3)
BOSTON, MA 02109-3912

HAND DELIVERY

April 18, 2018

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

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APR 18 2018

EPA ORC WS
Office of Regional Hearing Clerk

Re: St. Onge's Hidden Country/EPA Docket No. SDWA-01-2018-0001

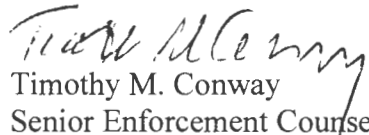
Dear Ms. Santiago:

Attached for filing in the above-referenced matter are an original and one copy of an Administrative Complaint for the above-referenced matter. Also attached are an original and one copy of a Certificate of Service.

EPA has also sent copies of the Administrative Complaint, the Certificate of Service, and this letter to the Respondent by First Class Mail.

Thank you for your assistance. Please call me if you have any questions.

Sincerely,


Timothy M. Conway
Senior Enforcement Counsel

Cc: Ken Rota, EPA
Joseph St. Onge, St. Onge's Hidden Country

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND REGION**

IN THE MATTER OF:)
)
St. Onge’s Hidden Country)
201 Pope Road)
Lowell, Vermont)
PWS ID No. VT0020680)
)
Proceedings under Section 1414(g)(3))
of the Safe Drinking Water Act,)
42 U.S.C. 300g-3(g)(3))
_____)

Docket No. SDWA-01-2018-0001

**ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY
TO REQUEST HEARING**

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EPA ORC WS
Office of Regional Hearing Clerk

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. § 300g-3(g)(3)(B). The Administrator of EPA has delegated the authority to take these actions to the Regional Administrator, who has delegated such authority to the Director, Office of Environmental Stewardship (“OES”).
2. Pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule (codified at 40 C.F.R. Part 19), and 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, Complainant hereby proposes that an administrative penalty be assessed against St. Onge’s Hidden Country (“Respondent”) for violation of Administrative Order issued to Respondent on September 14, 2017 pursuant to Section 1414(g) of the SDWA, and for additional violations incurred by the Respondent subsequent to the Administrative Order. All violations are with respect to compliance with the applicable requirements of the SDWA at the Respondent’s public water system located in Lowell, Vermont.

II. FACTUAL AND JURISDICTIONAL ALLEGATIONS AND FINDINGS OF VIOLATIONS

3. St. Onge's Hidden Country water system (hereinafter "the System") is a "public water system," within the meaning of Section 1401(4) of the SDWA, 42 § 300f(4) and 40 C.F.R. § 141.2. The System is owned and operated by Joseph St. Onge.
4. The System is a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2 and has the capacity to serve a population of approximately sixty-six (66) people at any one time.
5. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and is subject to Administrative Orders issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(1).
6. The System consists of one service connection that provides piped water to the public for human consumption to a 60-seat restaurant and a 3-bedroom apartment for a maximum design capacity of 60 transient users and 6 residential users.
7. The System is supplied by a groundwater source consisting of one well. The water is not treated, and the System does not provide at least 4-log treatment of viruses.
8. On or after March 1, 2010, the System submitted a Notice of Intent ("NOI") to the State of Vermont's Department of Environmental Conservation's Drinking Water & Groundwater Protection Division ("VT DEC") to operate as a public transient non-community ("TNC") water system.
9. The System is a "transient non-community water system" as defined at 40 C.F.R. § 141.2.
10. On February 10, 2011, the VT DEC issued a letter to the System's owner, Joseph St. Onge, authorizing the System to operate as a TNC under VT DEC's March 1, 2010 General Permit until the permit's expiration date of February 28, 2020.
11. The System is subject to the Act and the National Primary Drinking Water Regulations ("Drinking Water Regulations") at 40 C.F.R. Part 141. The Drinking Water Regulations are "applicable requirements" as defined in Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
12. On February 13, 2013, EPA promulgated the Revised Total Coliform Rule ("RTCR"), 40 C.F.R. Part 141, Subpart Y.
13. Prior to the effective date of the RTCR regulations on April 1, 2016, the Respondent was required to conduct total coliform sampling on a quarterly calendar basis pursuant to 40 C.F.R. § 141.21(a)(3)(i).

