



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CI FRK

OCT 21 2019

Ref: 8ENF-RO-R

VIA FIRST CLASS MAIL

Rosebud Recycling, LLC
Damien K. Harmon, Registered Agent
126 North Adams Street
Mission, South Dakota 57555

Re: Compliance Order and Notice of Opportunity for Hearing Pursuant to Section 3008(a) of the Resource Conservation and Recovery Act
Docket No. **RCRA-08-2020-0002**

Dear Mr. Harmon:

The U.S. Environmental Protection Agency appreciates your cooperation and continued commitment to returning your facility to compliance with the Resource Conservation and Recovery Act (RCRA) hazardous waste program.

The EPA is issuing Rosebud Recycling, LLC (Rosebud Recycling) the enclosed Compliance Order and Notice of Opportunity for Hearing (Order) for alleged violations of the RCRA hazardous waste program at the Rosebud Recycling facility located on privately held land within the exterior boundaries of the Rosebud Indian Reservation in South Dakota. The EPA is authorized to issue this Order pursuant to section 3008(a) of RCRA, U.S.C. § 6928(a).

The Order describes the actions necessary for Rosebud Recycling to achieve compliance with the RCRA hazardous waste program. The EPA is authorized by RCRA to take appropriate enforcement actions necessary to secure prompt compliance with statutory requirements and implementing regulations. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet is enclosed. The SBREFA sheet notifies small entities of their right to comment on regulatory enforcement activities and provides information on compliance assistance resources and tools available to small businesses. SBREFA does not eliminate Rosebud Recycling's responsibility to comply with RCRA or to respond to this Order.

If you have any questions relating to technical issues raised in this Order, please contact Linda Jacobson at (303) 312-6503 or by email at Jacobson.Linda@epa.gov. Any questions relating to legal issues should be directed to Max Greenblum at (303) 312-6108 or by email at Greenblum.Max@epa.gov.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Suzanne Bohan for". The signature is fluid and cursive, with a long horizontal stroke at the end.

Suzanne Bohan, Director
Enforcement and Compliance Assurance Division

Enclosures:

1. Compliance Order and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. SBREFA Information Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)	Docket No. RCRA-08-2020-0002.
)	
Rosebud Recycling, LLC)	COMPLIANCE ORDER
)	AND NOTICE OF OPPORTUNITY
EPA ID No. SDE000220202)	FOR HEARING
)	
)	Proceeding pursuant to section 3008(a)
)	of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6928(a)
)	
Respondent.)	

EPA REGION VIII
HEARING CI FRK

I. INTRODUCTION

1. This Compliance Order and Notice of Opportunity for Hearing (Order) is issued pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6928(a).
2. The authority to issue this Order is vested in the EPA Administrator by section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and has been properly delegated to the undersigned officials.
3. This proceeding is governed by 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 (Consolidated Rules of Practice), a copy of which is enclosed.
4. The Rosebud Sioux Tribe has been notified of this action.

II. JURISDICTION

5. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA is authorized to issue compliance orders whenever the Agency determines that any person has violated or is in violation of any requirement of subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g. This Order sets forth specific actions Rosebud Recycling, LLC (Rosebud Recycling) is required to conduct within specified schedules to return Rosebud Recycling to compliance with RCRA. Pursuant to section 3008(c) of RCRA, 42 U.S.C. § 6928(c), respondents who fail to achieve compliance within the timeframe specified in a compliance order are liable for additional civil penalties up to \$37,500 for each day of noncompliance, and where appropriate, the suspension or revocation of RCRA permits.

III. FINDINGS OF FACT AND LAW

6. Rosebud Recycling is a "person" as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
7. Rosebud Recycling operates a metals recycling, automotive salvage yard, and car crushing facility located at 229 North Hillside Drive, in Mission, South Dakota (Facility), which is on privately held land within the exterior boundaries of the Rosebud Indian Reservation.

