

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

IN THE MATTER OF: )  
)  
**JOHN SCONIERS** )  
100 Hugh Muir Lane )  
Maywood, Illinois 60153 )  
)  
**U.S. EPA ID #: ILR 000150912** )  
)  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO.

**RCRA-05-2010-0019**

**COMPLAINT AND COMPLIANCE ORDER**

**Preliminary Statement and Jurisdiction**

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted under Sections 22.1(a)(4), 22.13, and 22.37 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (the Consolidated Rules), codified at 40 C.F.R. Part 22.

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

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

4. Respondent is Mr. John Sconiers, an individual doing business or residing in the State of Illinois.

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

### **Statutory and Regulatory Background**

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

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986 (51 Fed. Reg. 3778). The Administrator of U.S. EPA granted Illinois final authorization to administer certain HSWA and additional RCRA requirements effective March 5, 1988, 53 Fed. Reg. 126 (January 5, 1988); April 30, 1990, 55 Fed. Reg. 7320 (March 1, 1990); June 3, 1991, 56 Fed. Reg. 13595 (April 3, 1991); August 15, 1994, 59 Fed. Reg. 30525 (June 14, 1994); May 14, 1996, 61 Fed. Reg. 10684 (March 15, 1996); and October 4, 1996, 61 Fed. Reg. 40520 (August 5, 1996). The U.S. EPA-authorized Illinois regulations are codified at 35 Illinois Administrative Code (Ill. Adm. Code) Part 703 et seq. See also 40 C.F.R. §§ 272.700 et seq.

8. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information U.S. EPA determines that any person has violated or is in violation of any

requirement, U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

### **General Allegations**

9. The Respondent is Mr. John Sconiers, located at 100 Hugh Muir Lane, Maywood, Illinois 60153.

10. A "person" is defined at 35 Ill. Adm. Code 720.110, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

11. Respondent is a "person," as defined by 35 Ill. Adm. Code. 720.110 and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), authorizes U.S. EPA to require any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes, to furnish information relating to such wastes for the purposes of allowing Complainant to enforce RCRA.

13. On or about October 22, 2007, Respondent sold a semi dump trailer which was found to contain drums and containers of waste, including three containers of corrosive waste (D002), and one container of ignitable waste (D001), which are hazardous wastes as defined by 35 Ill. Adm. Code. 721.103 (40 C.F.R. § 261.3.).

14. Respondent generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste.

### Count 1

15. Complainant incorporates paragraphs 1 through 14 of this complaint as though set forth in this paragraph.

16. By letter dated June 19, 2009, U.S. EPA issued an Information Request (Request) to Respondent, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. The Request was sent via Certified Mail with a Return Receipt number 7001 0320 0006 0184 6884. A representative of Respondent signed the return receipt for the Request on June 24, 2009. A copy of the Request, with the signed return receipt, is provided as Attachment A to this Complaint.

17. The Request requested information pertaining to a semi-trailer sold by the Respondent through eBay and was found to contain drums and containers of waste, including three containers of corrosive waste (D002), and one container of ignitable waste (D001)

18. The Request required a response by Respondent on or before July 9, 2009.

19. The terms of the Request made clear that failure to comply with its requirements may result in an enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

20. No reply, written or otherwise, was received by EPA by July 9, 2009, or at any time thereafter.

21. By letter dated November 9, 2009, U.S. EPA issued Respondent a notice stating that Respondent is in violation of Section 3007 of RCRA, 42 U.S.C. § 6927, as a result of his failure to respond to the Request, and requiring Respondent to provide a complete response to the Request by November 28, 2009. The letter was sent via Certified Mail with a Return Receipt number 7009 1680 0000 7666 9863. A representative of Respondent signed the return receipt for the letter on November 12, 2009. A copy of the U.S. EPA letter, with the signed return receipt, is provided as Attachment B to this Complaint.

22. No reply, written or otherwise, was received by U.S. EPA by November 28, 2009, or at any time thereafter.

23. On March 23, 2010, U.S. EPA issued a pre-filing notice and opportunity to confer letter to Respondent notifying Respondent of the Complainant's intent under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to issue a compliance order and file an administrative complaint seeking civil penalties for Respondent's failure to timely comply with a request for information issued by U.S. EPA under Section 3007 of RCRA, 42 U.S.C. § 6927.