14. The VT DEC administers the Public Water Supply Supervision Program in Vermont pursuant to Section 1413 of the SDWA. The VT DEC has not yet obtained primary enforcement responsibility for the RTCR. Therefore, as of the date of this Order, EPA has primary responsibility for enforcement of the RTCR.
15. The VT DEC administers an EPA-approved operator certification program pursuant to 42 U.S.C. § 300g-8(c) and requires all public water systems to be operated by a certified operator of the appropriate class. VT DEC's operator certification program is an "applicable requirement" as defined in Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
16. Since September 1, 2015, the VT DEC has issued at least fifteen (15) Notices of Alleged Violation ("NOAVs") to the Respondent for failures to monitor and/or report, provide public notification to its customers, conduct mandatory seasonal start-up procedures prior to serving water to its customers, certify the completion of these procedures, and retain a certified operator for its public water system. To EPA's knowledge, Respondent has not complied with any of these NOAVs to date.
17. On April 18, 2017, the VT DEC formally requested EPA's enforcement assistance to stop Respondent's continued non-compliance and to protect public health. VT DEC's request contained a narrative description of the continuing violations and the remedy sought by the VT DEC.
18. On September 14, 2017, EPA issued an Administrative Order (Docket No. SDWA-01-2017-0001) to Respondent, effective upon issuance, pursuant to Section 1414(g) of the SDWA. A copy of the Administrative Order ("AO") is attached hereto as Attachment A.
19. The AO notified the Respondent of the following violations:
 - a. the failure to monitor and report test measurements or analyses for total coliform for the 3rd Quarter of the 2015 monitoring period (7/1/15-9/30/15) as required by 40 C.F.R. §§ 141.21(a) and 141.31(a);
 - b. the failure to collect repeat samples within 24 hours after receiving notification of a positive total coliform result for the 4th Quarter 2015 monitoring as required by 40 C.F.R. § 141.21(b)(1);
 - c. the failure to collect at least five (5) additional routine samples during the next month the system provides water to the public after receiving notification of a positive total coliform result as required by 40 C.F.R. § 141.21(b)(5);
 - d. the failure to collect additional routine samples as required by 40 C.F.R. § 141.21(b)(5) during the next month the system provides water to the public, when it is notified of the positive total coliform result;
 - e. the failure to conduct triggered source water monitoring from each ground water source in use at the time as required by 40 C.F.R. § 141.402(a) when the system is

notified that a sample collected under §141.21(a) is total coliform-positive and the system does not provide at least 4-log treatment of viruses;

- f. the failure to monitor for total coliform every month the System was in operation during 2016, as required by 40 C.F.R. § 141.854(i)(2).
- g. the failure to monitor for nitrate during the 2015 and 2016 monitoring periods as required by 40 C.F.R. § 141.23.
- h. the failure to develop a written sample siting plan that identifies sampling sites and a sample collection schedule representative of water throughout the distribution system no later than March 31, 2016 as required by C.F.R. § 141.853(a);
- i. the failure to demonstrate completion of a State-approved start-up procedure prior to serving water to the public for the 2016 and 2017 seasons (April 1st - October 31st) as required by 40 C.F.R. §141.854(i)(1);
- j. the failure to have a certified operator as required by Vermont Water Supply Rule, Chapter 21, Subchapter 21-12 (an “applicable requirement” pursuant to Section 1414(i) of the Act, 42 U.S.C. § 300g-3(i));
- k. the failure to notify the public in accordance with 40 C.F.R. § 141.203 of its failure to follow state-approved start-up procedures for the 2016 and 2017 seasons within thirty (30) days of learning of those violations.
- l. the failure to notify the public of the following violations within one year of learning of such violations as required by 40 C.F.R. § 141.204:
 - i) the failure to collect any repeat samples within 24 hours after receiving notification of a positive total coliform result for the 4th Quarter of 2015;
 - ii) the failure to collect additional routine samples during the next month the system provided water to the public after it received a positive total coliform result for the 4th Quarter of 2015;
 - iii) the failure to conduct triggered source water monitoring after receiving notification of the positive total coliform result for the 4th Quarter of 2015;
 - iv) the failure to monitor for nitrate during the 2015 monitoring period;
 - v) the failure to monitor for total coliform during April, May, June, July and August 2016.

