



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

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Silvano V. Boswell, General Manager
North American EN, Incorporated
776 Lunt Avenue
Elk Grove Village, Illinois 60007

Re: Administrative Complaint and Compliance Order
North American EN, Incorporated
EPA ID No.: ILD082068214 **RCRA-05-2007-0015**

Dear Mr. Boswell:

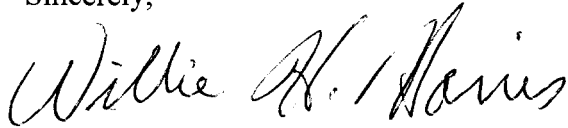
Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the United States Environmental Protection Agency's (U.S. EPA's) determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 *et seq.*, by North American EN, Incorporated (the facility). U.S. EPA based its determination on the February 28 and November 28, 2005, inspections of the facility located at 450 Crossen Avenue, Elk Grove Village, Illinois, and the facility's U.S. EPA files. The general allegations in the Complaint state the reasons for the U.S. EPA's determination.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for hearing with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Sherry L. Estes, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, U.S. EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with U.S. EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with U.S. EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with the Land and Chemicals Division staff, please write to Todd Brown, United States Environmental Protection Agency, RCRA Branch (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Mr. Brown may also be reached at (312) 886-6091.

Sincerely,

A handwritten signature in black ink that reads "Willie H. Harris". The signature is written in a cursive style with a large, prominent initial "W".

Willie H. Harris, P.E.
Chief
RCRA Branch
Land and Chemicals Division

Enclosure

cc: Todd Marvel, Illinois Environmental Protection Agency (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**North American EN, Inc.
450 Crossen Avenue
Elk Grove Village, IL 60007**

U.S. EPA ID No.: ILD082068214

Respondent

)
) **DOCKET NO. RCRA-05-2007-0015**
)
)
)
)
)
)
)
)
)
)
)

2007 SEP 27 AM 10:16
REGIONAL OFFICE
EPA REGION 5

ADMINISTRATIVE COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to Sections 22.01(a)(4), 22.13 and 22.37 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

3. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

4. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986). The Administrator of U.S. EPA granted Illinois final authorization to administer certain HSWA and additional RCRA requirements effective March 5, 1988, 53 Fed. Reg. 126 (January 5, 1988); April 30, 1990, 55 Fed. Reg. 7320 (March 1, 1990); June 3, 1991, 56 Fed. Reg. 13595 (April 3, 1991); August 15, 1994, 59 Fed. Reg. 30525 (June 14, 1994); May 14, 1996, 61 Fed. Reg. 10684 (March 15, 1996); and October 4, 1996, 61 Fed. Reg. 40520 (August 5, 1996). The U.S. EPA-authorized Illinois regulations are codified at 35 Illinois Administrative Code (IAC) Part 703 *et seq.* See also 40 C.F.R. § 272.700 *et seq.*

7. U.S. EPA has provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Regulatory Background

8. 35 IAC § 703.121(a)(1) states that no person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation without a RCRA permit for the hazardous waste management facility.

9. 35 IAC § 722.134(a) provides that a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, among other things, the generator complies with 35 IAC § 722.134(a)(4).

10. 35 IAC § 722.134(a)(4) requires that a generator of hazardous waste comply with the requirements for owners or operators in 35 IAC Part 725, Subparts C and D, and with 35 IAC §§ 725.116 and 728.107(a)(5).

11. 35 IAC Part 725, Subpart D, requires, among other things, that each owner or operator of a hazardous waste management facility have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. See, 35 IAC § 725.151(a).

12. Specific requirements for the content of a contingency plan are provided in 35 IAC § 725.152.

13. 35 IAC § 725.116(a) requires that facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties

in a way that ensures the facility's compliance with the requirements of 35 IAC Part 725. As required under 35 IAC § 725.116(d)(3), the owner or operator must also maintain a written description of the type and amount of introductory and continuing training that will be given to each person, by job title, when that title relates to hazardous waste management.

14. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. See, 35 IAC § 725.116(a)(2).

15. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including the following where applicable: A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment; B) Key parameters for automatic waste feed cut-off systems; C) Communications or alarm systems; D) Response to fires or explosions; E) Response to groundwater contamination incidents; and F) Shutdown of operations. See, 35 IAC § 725.116(a)(3).

