

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:)

Continental Analytical Services, Inc.)
525 N. 8th Street)
Salina, Kansas 67401)

RCRA ID No. KSD981723729)

Respondent.)

Docket No. RCRA-07-2006-0283

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 Continental Analytical Services, Inc., 525 N. 8th Street, Salina, Kansas 67401 (CAS 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 Kansas 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 Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter K.A.R. 28-31). 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. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. The State of Kansas 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 on October 26, 1990, the Complainant proposes that Respondent be assessed a civil penalty of \$314,741.50, 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, Continental Analytical Services, Inc. is a Kansas Subchapter S corporation authorized to conduct business in the state of Kansas and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

6. Respondent, located at 525 North 8th Street, Salina, Saline County, Kansas, is a full-service analytical laboratory offering chemical analytical services to businesses, government agencies, municipalities and consulting firms. CAS employs approximately 34 people. CAS has operated at this location since approximately 1992, when CAS bought Wilson Laboratories, which operated the facility prior to that time.

7. Respondent generates hazardous waste as a result of its lab operations. Specifically, Respondent generates spent: methylene chloride, acetone, hexane, iso octane, methanol, methyl tertiary butyl ether (MTBE), and mercuric sulfate solution, as well as waste materials containing chloroform.

8. The wastes listed in paragraph 7 are “solid wastes” and also “hazardous wastes” within the meaning of K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference 40 C.F.R. Parts 260 and 261.

9. Once a waste is classified as hazardous waste, it is assigned a waste code pursuant to the regulations referenced in paragraph 8. The waste codes for the wastes listed in paragraph 7 are F001, F003, D001, D002, and U044.

10. Respondent filed a notification of hazardous waste activity on or about May 6, 1988. This notification was updated on or about February 21, 2003. Both notifications state that CAS is a “Kansas Small Quantity Generator” of hazardous waste. Kansas Small Quantity Generators generate less than 25 kg of hazardous waste per month.

11. Based on information gathered during the inspection and on information subsequently submitted by Respondent to EPA, Respondent generates at least 25 kg of hazardous waste per month and is therefore properly classified as a “Kansas Generator” pursuant to K.A.R. 28-31-2(d).

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

13. The EPA performed an inspection at Respondent’s facility on September 21, 2004

(hereinafter the September 2004 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/FAILURE TO COMPLY WITH APPLICABLE REGULATIONS

14. Complainant hereby incorporates the allegations contained in paragraphs 1 through 13 above as if fully set forth herein.

I.a. Illegal Treatment of Hazardous Waste

15. Section 3005 of RCRA and Section 65-3437 of the Kansas Statutes, Annotated (K.S.A.) require each person owning or operating a facility for the treatment, storage or disposal of hazardous waste identified or listed under Subtitle C of RCRA to have a permit for such activities.

16. At the time of the September 2004 inspection, Respondent was engaging in the practice of placing containers of waste methylene chloride and various other waste solvents under fume hoods in some of the labs at the facility and allowing the waste to evaporate. The fume hoods are vented to the outdoors and there are no filtration systems on the vents.

17. Allowing the waste solvents to evaporate is "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10, which is incorporated by reference at K.A.R. 28-31-1(a)(2).

18. Respondent has not obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA or K.S.A. 65-3437.

19. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and K.S.A. 65-3437.

I.b. Failure to Comply with Applicable Regulations

20. Facilities that operate TSDs without obtaining a permit are subject to full regulation as a TSD and must comply with the regulations for interim status facilities set forth at 40 C.F.R. Subpart 265, which are incorporated by reference at K.A.R. 28-31-1(a)(6).

21. At the time of the September 2004 inspection, Respondent was not complying with the following regulatory requirements:

Failure to close hazardous waste storage containers

22. The regulations at 40 C.F.R. § 265.173, as incorporated by reference at K.A.R. 28-31-1(a)(6), require that hazardous waste containers must remain closed except when adding or removing hazardous waste.

23. At the time of the September 2004 inspection, at a time when hazardous waste was not being added or removed, several containers of hazardous waste in various labs at Respondent's facility were not closed.

24. Respondent's failure to keep its hazardous waste containers closed is a violation of K.A.R. 28-31-1(a)(6).

Failure to conduct weekly inspections of hazardous waste containers

25. The regulations at 40 C.F.R. § 265.174, as incorporated by reference at K.A.R. 28-31-1(a)(6), require that hazardous waste container storage areas must be inspected at least weekly to check for leaks or deterioration.

26. At the time of the September 2004 inspection, Respondent's representatives stated to the inspector that they did not perform weekly inspections of hazardous waste storage areas.

27. Respondent's failure to conduct weekly inspections of hazardous waste storage areas is a violation of K.A.R. 28-31-1(a)(6).

Failure to provide adequate aisle space in the hazardous waste storage area

28. 40 C.F.R. § 265.35, as incorporated by reference at K.A.R. 28-31-1(a)(6), requires facilities to maintain aisle space sufficient to allow the unobstructed movement of personnel and emergency equipment.

29. At the time of the September 2004 inspection, one of the hazardous waste storage areas at the facility did not have sufficient aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in the area in the event of an emergency.

30. Respondent's failure to maintain adequate aisle space in a hazardous waste storage area is a violation of K.A.R. 28-31-1(a)(6).

31. 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 \$ 271,752.80 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

32. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, the Respondent shall pay a penalty of \$271,752.80. 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:

Ms. Deborah Finger, Compliance Officer
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.

33. Respondent shall immediately cease any treatment of hazardous waste at the facility and shall provide documentation to EPA which demonstrates that Respondent is disposing of its hazardous waste in accordance with applicable Kansas laws and regulations. Such documentation shall be sent to Ms. Deborah Finger at the address listed in paragraph 32 above within thirty (30) days of receipt of this Order.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

34. 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.

35. 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.

36. 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.

37. The total proposed penalty for Count I is \$ 271,752.80. 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 issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

E. SETTLEMENT CONFERENCE

38. 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.

39. 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.

40. 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.


41. 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

42. All submittals made pursuant to this Order, unless otherwise specified, shall be sent to Ms. Deborah Finger, Compliance Officer, ARTD/RESP, U.S. EPA Region 7, 901 N. 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:

Registered Agent
Continental Analytical Services, Inc.
525 North 8th Street
Salina, Kansas 67401.

9/28/06
Date


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