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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

IN THE MATTER OF:)

Walter D. Estes)
d/b/a/ House of Chrome)
91 Highway 34)
Batavia, Iowa 52533)

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-07-2013-0026

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 Walter D. Estes, d/b/a/ House of Chrome, Batavia, Iowa (House of Chrome).

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 Iowa has not been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA enforces the federal RCRA program in Iowa, pursuant to federal regulations. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order requiring compliance or compliance within a specified time period pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928.

II. COMPLAINT

FACTUAL ALLEGATIONS

6. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Parts 260 and 261. Once it is determined that a solid waste is a hazardous waste, it is categorized according to waste codes set forth at 40 C.F.R. Part 261.

7. Section 3005 of RCRA, 42 U.S.C. §6925, requires facilities operating a hazardous waste storage facility to obtain a permit for such activities.

8. Generators of hazardous waste that generate between 100 kilograms/month and 1,000/kg/month may store hazardous waste at their facility for up to 180 days, provided they comply with the conditions for small quantity generators set forth at 40 C.F.R. §262.34. If the generator fails to comply with the conditions, it may not store hazardous waste at its facility for any amount of time, and is thus operating a hazardous waste storage facility without a permit.

9. Walter D. Estes, d/b/a/ House of Chrome, located at 91 U.S. Highway 34, Batavia, Jefferson County, Iowa, is an Iowa business that does custom chrome plating on items such as automobile hood ornaments. Walter D. Estes and House of Chrome are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

10. House of Chrome has been operated by Walter D. Estes since approximately 2003, when Mr. Estes bought House of Chrome from Mr. Harold Brewer.

11. Representatives of EPA visited the facility several times between February 21, 2006 and May 24, 2006.

12. During these visits, there was no activity observed and the doors were padlocked shut. EPA representatives took photos of the exterior of the building. On May 4, 2006, EPA observed that the electrical power to the building had been turned off at some time between February 21, 2006 and May 4, 2006.

August 3, 2006 RCRA Inspection

13. On or about August 3, 2006, EPA representatives performed a RCRA Compliance Evaluation Inspection (CEI) at House of Chrome (the August 2006 inspection). The inspection was conducted using electricity from a portable electrical generator, as the electric power at the facility was still turned off.

14. During the August 2006 inspection, a large volume of various unknown liquid and solid chemicals was present at the facility. At that time, Mr. Estes stated that he was having new electrical systems installed and that he planned to reopen and use the chemicals that were in storage at the facility.

15. Also during the August 2006 inspection, there was a 55-gallon container of rinse water sludge was present at the facility. The inspector left a Notice of Preliminary Finding (NOPF) at the facility indicating that House of Chrome had failed to perform a hazardous waste determination on this container of rinse water sludge.

July 19, 2007 RCRA Inspection

16. On July 19, 2007, EPA representatives again performed a RCRA CEI at House of Chrome (the July 2007 inspection). As was the case during the August 2006 inspection, the CEI was conducted using a portable electric generator as the electric power was still not turned on.

17. During the July 2007 inspection, Mr. Estes stated that he didn't have any waste at the facility; however, there was a large volume of unknown liquid and solid chemicals being stored at the facility.

18. Also during the July 2007 inspection, Mr. Estes stated that although he worked approximately two nights per week at House of Chrome, Mr. Estes was not performing any chrome plating at that time. Mr. Estes also stated that all of the chemicals were product that he was going to use and that he was going to get the electricity turned back on and resume plating operations.

19. At the time of the July 2007 inspection, there was a 55-gallon drum containing approximately 20 gallons of muriatic acid used in the copper solution used in the plating process. The drum appeared to be corroded.

20. In response to a Letter of Warning issued after the July 2007 inspection, Mr. Estes sent a copy of an electrical bill for House of Chrome to EPA to demonstrate that the electricity had been reconnected and in the letter accompanying the electrical bill, Mr. Estes stated that the materials being stored at House of Chrome were useable products.

March 11, 2009 RCRA Inspection

21. On March 11, 2009, EPA representatives again performed a RCRA CEI at House of Chrome (the March 2009 inspection).
22. At the time of the March 2009 inspection, there was still a large volume of unknown liquid and solid chemicals being stored at House of Chrome and Mr. Estes again indicated that the materials were useable products. However, Mr. Estes also stated that many of the chemicals in storage at that time were the same materials that had been in storage during the previous inspection.
23. During the March 2009 inspection, Mr. Estes stated that throughout 2008, he had resumed chrome plating activities approximately two times per week, on his days off from his regular job or after work. He also stated that he was planning to increase plating operations again at some time during March 2009 as he was planning to retire from his regular job.
24. At the time of the March 2009 inspection, House of Chrome was also performing nickel plating operations.

July 24, 2012 RCRA Inspection

25. On July 24, 2012, an EPA representative performed another RCRA CEI at House of Chrome (the July 2012 inspection).
26. During the July 2012 inspection, Mr. Estes stated that he did not remember the last time he had performed any plating operations at House of Chrome; however, he produced a book of duplicate sales receipts. Most of the receipts were not dated, but the most recent date on any of the receipts was in 2005.
27. During the July 2012 inspection, although the electricity had been reconnected, only one room was lighted because of bad wiring to the lighting in the rest of the building. The visual inspection was conducted by the light of a flashlight.
28. Also during the July 2012 inspection, Mr. Estes stated that he did not intend to resume plating operations. When the inspector asked what Mr. Estes intended to do with the chemicals, Mr. Estes stated that he would have to dispose of them so that he could sell the building.
29. The inspector informed Mr. Estes that he would have to perform hazardous waste determinations on the materials before disposing of them.