8. Rosebud Recycling is an “owner” and/or “operator” of the Facility as defined at 40 C.F.R. § 260.10.
9. The Facility is a “facility” as defined at 40 C.F.R. § 260.10.
10. On or about July 16, 2019, an EPA representative conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility.
11. During the CEI, the EPA representative observed the following: three drums in the vehicle processing area which needed to be labeled as oil, gas, and anti-freeze (these were labeled before the inspection concluded); two areas of stained oily soils, one beside the processing area concrete slab by the shop and a second under and around the car crusher; thirty-seven drums labeled as concrete curing compound, holding a total of fifteen gallons of product; two drums of Hy Tran oil which were determined to be empty; refrigerators located in “white goods” pile, waiting crushing but still with oil in coils; and staged cars waiting crushing, but based on a random check, still containing undrained brake fluid.
12. Rosebud Recycling is a generator of solid waste as defined in 40 C.F.R. §§ 260.10 and 261.2.
13. During the CEI, a Facility representative informed the EPA representative that Rosebud Recycling had not made hazardous waste determinations for the drums of curing compound.
14. Pursuant to 40 C.F.R. § 262.11, Rosebud Recycling was and is required to make hazardous waste determinations on all solid waste it generates.
15. At the conclusion of the CEI, the EPA representative and Facility representative discussed the steps Rosebud Recycling would need to perform to return to compliance, including: maintaining practice of labeling the containers for oil, gas, and anti-freeze and removal of stained oily soils.
16. In a conference call on September 12, 2019, a Facility representative confirmed a commitment to remove areas of soil impacted by used oil and to institute a standard operating procedure (SOP) at the facility for management of hazardous wastes generated at the facility. The facility representative also stated that the concrete curing compound had been determined to be biodegradable and non-hazardous and was applied to the facility’s parking lot as a product.

IV. FINDINGS OF VIOLATION

a. Failure to Comply with Used Oil Requirements

17. Pursuant to 40 C.F.R. § 279.20, a used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. On the date of the CEI, the Facility was subject to regulations applicable to used oil generators.
18. Pursuant to 40 C.F.R. § 279.22(c), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” At the time of the CEI, the Facility had one used oil containers in the process area which was unlabeled. Mr. Harmon had the container labeled before the inspection concluded.
19. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must stop the release, contain the released used oil, and clean up and manage properly the released used oil and other materials. At the time of the CEI, several areas of soils stained from a used oil release were observed. A stained soil area next to and under the car crusher existed at the time of the

inspection and was estimated to be 50' x 52' with an unknown depth. There was also a stained area adjacent to the concrete pad on which cars were processed.

b. Failure to Make Hazardous Waste Determinations

20. Pursuant to 40 C.F.R. § 262.11, each person who generates a solid waste shall determine if that waste is a hazardous waste.

21. At the time of the CEI, Rosebud Recycling had not made a hazardous waste determination on the thirty-seven drums of concrete curing compound.

22. Rosebud Recycling's failure to make a hazardous waste determination on these solid wastes is a violation of 40 C.F.R. § 262.11.

V. COMPLIANCE ORDER

Based upon the Findings of Violation and the Findings of Fact and Law alleged above and pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6908(a), Rosebud Recycling is hereby ordered to take the following actions in the specified timeframes.

23. Within thirty days of receipt of this Order, Rosebud Recycling shall:

A. For the used oil containers and oily soils:

1. provide photographs demonstrating that the containers and tanks presently being used to store used oil are in good condition and properly labeled with the words "Used Oil";

2. provide a description of how the areas of soil impacted by used oil releases have been remediated, including the quantity of oily soils removed, measures to backfill or restore the removal locations, and photographs of these areas, as well as any post-removal sampling results, disposal records, bills of lading for used oil; and

3. provide an SOP, or documentation of best management practices, to ensure hazardous waste determination at the point of generations for the batteries, brakes, and all fluids – including oil, brake fluid, transmission fluid, gasoline, anti-freeze, and refrigerants – for the vehicles to be processed, and for the used oil and refrigerants of any white goods being prepared for crushing.