16. Each new facility employee must successfully complete the training program within six months after the date of his or her entry into employment or assignment to a facility or to a new position at a facility. See, 35 IAC § 725.116(b).

17. All facility personnel must take part in an annual review of this training. See, 35 IAC § 725.116(c).

18. The owner or operator of a hazardous waste management facility must maintain the following documents and records at the facility: 1) The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job; 2) A written job description for each position related to hazardous waste management; 3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management; and 4) Records that document that the training or job experience required under 35 IAC §§ 725.116(a), (b), and (c) has been given to and completed by facility personnel.

19. Training records for current personnel must be kept until closure of the facility. Training records for former employees must be kept for at least three years from the date the employee last worked at the facility. See, 35 IAC § 725.116(e).

20. Generators of hazardous waste must also comply with the Standards Applicable to Generators of Hazardous Waste set forth at 35 IAC Part 722.

General Allegations

21. The Respondent is North American EN, Inc., was at all times relevant to the allegations in this Complaint, the owner and/or operator, as defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 450 Crossen Avenue, Elk Grove Village, Illinois 60007 (the facility). As of March 2006, Respondent moved its facility to 776 Lunt Avenue, Elk Grove Village, Illinois 60007.

22. Respondent is and was at all times relevant to this Complaint, a corporation incorporated under the laws of Illinois.

23. Respondent is a "person" as defined by 35 IAC § 720.110, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

24. Respondent performs electroless nickel plating operations at its facility.

25. At all times relative to this Complaint, Respondent generated hazardous wastes on-site from its manufacturing operations.

26. These hazardous wastes included: spent nitric acid solutions, possessing the characteristic of corrosivity; ion exchange columns possessing the characteristic of toxicity (Hazardous Waste Number D007); and spent electroless nickel solution, possessing the characteristics of corrosivity and toxicity (Hazardous Waste Numbers D002 and D007).

27. According to Respondent, the spent nitric acid solutions are generated from the continual use of nitric acid in a cleaning operation, and are used up until the point they are shipped off-site as hazardous waste. While on-site, the nitric acid is stored in three 700-gallon storage tanks.

28. The spent ion exchange columns are generated from wastewater treatment operations to remove nickel and chromium, and are accumulated on-site prior to off-site shipment.

29. The spent electroless nickel solution is accumulated on-site in two storage tanks. One of these tanks has a capacity of 4,500 gallons, the other has a capacity of 850 gallons.

30. Respondent had two separate analyses performed on the spent electroless nickel solution in April, 2005. Both analyses included pH; and the Toxicity Characteristic Leaching Procedure (TCLP) to determine if the waste possessed the characteristic of toxicity for arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

31. The results of one of these analyses demonstrated that the spent electroless nickel solution possessed the characteristic of toxicity as a result of its chromium concentration.
32. Respondent manifested this waste stream off-site as a hazardous waste, on at least one occasion, in April of 2005.
33. Respondent's facility first notified U.S. EPA of its status as a generator of hazardous waste on or about August 1, 1980.
34. Respondent has never applied for or been issued a RCRA Permit for the on-site storage of hazardous waste at its facility.
35. Respondent has never applied for or been granted interim status for the on-site storage of hazardous waste at its facility.
36. Respondent submitted Annual Hazardous Waste Reports to the Illinois Environmental Protection Agency for the years 2001 through 2005.
37. In each of the above-mentioned Annual Reports, Respondent identified its generator status as that of a large quantity generator of hazardous waste (i.e. greater than 1000 kg of hazardous waste in a calendar month).
38. Because of Respondent's large quantity generator status and because Respondent accumulates hazardous waste on-site, Respondent is therefore required to obtain a RCRA Permit or comply with the conditions for a permit exemption at 35 IAC § 722.134(a).
39. In order to comply with the conditions for a permit exemption at 35 IAC §722.134(a), Respondent must comply with 35 IAC § 725.116 (the hazardous waste training requirements). Other permit exemption conditions include compliance with 35 IAC Part 725, Subpart D (Contingency Plan and Emergency Procedures).

40. On February 28, 2005, a U.S. EPA representative conducted a compliance evaluation inspection (CEI) at Respondent's facility to evaluate Respondent's compliance with RCRA.

41. On March 22, 2005, U.S. EPA issued Respondent a Notice of Violation (NOV) for violations determined as a result of information obtained during the February 28, 2005 CEI.