30. The following chemicals were present at House of Chrome at the time of the July 2012 inspection:

- a. a tank with a capacity of approximately 100 gallons holding approximately 60 gallons of water mixed with a metal cleaning solution Mr. Estes stated was "Metal Cleaner 375"¹;
- b. a 250-gallon tank holding approximately 100 gallons of a solution containing chromium trioxide, which is a hazardous waste bearing the waste code D007;
- c. one five-gallon container, in secondary containment, of brightener solution for the chrome plating process that was approximately half full;
- d. one five-gallon container, in secondary containment, of brightener solution for nickel plating that was labeled "corrosive" and was approximately half-full;
- e. one black 55-gallon drum with approximately one inch of liquid in the bottom that Mr. Estes said contained a cleaner used to neutralize pot metal so that copper would adhere to it;
- f. one 150-gallon covered tank that held approximately 50 gallons of chemicals used in the nickel plating process;
- g. one black 55-gallon drum in secondary containment that held approximately 35 to 40 gallons of unused muriatic acid;
- h. one open 55-gallon drum holding approximately 15 to 20 gallons of a mixture of muriatic acid and water that was used to copper-coat pot metal and that had a wire basket of copper nuggets suspended over the mixture; and
- i. one 55-gallon drum holding approximately five or six gallons of liquid that was a "build" solution used to add a thicker layer of copper onto pot metal.

¹ The facility did not provide a Material Safety Data Sheet (MSDS) for this product, nor could he locate any information about a product with the name "Metal Cleaner 375" on the internet. In addition, no MSDS sheets were provided for the wastes listed in paragraphs 30.c. through i.

ALLEGATIONS OF VIOLATIONS

Count I: Operation of a Hazardous Waste Storage Facility Without A Permit

31. The allegations set forth in paragraphs 6 through 30 above are incorporated herein.
32. The unused chromium trioxide solution listed in paragraph 30b above is a hazardous waste bearing the waste code D007.
33. Storage of 100 gallons of waste chromium trioxide constitutes generation of at least 100 kg of hazardous waste, making House of Chrome a small quantity generator at the time of the July 2012 inspection.
34. Pursuant to 40 C.F.R. § 262.34(d), small quantity generators may store hazardous waste at their facility for a maximum of 180 days. In addition, 40 C.F.R. § 261.4(c) provides that hazardous waste stored in a tank for more than 90 days after production has ceased is not exempt from regulation as a hazardous waste.
35. The waste chromium trioxide has been in storage at the facility at a minimum since the July 2012 inspection, which is more than 180 days.
36. House of Chrome has never applied for or received a permit to operate a RCRA hazardous waste storage facility.

Count II: Failure to Perform Hazardous Waste Determinations

37. The allegations set forth in paragraphs 6 through 30 above are incorporated herein.
38. Pursuant to 40 C.F.R. § 262.11, generators of solid waste must determine if the solid waste is a hazardous waste.
39. House of Chrome has not performed hazardous waste determinations on any of the solid wastes listed in paragraph 30a – i, above.
40. Respondent's failure to perform hazardous waste determinations on the solid wastes listed in paragraph 30a – i, above is a violation of 40 C.F.R. § 262.11.

III. COMPLIANCE ORDER

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

- a. Within sixty (60) days of the effective date of this Complaint, submit financial information demonstrating that Respondent has the financial ability to perform the activities required by this Compliance Order.
- b. Within sixty (60) days of the date of this Complaint, perform hazardous waste determinations in accordance with 40 C.F.R. § 262.11, on all of the solid waste materials listed in paragraph 30a – i, above, as well as any other solid wastes being stored at the House of Chrome facility, and provide written results of those determinations to EPA's representative listed in paragraph 42 below;
- c. 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;
- d. Immediately upon the effective date of this Complaint, Respondent shall refrain from disposal of any solid or hazardous waste at the facility until the plan required by paragraph 41.c. is approved; and
- e. Implement the plan as approved by EPA in accordance with the schedules contained in the approved plan.

42. Review and approval of the plan required by paragraph 41.c. shall be as follows. Respondent shall submit the plan to:

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

43. 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 Ms. Belinda Holmes, Office of Regional Counsel, at the same address.

44. Respondents' 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

45. 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 Ms. Belinda Holmes, Office of Regional Counsel, U.S. EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551-7714.

46. 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

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

*In the matter of
House of Chrome
Complaint, Compliance Order and
Notice of Opportunity for Hearing
Docket No: RCRA-07-2013-0026
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IT IS SO ISSUED AND ORDERED:

8-9-13

Date



Belinda Holmes
Senior Counsel
Office of Regional Counsel

8-14-13

Date



Donald Toensing, Chief
Waste Enforcement and Materials Management Branch

Attachment: 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