

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5th St.

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

United States Department of Agriculture)
Animal Research Service/National)
Animal Disease Center)

Docket No. RCRA-07-2006-0153

2300 North Dayton Road)
Ames, Iowa 50010)

EPA ID# IA8123490007)

Respondent.)

COMPLAINT, COMPLIANCE
ORDER AND NOTICE OF
OPPORTUNITY FOR HEARING

A. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as RCRA), 42 U.S.C. Sections 6928(a) and (g), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, found at 40 Code of Federal Regulations (C.F.R.) Part 22. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch, Air, RCRA and Toxics Division, United States Environmental Protection Agency, Region 7 (EPA or

Complainant). The Respondent is the United States Department of Agriculture Animal Research Service/National Animal Disease Center, 2300 North Dayton Road, Ames, Iowa, 50010 (NADC or Respondent).

2. The authority to execute this Complaint, Compliance Order, and Notice of Opportunity for Hearing is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA, and Toxic Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Division Director has further delegated this authority to the Chief of the RCRA Enforcement and State Programs Branch by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

3. The State of Iowa has not been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g); therefore, the federal RCRA program is directly enforceable by EPA in the State of Iowa.

4. 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 \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997, and penalties up to \$32,500 per day for violations occurring after March 15, 2004. 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, 2002, the Complainant proposes that Respondent be assessed a civil penalty of \$35,199.00, 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.

B. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

5. The Respondent, the Animal Research Service/National Animal Disease Center, Ames, Iowa, is owned and operated by the United States Department of Agriculture. NADC is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

6. The NADC is located on approximately 318 acres on the northeastern edge of Ames, Iowa. Respondent has operated at its current location for approximately 41 years.

7. The Respondent’s facility conducts basic and applied research on domestic animal diseases found in the United States. Respondent generates hazardous waste as a result of its operations.

8. Also located within the same contiguous facility is the National Veterinary Service Laboratory and Center for Veterinary Biologics (NSVL/CVB).

9. The hazardous wastes generated by Respondent include, but are not limited to: flammable wastes, including waste ethanol, methanol, acetone, xylene, petroleum naphtha, and

solvent-contaminated used oil; waste vaccines containing mercury; and miscellaneous waste chemicals, including but not limited to chloroform, spent hydrochloric acid and silver nitrate.

10. The wastes listed in paragraph 9 are “hazardous wastes” within the meaning of 40 C.F.R. Part 261.

11. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations referenced in paragraph 10.

12. Respondent generates more than one thousand kilograms of hazardous waste per month, and is therefore a “generator” of hazardous waste within the meaning of 40 C.F.R. § 262.34 (hereinafter generator or large quantity generator).

13. Respondent does not have a permit to treat, store or dispose of hazardous waste.

14. The EPA performed an inspection at Respondent’s facility on July 15 through 17, 2003 (hereinafter the July, 2003 inspection). The inspector observed several violations of RCRA during the inspection, which form the basis for the allegations in Count I below.

COUNT I

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

15. Complainant hereby incorporates the allegations contained in paragraphs 5 through 14 above as if fully set forth herein.

I.a. Failure to meet generator requirements

16. The regulations at 40 C.F.R. 262.34, state that a generator may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided conditions listed in 40 C.F.R. 262.34, are met.

17. At the time of the July, 2003 inspection, the Respondent was not complying with the following conditions:

Failure to maintain adequate aisle space

18. The regulations at 40 C.F.R. § 262.34(a)(4), state that generators may accumulate hazardous waste on-site for up to 90 days without a permit or interim status provided that they comply with 40 C.F.R. Part 265, Subpart C. The regulations at 40 C.F.R. § 265.35, which are within Subpart C, state that a facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency.

19. At the time of the July, 2003 inspection, there were approximately twenty-five (25) 55-gallon drums of waste vaccines (waste code D009) in storage at the facility without aisle space sufficient to allow the unobstructed movement of emergency equipment and personnel in the event of an emergency.

Failure to perform weekly inspections

20. The regulations at 40 C.F.R. § 262.34(a)(1)(i), state that generators may accumulate hazardous waste on-site for up to 90 days without a permit or interim status provided that they comply with 40 C.F.R. Part 265, Subpart I. The regulations at 40 C.F.R. § 265.174, which are within Subpart I, state that large quantity generators are required to perform weekly inspections of container storage areas to check for leaks and for deterioration caused by corrosion or other factors.

21. At the time of the July, 2003 inspection, the weekly inspection log for the nonflammable hazardous waste storage area showed that NADC had failed to perform weekly inspections on six occasions between April 3, 2002 and April 25, 2003.

Failure to keep hazardous waste satellite containers closed

22. The regulations at 40 C.F.R. § 262.34(c)(1)(i), state that generators may accumulate hazardous waste on-site for up to 90 days without a permit or interim status provided that while waste is being accumulated on-site at or near the point of generation, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of 40 C.F.R. § 265.173.

23. The regulations at 40 C.F.R. § 265.173(a), require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

24. At the time of the July, 2003 inspection, at a time when waste was not being added or removed, there was one container of hazardous waste hydrochloric acid (D002) and one other container marked "hazardous waste" that were open.

Failure to label satellite containers of hazardous waste

25. The regulations at 40 C.F.R. § 262.34(c)(1)(ii), state that generators may accumulate hazardous waste on-site for up to 90 days without a permit or interim status provided that any hazardous waste in containers being accumulated at or near the point of generation must be labeled with the words, "hazardous waste," or other words that identify the contents.

26. At the time of the July, 2003 inspection, the following satellite containers were not labeled as hazardous waste:

- a. Three containers of flammable liquids in laboratory B8;
- b. One container of silver nitrate solution in laboratory B8; and
- c. One container holding a mixture of spent methanol, chloroform and water in laboratory B2.