- m. the failure to submit a certification to the primacy agency verifying that they have fully complied with the public notice requirements and include a representative copy of each type of notice distributed, posted, published, and made available to the persons served by the systems as required by 40 C.F.R. § 141.31(d); and,
 - n. the failure to notify the public in accordance with 40 C.F.R. § 141.204 for the violations identified in Paragraph 19 (l) above, within one year of learning of those violations.
- 20. The Respondent did not respond to EPA's Administrative Order, failed to submit any of the required information, and remains out of compliance.
- 21. Subsequent to EPA's AO, EPA has identified other potential violations:
 - a. EPA received information from the VT DEC documenting additional violations in violation of Paragraph 1 of EPA's AO which ordered the Respondent to conduct all required monitoring at the requisite frequencies. The additional violations were identified as follows:
 - i. the failure to monitor for nitrate during the 2017 monitoring period as required by 40 C.F.R. § 141.23; and
 - ii. the failure to monitor for total coliform every month the System was in operation during 2017, as required by 40 C.F.R. § 141.854(i)(2).
 - b. EPA, on April 2, 2018, issued to Respondent a Notification of Proposed Enforcement and Invitation for Settlement Negotiations ("Notification") to identify again the violations alleged and to invite Respondent to notify EPA within 10 days if it was interested in settlement discussions with EPA. Respondent received EPA's Notification on April 4, 2016. To date, Respondent has not responded to EPA.
- 22. Pursuant to § 1414(g)(2) of the SDWA, 42 U.S.C. § 300-3(g)(2), EPA has conferred with the VT DEC prior to the issuance of this Administrative Complaint and Notice of Opportunity to Request a Hearing.

III. PROPOSED CIVIL PENALTY

- 23. Under Section 1414(g)(3) of the Act, 42 U.S.C. § 300-3(g)(3), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations which are assessed penalties under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300-3(g)(3)(B) after December 6, 2013, subject the violator to civil penalties in an amount not to exceed \$38,954 per proceeding.

24. Based on the foregoing findings of violation, and pursuant to the authority of Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300-3(g)(3)(B), Complainant hereby proposes to issue an Order Assessing Administrative Penalties to the Respondent assessing a penalty in the amount of \$30,000. The proposed penalty has been determined in accordance with Section 300h-2(c)(4) of the Act, 42 U.S.C. § 300h-2(c)(4). For purposes of determining the amount of any penalty to be assessed, EPA has taken into account the seriousness of the violations, any good faith efforts to comply with the applicable requirements, the violator's ability to pay, and other appropriate factors. The proposed penalty does not constitute a demand as defined in 28 U.S.C. §§ 2412 *et. seq.*
25. If warranted, Complainant may adjust the proposed civil penalty assessed in this Complaint. Complainant will consider Respondent's ability to pay in making any adjustments to the proposed civil penalty. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to the Complainant become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

IV. SETTLEMENT CONFERENCE

26. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegation of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to this Complaint.**
27. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by the Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or her designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.
28. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section V, following your receipt of this Complaint. **Such a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to this Complaint.**

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. As provided in Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300-3(g)(3)(B), the Respondent has the right to a public hearing regarding this Complaint to contest any material fact contained in the Complaint, or to contest the appropriateness of the amount of the proposed penalty. At the hearing, Respondent may contest and material fact

contained in the violations listed in Section II above, and the appropriateness of the proposed penalty amount.

30. Hearing procedures are described in 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, a copy of which is enclosed.
31. If the Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 1, within thirty (30) days of service of this Complaint. 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. Where Respondent has no knowledge of a factual allegation and so states, the allegation is deemed denied.
32. The Answer shall also state:
 - a. the circumstances or arguments that alleged to constitute grounds of any defense;
 - b. the facts which Respondent disputes;
 - c. the basis for opposing any proposed relief; and
 - d. whether a hearing is requested.

