

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
2015 SEP -3 AM 9: 35

IN THE MATTER OF:)
)
Pat Studer)
d/b/a Studer Container Services)
520 Madison Avenue)
Kansas City, Missouri 64105)
Respondent)
)
Proceeding under Section 3008(a) of the)
Resource Conservation and Recovery)
Act as amended, 42 U.S.C. §§6928 (a) and (g))
_____)

**COMPLAINT,
COMPLIANCE ORDER
AND NOTICE OF
OPPORTUNITY FOR HEARING**
Docket No. RCRA-07-2015-0100

I. JURISDICTION

1. This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and in accordance with the United States Environmental Protection Agency's (EPA) 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 (Consolidated Rules of Practice), Title 40 Code of Federal Regulations (C.F.R.) Part 22.
2. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch (WEMM) of the EPA, Region 7, who has been duly delegated the authority to bring this action.
3. The Respondent is Pat Studer, d/b/a Studer Container Services, 520 Madison Avenue, Kansas City, Missouri 64105 (Respondent).
4. Based upon the facts alleged in this Complaint, Complainant proposes that Respondent perform the actions set forth in the Compliance Order below to address the violations of RCRA alleged in the Complaint.

5. 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. The state of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes 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. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. 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).

II. COMPLAINT

STATUTORY AND REGULATORY REQUIREMENTS

6. The duly authorized regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11 require that a person who generates a solid waste must determine if that waste is a hazardous waste.

7. Section 3007 of RCRA, 42 U.S.C. § 6927, RSMo §§ 260.380.1(9) and 260.390(7) and the duly authorized regulations at 10 C.S.R. 25-3.260(1)(A)4, require that a person who handles or has handled hazardous waste, generates hazardous waste or owns a “hazardous waste facility,” as that term is defined by RSMo §§ 260.360, must make available to EPA upon request all records relating to hazardous waste generation or management.

FACTUAL ALLEGATIONS

Facility Inspections

8. Pat Studer, d/b/a Studer Container Services, is located at 520 Madison Avenue (Studer Facility), is a Missouri business is primarily a scrap metal hauler that contracts with various companies. They also purchase a large amount of miscellaneous equipment/chemicals from businesses/auctions. These equipment/chemicals are mostly either sold, recycled, or used on-site. Pat Studer and Studer Container Services are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. 6903(15).

9. The Studer Facility has been operated by Pat Studer since 2005. It has been operating at this facility since 2007. Two people are currently employed at the Studer Facility.

10. Representatives of EPA conducted Compliance Evaluations of the Studer Facility on April 10-11, 2012 (the 2012 EPA Inspection) and again on January 29-30, 2015 (the 2015 EPA Inspection).

11. At the time of the 2012 EPA Inspection, the Studer Facility was cited for the following violations:

- a) 10 Code of State Regulations (10 CSR) 25-11.279(1) incorporating Title 40 Code of Federal Regulations (40 CFR) 279, Subparts E and F – Failure to meet the used oil transporter and processing (because used oil was stored for greater than 35 days) requirements for used oils.
- b) 10 CSR 5.262(1) incorporating 40 CFR 262.11 – Failure to perform hazardous waste determinations on multiple containers.

12. At the time of the 2015 EPA Inspection, the EPA Inspector identified the following solid waste streams at the Studer Facility, which required a hazardous waste determination, as she believed that some or all of it could contain hazardous waste:

- c) 21, 5-gallon pails of old paints
- d) One, 55-gallon blue drum containing approximately 5 gallons of hydraulic oil
- e) One, 55-gallon blue drum containing approximately 20 gallons of hydraulic oil
- f) Five, 55-gallon drums of hydraulic oil or soaps;
- g) Two, 5-gallon pails of hydraulic oil or soaps;
- h) One, 1-gallon jugs of hydraulic oil or soaps;
- i) Two, 275-300-gallon totes (one full and one approximately $\frac{3}{4}$ full) of oils;
- j) 10, 5-gallon pails of old chemicals;
- k) One, 275-300-gallon tote with approximately 100 gallons of hydraulic oil;
- l) Approximately 10, 8-foot lamps;
- m) Four HID lamps;
- n) Two, 275-300-gallon totes; and
- o) One, 55-gallon drum.

13. At the time of the 2015 EPA Inspection, the EPA Inspector observed that the chemicals and containers noted during the 2012 EPA Inspection remained on-site. When questioned by the EPA Inspector about this, Respondent Pat Studer stated that he had not shipped any chemicals off-site other than the contaminated soil generated from the spills and the old televisions.

14. At the time of the 2015 EPA Inspection, the EPA Inspector informed Respondent of the necessity to make hazardous waste determinations on the solid waste streams listed in the paragraph above.

Information Request Letters

15. Following the 2012 EPA's Inspection, the EPA, believing that the Respondent handles or may have handled hazardous waste at the Studer Facility, attempted to deliver Letters of Warning/Requests for Information issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, RSMo §§ 260.380.1(9) and 260.390(7) and the duly authorized regulations at 10 C.S.R. 25-3.260(1)(A)4, to Respondent. The letters were sent to gather information from Respondent concerning various containers and wastes that the Inspector observed during the inspection which were possibly hazardous wastes. The EPA's first attempt was sent on October 23, 2012. According to the signed certified mail green card, this letter was received by Respondent on October 25, 2012. Although a reply was requested to be made within 30 days, Respondent has never responded to this letter.