Failure to have an contingency plan which complies with applicable requirements

27. The regulations at 40 C.F.R. § 262.34(a)(4), state that generators may store hazardous waste on-site for up to 90 days without a permit or interim status provided they comply with the requirements of 40 C.F.R. Part 265, Subpart D (Contingency Plan and Emergency Procedures).

28. At the time of the July, 2003 inspection, the facility's contingency plan failed to comply with the requirements of 40 C.F.R. Part 265, Subpart D in the following respects:

- a. Respondent had not submitted the contingency plan to local emergency agencies as required by 40 C.F.R. § 265.53(b);
- b. Respondent had not included a description of arrangements with local emergency agencies in the contingency plan, as required by 40 C.F.R. § 265.52(c);
- c. Respondent had not designated a primary emergency coordinator in the contingency plan as required by 40 C.F.R. § 265.52(d);
- d. Respondent had not included a list of available emergency equipment and its capabilities in the contingency plan as required by 40 C.F.R. § 265.52(e); and

e. Respondent had not included a facility evacuation plan in the contingency plan as required by 40 C.F.R. § 265.52(f).

Failure to provide annual training to employees responsible for managing hazardous waste

29. The regulations at 40 C.F.R. § 262.34(a)(4), state that a generator may accumulate hazardous waste on-site for up to 90 days without a permit or interim status provided they comply with the requirements of 40 C.F.R. § 265.16 (Personnel Training).

30. At the time of the July, 2003 inspection, Respondent had failed to comply with the following requirements of 40 C.F.R. § 265.16:

a. Respondent failed to provide annual training for at least one of the five employees responsible for managing hazardous waste (40 C.F.R. § 265.16(c)); and

b. Respondent failed to include hazardous waste management duties in job descriptions for two of the five employees responsible for managing hazardous waste (40 C.F.R. § 265.16(d)(2)).

31. Because Respondent failed to comply with the generator requirements set forth in paragraphs 16 through 30 above, Respondent was not allowed to store hazardous waste at its facility unless it obtained a RCRA permit. Therefore, any storage of hazardous waste during the time when Respondent was not complying with the generator requirements constitutes the operation of a hazardous waste storage facility without a permit.

I.b. Disposal of hazardous waste without a permit

32. Section 3005 of RCRA, 42 U.S.C. § 6925, requires facilities that treat, store or dispose of hazardous waste to obtain a permit.

33. During the summer of 2003, prior to the July, 2003 inspection, an employee had disposed of approximately one pint of lacquer thinner (waste code D001) into the regular trash receptacle at Respondent's facility.

34. Respondent does not have a permit to treat, store or dispose of hazardous waste.

35. The disposal of D001 waste into the trash at the Respondent's facility constitutes disposal of hazardous waste without a permit.

36. Pursuant to Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. Sections 6928(a) and 6928(g), Complainant proposes that a civil penalty of \$ 35,199.00 be assessed for the violations alleged in Count I. This proposed penalty is based upon the facts alleged in Count I of this Complaint, and upon consideration of the factors set forth in paragraph 4 above.

C. COMPLIANCE ORDER

37. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, the Respondent shall pay a penalty of \$ 35,199.00. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 7, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Mr. Kevin Snowden, Environmental Scientist
Mail Code ARTD/RESP
U.S. EPA Region 7
901 N. 5th St.
Kansas City, Kansas 66101.

The check must reference the EPA Docket Number of this Complaint and Compliance Order and the Respondent by name.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

39. A written answer to the Complaint and Compliance Order and the request for hearing must satisfy the requirements of 40 C.F.R. Section 22.15 (1980) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 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, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Belinda L. Holmes, Senior Assistant Regional Counsel, Office of Regional Counsel, at the same address.

40. The Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint, Compliance Order, and Notice of Opportunity for Hearing will constitute a binding admission of all allegations contained in the Complaint and a waiver of the 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.

41. The total proposed penalty for Counts I and II is \$ 35,199.00. This proposed penalty is based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide defenses relevant to the appropriate amount of the proposed penalty.

E. SETTLEMENT CONFERENCE

42. Whether or not the 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 write to: Belinda L. Holmes, Senior Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA, Region 7, 901 N. 5th St., Kansas City, Kansas 66101; or call her at (913) 551-7714.

43. 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.

44. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of 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 Consent Order which may be issued by the Regional Judicial Officer, EPA Region 7.

45. If the Respondent has neither effected a settlement by informal conference nor requested a hearing within the thirty (30) day time period allowed by the Complaint, Compliance

Order and Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and the Respondent will be notified that the penalties have become due and payable.

F. SUBMITTALS


46. All submittals made pursuant to this Order, unless otherwise specified, shall be sent to Mr. Kevin Snowden, Environmental Scientist, ARTD/RESP, U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

G. EFFECTIVE DATE

47. This Complaint, Compliance Order and Notice of Opportunity for Hearing shall become effective on the date signed by the Chief of the RCRA Enforcement and State Programs Branch, Air, RCRA and Toxics Division, EPA Region 7.


IT IS SO ISSUED AND ORDERED:

3-29-06
Date



Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

3/29/06
Date



Belinda L. Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested, to:

Edward B. Knipling, Administrator
Agricultural Research Service
1400 Independence Ave., S.W.
Room 302A
Jamie Whitten Federal Building
Washington, DC 20250

and to:

Ronald L. Horst, Acting Director
National Animal Disease Center
2300 Dayton Ave., Room 104
Ames, IA 50010-0070



3/29/06

Belinda L. Holmes
Senior Assistant Regional Counsel
U.S. EPA Region 7