Failure of Respondent to admit, deny or explain any of material factual allegation in the Complaint constitutes an admission of the allegation.

33. The Answer must be filed within thirty (30) days of receiving this Complaint with the following:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC04-6
Boston, MA 02109-3912

34. A copy of this Answer and any subsequent documents filed in this action shall be sent to:

Timothy M. Conway
Senior Enforcement Counsel
EPA Region 1
5 Post Office Square, Suite 100
Mail Code: OES4-3
Boston, MA 02109-3912.

Mr. Conway may be reached by telephone at (617) 918-1705 and by facsimile at (617) 918-0705.

35. If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, a Default Order may be issued. Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's rights to contest such factual allegations. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. Respondent's failure to pay the entire civil penalty assessed by the default order by its due date will result in a civil action to collect the assessed penalty. In addition, the default penalty is subject to the provisions relating to the imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717.
36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing on an approved copy of an Order Assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate.
37. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3), shall affect Respondent's continuing obligation to comply with the SDWA, any other Federal or State laws, and with any Compliance Order issued pursuant to Section 1414(g).

VI. QUICK RESOLUTION

38. In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any point by paying the specific penalty proposed in this Complaint.
39. If Respondent pay the specific penalty amount proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. §22.18(a)(1), no Answer need be filed.
40. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing and Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC04-6

Boston, MA 02109-3912

And a copy shall be provided to:

Timothy M. Conway
Senior Enforcement Counsel
EPA Region 1
5 Post Office Square, Suite 100
Mail Code: OES4-3
Boston, MA 02109-3912.

41. If Respondent files such a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within sixty (60) days of receiving the Complaint. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.
42. Upon receipt of payment in full, in accordance with 40 C.F.R. §22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.
43. Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of the Administrative Penalty Complaint.

a. Payment by check to "United States Treasury":

i. If sent via first-class mail to:

US EPA Region 1
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automatic Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Finance Center Contacts:
1) Jesse White: 301-887-6548
2) John Schmid: 202-874-7026
3) REX (Remittance Express) 866-234-5681

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Wanda Santiago, Regional Hearing Clerk
USEPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC04-6
Boston, MA 02109-3912

and to:

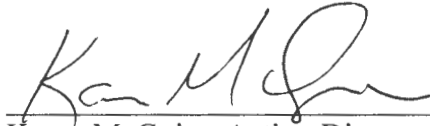
Timothy M. Conway
Senior Enforcement Counsel
USEPA Region 1
5 Post Office Square-Suite 100
Mail Code: OES-04-3
Boston, MA 02109-3912

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

44. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region 1 Office of Environmental Stewardship, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the

Administrator, members of the Environmental Appeal Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of this case with the Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 4-18-18



Karen McGuire, Acting Director
Office of Environmental Stewardship
United State Environmental Protection Agency, Region 1

In re: St. Onge's Hidden Country/EPA Docket No. SDWA-01-2018-0001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing on the date and in the manner noted below:

Original and one copy,
hand-delivered:

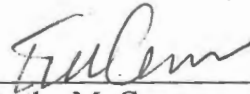
Ms. Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3812

Copy, by First Class Mail:

Joseph St. Onge
St. Onge's Hidden Country
201 Pope Road
Lowell, VT 05847

Date:

4/18/18



Timothy M. Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3812
(617) 918-1705
conway.tim@epa.gov

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APR 18 2018

EPA ORC
Office of Regional Hearing Clerk

KENNETH F. GRAY

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1212
F 207.791.1350
kgray@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

April 16, 2018

BY ELECTRONIC MAIL AND FIRST CLASS MAIL

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (Mailcode: ORC04-6)
Boston, MA 02109-3912

Re: In the Matter of Tasman Leather Group, LLC, Docket No. RCRA-01-2017-0054

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of an Answer to Complaint and Request for a Hearing and Certificate of Service.

Thank you, and please call with any questions.