24. Respondent is in violation of Section 3007 of RCRA, 42 U.S.C. § 6927.

25. Respondent's violation of Section 3007 of RCRA, 42 U.S.C. § 6927, subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

#### **Proposed Civil Penalty**

26. Complainant proposes to assess Respondent a civil penalty of \$10,316 for the first day of violation and an additional \$516 per day of violation for days 2 through 180 that a response was not submitted for an additional penalty amount of \$92,364 ( $\$516 \times 179$  days), for a total civil penalty of \$102,680 for violations alleged in this Complaint.

27. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Under the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 12, 2009.

28. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider the seriousness of the violation and any good faith efforts to comply with applicable requirements. *See* Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

29. The Complainant proposes, subject to the receipt and evaluation of further relevant information from Respondent, that the Administrator assess a civil penalty of \$102,680, for the violations alleged in this Complaint, as further explained in Attachment C, "Penalty Summary Sheet."

30. Respondent may pay this proposed penalty by certified or cashier's check, payable to the "Treasurer, the United States of America," and remit to:

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

Respondent must include the case name, docket number and the billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Associate Regional Counsel Kevin Chow at the addresses set forth below in Filing and Service of Documents, and to:

Spiros Bourgikos  
RCRA Branch (LR-8J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

### **Compliance Order**

31. Based on the foregoing, Respondent is hereby ordered -- under authority in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules -- to comply with the following requirements:

a. Respondent shall submit a full and complete response to the Request issued under Section 3007 of RCRA, 42 U.S.C. § 6927.

b. Respondent shall submit all information required by the Request and this Order to the attention of Spiros Bourgikos, RCRA Branch (LR-8J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

c. Respondent shall submit a full and complete response to the Request not later than fourteen (14) days after this Order becomes a Final Order.

32. Pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.37(b), this Order shall automatically become a Final Order within thirty (30) days of service of this Order to Respondent, unless Respondent requests a public hearing under 40 C.F.R. § 22.15 within such time.

33. In the event Respondent requests a public hearing within thirty (30) days of being served with this Order, Complainant requests a compliance order under the terms and conditions stated in Paragraph 31 above. 40 C.F.R. § 22.14(a)(4)(iv).

### **Rules Governing this Proceeding**

The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent in Attachment D is a copy of the Consolidated Rules.

### **Filing and Service of Documents**

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

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Kevin Chow, Associate Regional Counsel, to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Chow, at (312) 353-6181. His address is:

Kevin Chow (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

### **Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount or the compliance order, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

Service of the Complaint is complete when the Return Receipt is signed. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal



holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

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

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

Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules. In addition, default will preclude Respondent from obtaining adjudicatory review of any of the provisions contained in the Compliance Order

section of the Complaint.

**Settlement Conference**

Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request a settlement conference, Respondent should write to Spiros Bourgikos, RCRA Branch (LR-8J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone him, at (312) 886-6862.

Your request for an informal settlement conference will not extend the 30-day period for filing a written Answer and Request for Hearing. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with RCRA and any other applicable federal, state or local law.

7/9/10  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Bruce F. Sypniewski  
 Acting Director  
 Land and Chemicals Division

ATTACHMENT A

Complaint Docket No. \_\_\_\_\_ **RCRA-05-2010-0019**


CERTIFICATE OF SERVICE

I, \_\_\_\_\_, hereby certify that I delivered a copy of the foregoing Complaint and Compliance Order, Docket No. [ \_\_\_\_\_ ], to the person designated below, on the date below, **RCRA-05-2010-0019** by depositing it in the U.S. Mail, certified-return receipt requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

John Sconiers  
100 Hugh Muir Lane  
Maywood, Illinois 60153

I have further filed the original of the Complaint and Compliance Order and this Certificate of Service in the Office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 12<sup>th</sup> day of July, 2010.

  
Margaret Gray, Administrative Assistant  
RCRA Branch  
U.S. EPA, Region 5