



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

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CT Corporation System, Registered Agent for
Envirosafe Services of Ohio, Inc.
1300 East Ninth Street
Cleveland, OH 44114

Re: In the Matter of Envirosafe Services of Ohio, Inc., Oregon, Ohio
Docket No: CERCLA-05-2008-0006

Dear Registered Agent:

I have enclosed a Complaint filed against Envirosafe Services of Ohio, Inc. under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b). The Complaint alleges violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later. Mail your answer to Harriet Croke, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference by contacting James Entzminger at (312) 886-4062. If you have any legal questions, please contact Harriet Croke, Assistant Regional Counsel at (312) 353-4789.

Sincerely yours,

A handwritten signature in black ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosures (3) Administrative Complaint
Enforcement Response Policy
Civil Administrative Rules of Practice

cc: Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)
Ms. Nancy Dragani, Co-Chairperson (w/ enclosure)
Jeff Beattie (w/ enclosure)
Mel House (w/ enclosure)
Ohio SERC

Douglas Roberts, President (w/ enclosure)
Envirosafe Services of Ohio, Inc.
876 Otter Creek Road
Oregon, OH 43616-1243 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Envirosafe Services of Ohio, Inc.
876 Otter Creek Road
Oregon, OH 43616-1243

Respondent.

(**Docket No: CERCLA-05-2008-0006**
(
(**Proceeding to Assess a Civil Penalty**
(**under Section 109(b) of the**
(**Comprehensive Environmental**
(**Response, Compensation, and Liability**
(**Act.**
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(

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US EPA REGION V

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b).

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 2, Superfund Division, Region 5, United States Environmental Protection Agency (EPA).

3. The Respondent is Envirosafe Services of Ohio, Inc., an Ohio corporation, doing business in the State of Ohio

Statutory and Regulatory Background

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

General Allegations

5. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. At all times relevant to this Complaint, Respondent was in charge of the Facility located at 876 Otter Creek Road, Oregon, Ohio (Facility).

7. Respondent's Facility consists of buildings, structures, installations, equipment, pipe or pipeline, landfill, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

8. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

9. Resource Conservation and Recovery Act hazardous waste code F039 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. Resource Conservation and Recovery Act hazardous waste code F039 has a reportable quantity of one pound, as indicated at 40 C.F.R. Part 302, Table 302.4.

11. On February 3, 2007, at or about 10:30 a.m., Respondent's Facility released approximately 50-100 gallons of Resource Conservation and Recovery Act hazardous waste code F039 (the Release).

12. In a 24 hour time period, the Release of Resource Conservation and Recovery Act hazardous waste code F039 exceeded the one pound reportable quantity.

13. During the Release approximately 417 pounds spilled, leaked, pumped, poured, emptied, discharged, or escaped, into the land surface or subsurface strata, or land.

14. The Release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

15. Respondent had knowledge of the Release on February 3, 2007, at approximately 10:30 a.m.

16. Respondent notified the NRC of the Release on February 3, 2007, at 5:45 p.m.

17. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

18. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Proposed CERCLA Penalty

19. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

20. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires the Administrator of EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice requires, when assessing an administrative penalty under Section 109(b) of CERCLA.

21. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$28,340 for the CERCLA violation alleged in this Complaint.

22. Complainant calculated the CERCLA penalty by evaluating the facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (dated September 30, 1999)," a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized

Harriet Croke to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Harriet Croke at (312) 353-4789. Her address is:

Harriet Croke (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Terms of Payment

Respondent may pay the proposed penalty for the CERCLA violation by sending a certified or cashier's check, payable to the "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The CERCLA check must note the case title of this matter: In the Matter of EnviroSAFE Services of Ohio, Inc. and the docket number of this Complaint.

A transmittal letter, stating the case title, Respondent's complete address, and the case docket number must accompany the payment. Respondent must send a copy of the CERCLA check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

James Entzminger
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Harriet Croke
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Alternatively, Respondent may pay by wire transfer to the Federal Reserve Bank of New York, Routing/ABA Number 021030004 for Account Number 68010727, EPA. The wire payment must have the appropriate Docket Number.

This civil penalty is not deductible for federal tax purposes.

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no

knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and,
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

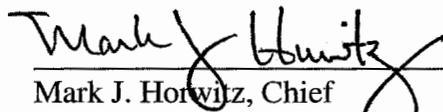
Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact:

James Entzminger
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-4062

Respondent's request for an informal settlement conference will not extend the 30 day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process.

EPA encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: April 16, 2008



Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 2
Superfund Division
U.S. EPA Region 5

In the Matter Of:

Envirosafe Services of Ohio, Inc., Oregon, Ohio
Administrative Complaint, CERCLA Section 103

Docket No: CERCLA-05-2008-0006

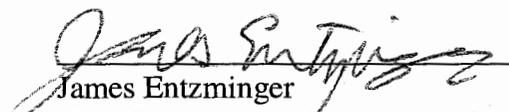
Certificate of Service

I, James Entzminger, certify that I filed the original and one copy of the Administrative Complaint, docket number CERCLA-05-2008-0006 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the Enforcement Response Policy, by placing them in the custody of the United States Postal Service addressed as follows:

CT Corporation System, Registered Agent for
Envirosafe Services of Ohio, Inc.
1300 East Ninth Street
Cleveland, OH 44114

Douglas Roberts, President
Envirosafe Services of Ohio, Inc.
876 Otter Creek Road
Oregon, OH 43616-1243

on the 16 day of April, 2008.


James Entzminger
U.S. Environmental Protection Agency
Region 5

In the Matter Of:
Envirosafe Services of Ohio, Inc., Oregon, Ohio
Administrative Complaint, CERCLA Section 103
Docket No: CERCLA-05-2008-0006

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