Very truly yours,



Kenneth F. Gray
Attorney for Tasman Leather Group, LLC

Enclosures

cc: Norman Tasman, President, Tasman Leather Group, LLC
Joanna Jerison, Esq., Manager, Legal Enforcement Office, EPA Region I
Sheldon Yoffe, Esq., Tasman Industries
Kevin P. Pechulis, Esq., Enforcement Counsel, EPA Region I

**United States Environmental Protection Agency
Region I**

IN THE MATTER OF:)
)
Tasman Leather Group, LLC)
9 Main Street)
Hartland, ME 04943)
Respondent)
)
EPA I.D. No. MER000511501)
)
Section 3008(a))
)
Resource Conservation and Recovery)
Act, 42 U.S.C. § 6928(a))
_____)

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APR 18 2018

EPA ORC
Office of Regional Hearing Clerk

Docket No.
RCRA-01-2017-0054

**ANSWER TO COMPLAINT AND
REQUEST FOR A HEARING**

Tasman Leather Group, LLC (“Respondent”) respectfully files this answer and requests a hearing in the above-captioned matter, an enforcement action filed by the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”).

Respondent received the Complaint, Compliance Order, and Notice of Opportunity for a Hearing (“Complaint”) on September 28, 2017. Respondent and Complainant have agreed to several extensions to negotiate settlement, with the answer due no later than April 16, 2018. The following section is the answer, and for ease of reference, the numbers of Paragraphs 1-79 correspond to EPA’s enumeration in the Compliant.

ANSWER

1. Respondent admits that Complainant is the Legal Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1. The remainder of Paragraph 1 is a conclusion of law, and no response is required. To the extent that facts are alleged or stated, Respondent has no knowledge of those facts.
2. Respondent admits receipt of the Compliant and notice of the EPA's determination and opportunity to request a hearing but denies the remainder of Paragraph 2.
3. This Paragraph 3 is a conclusion of law and no response is required.
4. Respondent has no knowledge to admit or deny Paragraph 4.
5. The first sentence of Paragraph 5 is a conclusion of law and no response is required. Respondent admits the facts stated in the second and third sentences of Paragraph 5.
6. This Paragraph 6 is a conclusion of law and no response is required.
7. The first sentence of Paragraph 7 is a conclusion of law and no response is required. Respondent admits the facts stated in the second sentence in Paragraph 7.
8. Respondent has no knowledge to admit or deny these allegations of fact in Paragraph 8.
9. This Paragraph 9 is a conclusion of law and no response is required. Respondent further answers that the Complainant may not commence or maintain enforcement action against alleged violations of state law that are broader in scope than, or different from, federal hazardous waste requirements.
10. This Paragraph 10 is a conclusion of law and no response is required.
11. Respondent admits this Paragraph 11.
12. This Paragraph 12 is a conclusion of law and no response is required.

13. Respondent admits this Paragraph 13, but explains that the current workforce is approximately 170 persons.
14. Respondent admits this Paragraph 14.
15. This Paragraph 15 is a conclusion of law and no response is required.
16. Respondent admits the allegation in Paragraph 16 to the extent it is a statement of current fact, but because that the Paragraph does not allege the period of time for which Respondent was a generator of hazardous wastes, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations otherwise set forth in Paragraph 16.
17. Respondent admits that it generated hazardous waste in the past and is a current generator as alleged in Paragraph 17, but explains that Tasman is without knowledge or information sufficient to form a belief as to the truth of the allegations of being a generator “at all times relevant to this Complaint.”
18. Paragraph 18 sets forth a legal conclusion as to which no response is required.
19. Respondent that an EPA employee conducted an inspection of Respondent’s facility on May 3, 2016. The remainder of Paragraph 19 is a legal conclusion as to which no response is required.
20. Respondent admits the allegations set forth in the Paragraph 20 of the Complaint.
21. Respondent admits the allegations set forth in the Paragraph 21 of the Complaint.
22. Paragraph 22 sets forth a legal conclusion as to which no response is required.
23. Respondent admits the allegations set forth in the Paragraph 23 of the Complaint.
24. Respondent admits the allegations set forth in the Paragraph 24 of the Complaint.
25. Paragraph 25 states a legal conclusion as to which no response is required.

