

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

American Railcar Industries, Inc.)

1101 Bedford Avenue)
North Kansas City, Missouri, 64116)

EPA ID# MOT300010022)

Respondent.)

Docket No. RCRA-07-2006-0282

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 American Railcar Industries, Inc., 100 Clark Street, St.

Charles, Missouri, owner and operator of the American Railcar, Inc. facility at 1101 Bedford Avenue, Kansas City, Missouri, 64118 (American Railcar 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 Toxics 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 Missouri 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 Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (C.S.R.), Chapter 25 (10 C.S.R. 25). 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. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur 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 \$ 13,701.00, 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, American Railcar Industries, Inc., is a Delaware corporation authorized to conduct business in the State of Missouri and having its principal place of business at 100 Clark Street, St. Charles, Missouri, 63301 (American Railcar). American Railcar is the owner and operator of the American Railcar Industries Fleet Services facility located at 1101 Bedford Avenue, Kansas City, Missouri, 64118. American Railcar is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

6. American Railcar is located on approximately 18.5 acres in Kansas City, Missouri, and has been at this location for approximately 53 years.

7. The Respondent’s facility conducts cleaning, maintenance and repairs on railcars for rail companies. Respondent has two paint shops, two paint storage buildings (one for exterior

paint and one for interior paint), a metal shop, a repair shop, a railcar wash down pad, a grit blasting building, a sand blast shed, a maintenance shop and a waste water treatment facility.

8. Respondent submitted a Notification of Hazardous Waste Activity on or about August 13, 1980, which was last updated on or about December 3, 2001.

9. The hazardous wastes generated by Respondent include but are not limited to waste paint and spent solvent from painting operations.

10. The wastes listed in paragraph 9 are "hazardous wastes" within the meaning of 10 C.S.R. 25-4.261(1), which incorporates by reference 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. Wastes generated by Respondent bear the waste codes D001, D002, D005, D007, F003, and F005.

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 10 C.S.R. 25-5.262, which incorporates by reference 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 March 15 through 17, 2005 (hereinafter the March 2005 inspection). The inspector observed several violations of RCRA during the inspection, which form the basis for the allegations below.

COUNT I

FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION

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

16. At the time of the March 2005 inspection, Respondent had generated two solvent-contaminated rags, one five-gallon pail of hardened paint and 400 gallons of off-specification and/or expired paint at its facility but Respondent had not performed a hazardous waste determination on these wastes.

17. 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. 262.11 by reference, requires that generators of solid waste must determine whether their solid waste is a hazardous waste.

18. Respondent's failure to perform hazardous waste determinations on the solvent-contaminated rags, hardened paint and off-specification and/or expired paint is a violation of 10 C.S.R. 25-5.262(1).

19. 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 \$ 3,223.00 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.

COUNT II

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

II.a. Failure to meet generator requirements

20. The regulations at 40 C.F.R. 262.34, which are incorporated by reference at 10 C.S.R. 25-5.262(1), 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.

21. At the time of the March 2005 inspection, the Respondent was not complying with the following conditions:

Failure to have an contingency plan which complies with applicable requirements

22. The regulations at 10 C.S.R. 25-5.262(1), which incorporate by reference 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).

23. At the time of the March 2005 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 made arrangements with local emergency agencies, nor did the contingency plan include a description of arrangements with local emergency agencies, as required by 40 C.F.R. § 265.52(c);

c. 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

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

24. Because Respondent failed to comply with the generator requirements set forth in paragraphs 22 and 23 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.

25. Respondent does not have a permit to treat, store or dispose of hazardous waste, but Respondent was storing hazardous waste at its facility at the time of the March 2005 inspection.

26. 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 \$10,478.00 be assessed for the violations alleged in Count II. This proposed penalty is based upon the facts alleged in Count II of this Complaint, and upon consideration of the factors set forth in paragraph 4 above.

C. COMPLIANCE ORDER

27. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, the Respondent shall pay a penalty of \$13,701. 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 371099M, Pittsburgh,

Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Mr. Marc Matthews, Environmental Engineer
Mail Code ARTD/RESP
U.S. EPA Region 7
901 North 5th Street
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

28. 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.

29. 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 North 5th Street, 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.

30. 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.

31. The total proposed penalty for Counts I and II is \$ 13,701. 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

32. 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 North 5th Street, Kansas City, Kansas 66101; or call her at (913) 551-7714.

33. 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.

34. The 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.

35. 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

36. All submittals made pursuant to this Order, unless otherwise specified, shall be sent to Mr. Marc Matthews, Environmental Engineer, ARTD/RESP, U.S. EPA, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

IT IS SO ISSUED AND ORDERED:

9-28-06

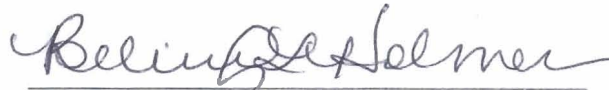
Date



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

9/28/06

Date



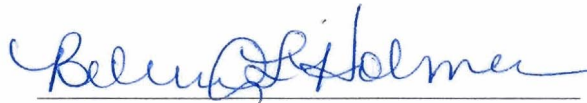
Belinda L. Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

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:

CT Corporation System
Registered Agent for American Railcar Industries, Inc.
120 South Central Avenue
Clayton, Missouri 63105.

9/28/06
Date


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