



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

(C-14J)

January 8, 2008

Judge Spencer T. Nissen
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Re: Fujifilm Graphic Systems U.S.A., Inc.
Docket No. RCRA-05-2007-0018.

Dear Judge Nissen:

Pursuant to your Order, dated November 30, 2007, please find Complainant's Prehearing Exchange for this civil administrative action which I filed today with the Regional Hearing Clerk.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey M. Trevino".

Jeffery M. Trevino
Associate Regional Counsel

Attachment

cc: Sonja Brooks-Woodard
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, IL 60604-3590

David A. Roth, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, NJ 07095-0988

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

2008 JAN -8 PM 3: 20

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Fujifilm Graphic Systems U.S.A., Inc.) Docket No. RCRA-05-2007-0018.
)
Respondent)

COMPLAINANT PREHEARING EXCHANGE

On November 30, 2007, the Court ordered the parties of this civil administrative action to file Prehearing Exchanges by January 8, 2008. Therefore, Complainant hereby files its Prehearing Exchange.

I. Desired or Required Hearing Location

Complainant prefers the Court hold the hearing in Chicago, Illinois, as provided by sections 22.21(d) and 22.19(d) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("the Consolidated Rules"), 40 C.F.R. §§ 22.21(d) and 22.19(d).

However, if the Court chooses to hold the hearing at a suitable location in the county where the Respondent resides (DuPage County), or conducts the business which the hearing concerns (DuPage County), Complainant does not object.

Complainant requests approximately four (4) hours to complete its direct-examination of its witnesses for its case-in-chief.

II. Prospective Witness and Testimony

A. Jamie Paulin
Environmental Scientist
Compliance Section 1
RCRA Branch
Land and Chemicals Division (LR-8J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590
(312) 886-1771

Ms. Paulin will testify to her educational background, employment experience, the following factual allegations of the complaint, and the proposed civil penalty.

1. Respondent was a corporation incorporated under the laws of the State of New York.
2. Respondent owned or operated real estate and buildings located at 850 Central Avenue, Hanover Park, Illinois, (the Facility”).
3. Respondent’s operations included the demonstration of photographic equipment.
4. On or about January 20, 2001, Respondent notified U.S. EPA of its hazardous waste activities at the facility pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.
5. Respondent was a generator of hazardous waste as defined in 35 IAC § 720.110 and 40 C.F.R. § 260.10.
6. Respondent generated hazardous waste which included a “D002” corrosive material and a “D001” flammable material.
7. Respondent has never had a storage treatment and disposal of hazardous waste permit pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).
8. Respondent has never had interim status to store treat and dispose of hazardous waste pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
9. Respondent stored approximately five-hundred (500) gallons of hazardous waste at its facility for 117 days, beginning in the Winter of 2005, and continuing to the Spring of 2006 (count one (1)).

10. Respondent stored one (1) 55-gallon container of hazardous waste at its facility for 146 days, beginning in the Winter of 2005, and continuing to the Spring of 2006 (count one (1)).
11. As of April 20, 2006, Respondent had failed to test and maintain its fire protection equipment (count two (2)).
12. As of April 20, 2006, Respondent's Contingency Plan failed to include emergency contacts' home addresses, the description, capability and location of all emergency equipment, a description of alternate evacuation routes, and Respondent had failed to submit its Contingency Plan to all local police departments, fire departments, hospitals, and state and local emergency response teams (count three (3)).
13. As of April 20, 2006, Respondent's Training Program failed to familiarize its personnel them with emergency procedures, emergency equipment, and emergency systems, including; procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment; familiarizing them with key parameters for automatic waste feed cut-off systems; familiarizing them with communications or alarm systems; familiarizing them with responses to fire or explosions; familiarizing them with responses to groundwater contamination incidents; familiarizing them with shutdown of operations (count four (4)).
14. Respondent failed to provide its personnel with any 2004 Annual Review of its initial training (count four (4)).
15. On April 20, 2006, Respondent had four (4) satellite accumulation containers in its hazardous waste storage area which were not in use, but in storage, and not closed (count five (5)).
16. The proposed civil penalty of \$89,856.00 is appropriate pursuant to section 3008 of RCRA, 42 U.S.C. § 6928, and the U.S. EPA 1990 RCRA Civil Penalty Policy, dated June 23, 2003.

Complainant respectfully reserves the right to amend its Witness(es) to be Called upon timely notice to the Court and Respondent.

III. Documents and Exhibits

- A. U.S. EPA Compliance Evaluation Inspection Report for Enovation Graphic Systems, Inc., 850 Central Avenue, Hanover Park, Illinois, dated April 20, 2006. Bates Stamp Nos. 000000-000073. (Complainant Exhibit No. 1).