26. Respondent realleges and incorporates by reference Paragraphs 1-25 of this Answer.
27. Paragraph 27 sets forth a legal conclusion as to which no response is required.
28. Paragraph 28 sets forth a legal conclusion as to which no response is required.
29. Paragraph 29 sets forth a legal conclusion as to which no response is required.
30. Respondent admits the allegations set forth in the Paragraph 30 of the Complaint, but explains that (1) it understood that the generator identification number it used was proper and required to be used for the 9 Main Street, Hartland, Maine facility, (2) it understood that the prior owner and operator of the 9 Main Street, Hartland, Maine facility had used the generator identification number for shipments from that location, (3) Respondent completed hazardous waste manifests identifying the 9 Main Street, Hartland, Maine as the generator address so there should have been no issue of confusion as to the actual address of the facility or the address from which waste was generated, (4) because respondent believed it was using the correct identification number any non-compliance was completely unintentional, in good faith, and in an attempt to comply with the regulations, (5) no harm to health or the environment resulted or could have resulted from the alleged violation, and (6) any “threat to the integrity of the RCRA program” was non-existent.
31. Respondent admits Paragraph 31.
32. Paragraph 32 is a legal conclusion as to which no response is required.
33. Respondent realleges and incorporates by reference Paragraphs 1-32 of this Answer.
34. Paragraph 34 is a legal conclusion as to which no response is required.

35. Respondent denies Paragraph 35 of the Complaint. Answering further, Respondent states that it had in place most of the required elements of a contingency plan, but had not adopted a formal and final version of the contingency plan.
36. Paragraph 36 is a legal conclusion as to which no response is required.
37. Respondent realleges and incorporates by reference Paragraphs 1-36 of this Answer.
38. Paragraph 38 is a legal conclusion as to which no response is required.
39. Paragraph 39 is a legal conclusion as to which no response is required.
40. Respondent admits Paragraph 40.
41. Respondent admits that it did not submit an annual report by March 1, 2016 and admits that it did file an annual report on May 31, 2016. Respondent denies that it submitted a late report under Maine Department of Environmental Protection (“DEP”) reporting practices, which have DEP mailing summaries to generators (which occurred July 11, 2016), and generators responding to DEP summaries (which were requested by August 31, 2016).
42. Paragraph 42 is a conclusion of law to which no response is required.
43. Respondent realleges and incorporates by reference Paragraphs 1-42 of this Answer.
44. Paragraph 44 is a legal conclusion as to which no response is required.
45. Paragraph 45 is a legal conclusion as to which no response is required.
46. Paragraph 46 is a legal conclusion as to which no response is required.
47. Paragraph 47 is a legal conclusion as to which no response is required.
48. Paragraph 48 is a legal conclusion as to which no response is required.
49. Paragraph 49 is a legal conclusion as to which no response is required.
50. Respondent admits Paragraph 50.

51. Paragraph 51 is a legal conclusion as to which no response is required.
52. Respondent realleges and incorporates by reference Paragraphs 1-51 of this Answer.
53. Paragraph 53 is a legal conclusion as to which no response is required.
54. Respondent admits that it shipped 83 containers of liquid waste and that one drum was determined to be a hazardous waste, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 54.
55. Paragraph 55 is a legal conclusion as to which no response is required.
56. Respondent realleges and incorporates by reference Paragraphs 1-55 of this Answer.
57. Paragraph 57 is a legal conclusion as to which no response is required.
58. Paragraph 58 is a legal conclusion as to which no response is required.
59. Respondent admits that it stored ignitable hazardous waste but denies the remainder of the allegations set forth in Paragraph 59.
60. Paragraph 60 is a legal conclusion as to which no response is required.
61. Respondent realleges and incorporates by reference Paragraphs 1-60 of this Answer.
62. Paragraph 62 is a legal conclusion as to which no response is required.
63. Paragraph 63 is a legal conclusion as to which no response is required.
64. Respondent admits Paragraph 64.
65. Paragraph 65 is a legal conclusion as to which no response is required.
66. Respondent realleges and incorporates by reference Paragraphs 1-65 of this Answer.
67. Paragraph 67 is a legal conclusion as to which no response is required.
68. Paragraph 68 is a legal conclusion as to which no response is required.
69. Paragraph 69 is a legal conclusion as to which no response is required.
70. Paragraph 70 is a legal conclusion as to which no response is required.