16. On January 29, 2015, during the 2015 EPA Inspection, the EPA inspector hand delivered the Request for Information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, RSMo §§ 260.380.1(9) and 260.390(7) and the duly authorized regulations at 10 C.S.R. 25-3.260(1)(A)4, to Mr. Studer. After delivering the letter, the inspector completed an affidavit on February 18, 2015, stating that she had delivered the letter on January 29, 2015.

17. To date, the EPA has not received a response to the EPA's requests for information. Each of the letters provided a 30 day response time period. The time period for the letter delivered on January 29, 2015, expired on February 28, 2015.

ALLEGATIONS OF VIOLATIONS

Count I: Failure to Perform Hazardous Waste Determinations

18. The allegations set forth in paragraphs 6 through 16 above are incorporated herein.

19. The regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11 require that a person who generates a solid waste must determine if that waste is a hazardous waste.

20. Although notified at the time of the 2015 EPA Inspection, and subsequent to the inspection, of the necessity to make hazardous waste determinations on the solid waste streams listed in paragraph 12 above, to date Studer Container Services has not performed hazardous waste determinations on these solid wastes.

21. Respondent's failure to perform hazardous waste determinations on the solid wastes listed above is a violation of 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11. It is thus a violation of 42 U.S.C. § 6928.

Count II: Failure to Respond to Information Request Letter

22. Respondent's failure to the Information Request Letters received by Respondent on October 23, 2012 and on January 29, 2015 are a violation of Section 3007 of RCRA, 42 U.S.C. § 6927, RSMo §§ 260.380.1(9) and 260.390(7) and the duly authorized regulations at 10 C.S.R. 25-3.260(1)(A)4. These actions are thus a violation of Section 3008 of RCRA, 42 U.S.C. § 6928.

III. COMPLIANCE ORDER

23. Based upon the facts alleged in this Complaint, and pursuant to §3008(a) of RCRA, Respondent is hereby ordered to:

- a. Within thirty (30) days of the date of this Complaint, perform hazardous waste determinations in accordance with 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11, on all of the solid waste materials listed in paragraph 12, above, as well as any other solid wastes being stored at the Studer Container Services facility, and provide written results of those determinations to EPA's representative listed in paragraph 24 below;
- b. Within sixty (60) days of the date of this Complaint, submit a plan for EPA approval outlining the proposed procedures for the disposal of any wastes determined to be hazardous waste, including where the waste will be disposed, who will transport the waste, and a schedule for disposal of the waste;
- c. Implement the plan as approved by EPA in accordance with the schedules contained in the approved plan.
- d. Within 30 days of the effective date of this Complaint, Respondent shall deliver a complete and accurate response all of the requests set forth in Exhibit 1, which is attached to this Complaint.

24. All documents required by paragraph 23 above shall be submitted to the following EPA representative at the address below:

Deborah Bredehoff, Environmental Engineer
AWMD/WEMM
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

EPA's representative identified in this paragraph will review and either approve or provide comments on the plan. If EPA's comments require modifications to or revisions of the plan, Respondent shall modify or revise the plan in accordance with such comments and then implement the approved plan. Respondent's failure to modify the document in accordance with EPA's comments shall constitute failure to comply with this Complaint.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

25. Respondent may request a hearing to contest any material fact contained in the Complaint, or to contest the appropriateness of the proposed penalty, by filing an answer in accordance with the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk at:

Regional Hearing Clerk
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Raymond C. Bosch, Office of Regional Counsel, at the same address.

26. Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondents' right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer. Once a Default Order is issued, the injunctive relief set forth in the Compliance Order above will be required without further proceedings.

V. SETTLEMENT CONFERENCE

27. Whether or not 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 contact Raymond C. Bosch, Office of Regional Counsel, U.S. EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551-7501.


28. 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.

VI. EFFECTIVE DATE

29. This Complaint and Notice of Opportunity for Hearing shall become effective on the date of signature of the Chief of the Waste Enforcement and Materials Management Branch of the Air and Waste Management Division, EPA Region 7.

9-2-2015

Date


Raymond C. Bosch
Assistant Regional Counsel
Office of Regional Counsel

9-2-15

Date

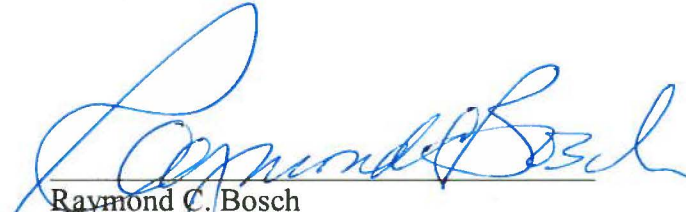

Donald Toensing, Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

Attachments: Exhibit One, Information Request Letter
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

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, 11201 Renner Boulevard, Lenexa, KS 66219, on September 3rd, 2015. A true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing 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, on September 3rd, 2015 to

Pat Studer
d/b/a Studer Container Services
520 Madison Avenue
Kansas City, Missouri 64105


Raymond C. Bosch
Assistant Regional Counsel