- B. U.S. EPA Notice of Violation to Enovation Graphic Systems, Inc., 850 Central Avenue, Hanover Park, Illinois, dated September 19, 2006. Bates Stamp Nos. 000074-000077. (Complainant Exhibit No. 2).
- C. Fujifilm Graphic System U.S.A., Inc.'s, Response to U.S. EPA Notice of Violation to Enovation Graphic Systems, Inc., 850 Central Avenue, Hanover Park, Illinois, dated October 13, 2006. Bates Stamp Nos. 000078-000481. (Complainant Exhibit No. 3).
- D. U.S. EPA Pre-Filing Notice and Opportunity to Confer Letter to Brian Stenson, Fujifilm Graphic Systems U.S.A., Inc., dated September 04, 2007. Bates Stamp Nos. 000482-000489. (Complainant Exhibit No. 4).
- E. U.S. EPA 1990 RCRA Civil Penalty Policy, dated June 23, 2003. Bates Stamp Nos. 000490-000597. (Complainant Exhibit No. 5).
- F. Dun & Bradstreet Report for Fujifilm Graphic Systems U.S.A., Inc., printed September 26, 2007. Bates Stamp Nos. 000598-000619. (Complainant Exhibit No. 6).
- G. U.S. EPA 1990 RCRA Civil Penalty Policy Penalty Computation Worksheets and Narratives for Fujifilm Graphic System U.S.A., Inc. Bates Stamp Nos. 000620-000659. (Complainant Exhibit No. 7).
- H. U.S. EPA Notice to State of Illinois of Commencement of Action against Fujifilm Graphic System U.S.A., Inc., dated October 4, 2007. Bates Stamp Nos. 000660-000661. (Complainant Exhibit No. 8).

Complainant respectfully reserves the right to amend its list of Documents and Exhibits upon timely notice to the Court and Respondent.

IV. Responses to Specific Requests of the Court

1. Provide a copy of the notification to the State of Illinois of the commencement of this action as alleged in paragraph 6 of the complaint.

RESPONSE: Attached as Complainant Exhibit No. 8, Bates Stamp Nos. 000660-000661.

2. Provide a copy of the notification of hazardous waste activity filed on or about January 20, 2001, referred to in paragraph 28 of the complaint.

RESPONSE: Not attached. We are awaiting this State of Illinois document from the State of Illinois. Once we receive it, we will forward it to the Court, Regional Hearing Clerk, and Respondent.

3. Provide a copy of the report of inspection of Respondent's facility.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

4. Provide a summary of any evidence supporting the allegation in paragraph 35 of the complaint that Respondent stored approximately 500 gallons of hazardous waste at its facility or 117 days, beginning in the Winter of 2005, and continuing to the Spring of 2006.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

5. Provide a summary of any evidence supporting the allegation in paragraph 36 of the complaint that Respondent stored one 55-gallon container of hazardous waste at its facility or 146 days, beginning in the Winter of 2005, and continuing to the Spring of 2006.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

6. Provide a summary of any evidence supporting the allegation in paragraph 41 of the complaint that, as of April 20, 2006, Respondent failed to test and maintain ins fire protection equipment.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

7. Provide a summary of any evidence, including Respondent's Contingency Plan, supporting the allegations in paragraph 45 of the complaint that, as of April 20, 2006, Respondent's Contingency Plan failed to include emergency contacts' home addresses, the description, capability and location of all emergency equipment, a description of alternate evacuation routes, and Respondent had failed to submit its Contingency Plan to all local police departments, fire departments, hospitals, and state and local emergency response teams.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

8. Provide a summary of any evidence supporting the allegation in paragraph 51 of the complaint that, as of April 20, 2006, Respondent's Training Program failed to familiarize its personnel them with emergency procedures, emergency equipment, and emergency systems.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

9. Provide a summary of any evidence supporting the allegation in paragraph 52 of the complaint that Respondent failed to provide its personnel with any 2004 Annual Review of its initial training.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

10. Provide a summary of any evidence supporting the allegation in paragraph 58 of the complaint that, On April 20, 2006, Respondent had four satellite accumulation containers in its hazardous waste storage area which were not in use, but in storage, and not closed.

RESPONSE: Attached as Complainant Exhibit No. 1, Bates Stamp Nos. 000000-000073.

11. Provide a summary of any expert testimony.

RESPONSE: None.

12. Provide a copy of the civil penalty computation worksheets and explain in detail the calculation of the proposed penalty.

RESPONSE: Attached as Complainant Exhibit No. 7, Bates Stamp Nos. 000620-000659.

Respectfully submitted,



Jeffery M. Trevino
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Office of Regional Counsel
Region 5
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
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Fujifilm Graphic Systems U.S.A., Inc.)	Docket No. RCRA-05-2007-0018.
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Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that today I filed personally with Sonja Brooks-Woodard, Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (R-19J), Chicago, Illinois, 60604-3590, the original document entitled COMPLAINT PREHEARING EXCHANGE for this civil administrative action and that I issued to the Court and Respondent by first class mail a copy of the original document:

Judge Spencer T. Nissen
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

David A. Roth, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, NJ 07095-0988



Jeffery M. Trevino
Associate Regional Counsel

8 January 2008

Dated