71. Respondent admits the facts alleged in Paragraph 71.

72. Paragraph 72 is a legal conclusion as to which no response is required. Respondent further states that the cathode ray tubes in question are not subject to federal enforcement action under the legal citations supplied because these cathode ray tubes are not regulated under the federal regulatory program.

73. Respondent realleges and incorporates by reference Paragraphs 1-72.

74. Paragraph 74 is a legal conclusion as to which no response is required.

75. Respondent denies that all of the universal waste lamps were stored with inadequate aisle space to allow inspection, but otherwise admits the allegations set forth in Paragraph 75 of the Complaint.

76. Paragraph 76 is a legal conclusion as to which no response is required. Respondent further states that the cathode ray tubes in question are not subject to federal enforcement action under the legal citations supplied because these cathode ray tubes are not regulated under the federal regulatory program.

THE PROPOSED PENALTY IS INAPPROPRIATE

77. The proposed penalty of \$120,088.00 is inappropriate because it does not comport with 42 U.S.C. § 6928 (a)(3), which requires taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

78. The proposed penalty of \$120,088.00 is inappropriate because it does not comport with the EPA “RCRA Civil Penalty Policy” dated June 2003 (“Penalty Policy”). EPA erred in numerous instances in determining a higher potential for harm or larger deviation that should have been assigned under the Penalty Policy. EPA also erred in not including

additional downward adjustments for all relevant factors including lack of willfulness and lack of negligence, cooperative attitude and good faith efforts to comply.

79. The proposed penalty of \$120,088.00 is inappropriate because EPA did not properly consider the ability of Respondent to pay the proposed penalty, which is a factor considered under the Penalty Policy. Although EPA requested and Respondent supplied confidential business information, EPA and its financial analyst improperly concluded that Respondent had no inability to pay the proposed penalty. To the extent that EPA may have been relying on EPA's "Memorandum of Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action" EPA either improperly applied that guidance or applicable precedent, or the guidance and any applicable precedent should be not be followed because it allows EPA to consider information that is not properly considered.

REQUEST FOR A HEARING

80. Respondent requests a hearing as allowed under 42 U.S.C. §6928(b), 40 C.F.R. §22.15 and Part 22, and Paragraph 82 of the Compliant.

SETTLEMENT CONFERENCES

81. Respondent and Complainant have held several settlement conferences and Respondent has negotiated in good faith in an attempt to resolve the Complaint, without success.

82. Respondent believes that settlement of this matter may be possible and is open to further negotiations if EPA deems settlement of interest.

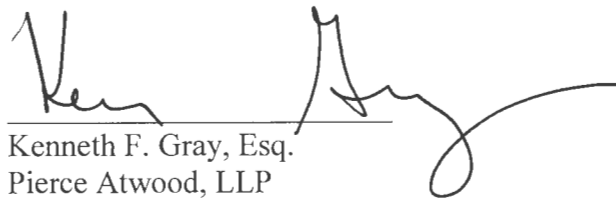
COMPLIANCE ORDER

83. Paragraph 80 of the Complaint is an order to comply with certain hazardous waste and universal waste requirements, and Paragraph 80 requested a response from Respondent within 45 days of receipt of the Complaint.
84. By letter dated November 2, 2018, which was in advance of the requested deadline, Respondent provided a statement of compliance.
85. EPA informed Respondent at a settlement conference on December 20, 2017 that EPA was satisfied that Respondent's statement of compliance fully addressed the order to comply found in Paragraph 80 of the Complaint.

Respectfully submitted,

Date: April 16, 2018

Signed:



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