24. All documents required to be submitted by this Order shall be sent to the attention of:

Ms. Linda Jacobson
8ENF-RO-R
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
Jacobson.Linda@epa.gov
(303) 312-6503

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

25. Rosebud Recycling has the right to request a hearing in accordance with 40 C.F.R. §§ 22.15 and 22.5.

26. In accordance with section 3008(b) of RCRA, 42 U.S.C. § 6928(b), 40 C.F.R. §§ 22.14(c) and 22.37(b), the RCRA requirements of this Order shall become final thirty days after service of this Order unless Rosebud Recycling requests a hearing in accordance with 40 C.F.R. § 22.15 no later than twenty (20) days after service of this Order.

VII. GENERAL PROVISIONS

27. Rosebud Recycling shall fully implement each item of this Order in accordance with the requirements and timeframes herein. Rosebud Recycling' failure to fully implement all requirements of this Order in the manner and time period required is a violation of this Order and may subject Rosebud Recycling to the assessment of penalties as provided under section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

28. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under RCRA for the violations alleged herein. Section 3008(g) of RCRA, 42 U.S.C. 6928(g), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of subtitle C of RCRA. Section 3008(d) of RCRA, 42 U.S.C. § 6928(d), authorizes fines and imprisonment for knowingly transporting, generating, treating, storing, or disposing of hazardous waste.

29. Nothing in this Order shall be construed to prevent EPA from taking whatever action(s) it deems appropriate for the violations cited in the Order or to relieve Rosebud Recycling from responsibilities, liabilities or penalties pursuant to any applicable federal, tribal or other applicable law or regulation.

30. Rosebud Recycling may seek administrative review of this Order issued under section 3008(a) of RCRA in accordance with 40 C.F.R. part 22, and once this Order is final and reviewable pursuant to section 3008(b) of RCRA and 40 C.F.R. part 22, judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
COMPLAINANT.**



Suzanne Bohan, Director
Enforcement and Compliance Assurance Division

IN THE MATTER OF: ROSEBUD RECYCLING, LLC

DOCKET NO.: RCRA-08-2020-0002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was set via Certified Mail to the following on October 21, 2019, as indicated below:

to:

Damien K. Harmon, Registered Agent
Rosebud Recycling, LLC
229 N. Hillside Dr.
Mission, SD 57555
CERTIFIED MAIL # 7012 2210 0000 5374 0390

Date: 10/21/2019

By: JOAN DeHty



U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Small Business Programs

www.epa.gov/smallbusiness
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman

www.epa.gov/sbo or 1-800-368-5888
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

EPA's Compliance Assistance Homepage

www2.epa.gov/compliance
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair
ccar-greenlink.org/ or 1-888-GRN-LINK

Chemical Manufacturing
www.chemalliance.org

Construction
www.cicacenter.org or 1-734-995-4911

Education
www.campuserc.org

Food Processing
www.fpeac.org

Healthcare
www.hercenter.org

Local Government
www.lgean.org

Metal Finishing
www.nmfrf.org

Paints and Coatings
www.paintcenter.org

Printing
www.pneac.org

Ports
www.portcompliance.org

Transportation
www.tercenter.org

U.S. Border Compliance and Import/Export Issues
www.bordercenter.org

EPA Hotlines, Helplines and Clearinghouses

www2.epa.gov/home/epa-hotlines
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Clean Air Technology Center (CATC) Info-line
www.epa.gov/ttn/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center
www.epa.gov/superfund/contacts/infocenter/index.htm or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline
www.epa.gov/otaq/imports or 734-214-4100

National Pesticide Information Center
www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) - www.epa.gov/opptintr/ppic or 1-202-566-0799

Safe Drinking Water Hotline - www.epa.gov/drink/hotline/index.cfm or 1-800-426-4791

Small Business Resources

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone/comments.htm or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc-hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.epa.gov/sbo/507program.htm

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www2.epa.gov/enforcement/small-businesses-and-enforcement

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www2.epa.gov/compliance/epas-audit-policy

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

Environmental Protection Agency

§ 22.1

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
- 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
- 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.
- 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(i) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(i); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9608, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the