42. Respondent replied in writing to the NOV with a submittal dated April 20, 2005 (NOV Reply).

43. On April 9, 2005, U.S. EPA issued Respondent a Request for Information (April-05 Information Request).

44. Respondent replied in writing to this Request for Information on April 20, 2005 (April-05 Reply).

45. On May 2, 2005, U.S. EPA issued Respondent a second Request for Information (May-05 Information Request).

46. Respondent replied in writing to this Request for Information on May 9, 2005 (May-05 Reply).

47. On November 28, 2005, U.S. EPA representatives conducted a Case Development Inspection (CDI) at Respondent's facility.

48. On March 15, 2006, U.S. EPA issued Respondent a third Request for Information (March-06 Information Request).

49. Respondent replied in writing to this Request for Information on July 5, 2006 (July-06 Reply).

Count 1

Illegal Storage of Hazardous Waste

50. Complainant incorporates paragraphs 1 through 49 as though set forth in this paragraph.

51. At the time of the February 28, 2005 CEI, Respondent did not have a written hazardous waste contingency plan. Respondent's failure to have a written hazardous waste contingency plan violated 35 IAC § 725.151(a), which is in 35 IAC Part 725, Subpart D.

52. At the time of the February 28, 2005 CEI, Respondent did not have records that demonstrated that Respondent had provided facility personnel with the training required under 35 IAC § 725.116. Training requirements are described in paragraphs 13 -18 of this Complaint; record retention requirements for that training are set forth in paragraph 19. Respondent's failure to conduct training and to maintain records of that training violated 35 IAC § 116 (a)-(e).

53. Respondent's violations of 35 IAC § 725.116 and provisions of 35 IAC Part 725, Subpart D mean that Respondent has not complied with the permit exemption condition of 35 IAC § 722.134.

54. As set forth in paragraphs 34 and 35, Respondent has never applied for or been issued a RCRA Permit for the on-site storage of hazardous waste at its facility, and has never applied or been granted interim status for the on-site storage of hazardous waste at its facility.

55. Therefore, Respondent was storing hazardous waste illegally on-site in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a).

56. Therefore, Respondent violated 35 IAC § 703.121(a)(1) by storing hazardous waste on-site without a permit.

Count 2

Failure to Determine if a Solid Waste is a Hazardous Waste

57. Complainant incorporates paragraphs 1 through 49 as though set forth in this paragraph.

58. 35 IAC § 722.111 requires that a person that generates a solid waste determine if that waste is a hazardous waste using the method described at 35 IAC §§ 722.111(a) through (c):

59. 35 IAC § 722.111(c) states that for purposes of compliance with 35 IAC Part 728, or if the waste is not listed as a hazardous waste in 35 IAC Part 721, Subpart D, the generator must then determine whether the waste is identified in 35 IAC Part 721, Subpart C, by either of the following methods: 1) testing the waste according to the methods set forth in 35 IAC Part 721, Subpart C, or according to an equivalent method approved by the Board under 35 IAC § 720.121; or 2) applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.

60. 35 IAC §§ 721.122 and 722.124 incorporate specific analytical methods for determining if a solid waste exhibits the hazardous characteristic of corrosivity and toxicity, respectively.

61. 35 IAC § 722.140(c) requires a generator to keep records of any test results, waste analyses, or other determinations made in accordance with 35 IAC § 722.111 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

62. At the times of the February 28, 2005 CEI and November 28, 2005 CDI, the U.S. EPA representatives observed a green colored liquid on the floor in the vicinity of the electroless plating lines.

63. The concrete in this area was also observed to be pitted and pebbly due to deterioration.

64. At the time of the CEI, a representative of Respondent stated that the green liquid was plating bath solution that is cleaned daily.

65. In Respondent's NOV reply, Respondent stated that the spill on the plating line was determined to be spilled electroless nickel plating solution that must have leaked out from the pipes that supply the process tanks.

66. Respondent stated in its NOV reply, that the electroless nickel plating solution has been determined to be non-hazardous, and submitted supporting documentation consisting of a hazardous waste manifest for a shipment of electroless nickel plating solution where the material is identified as "Not Regulated"; and a Generator's Waste Profile Sheet where Respondent describes the waste stream.

67. None of the documents described in paragraph 66, above, describe the results of the test methods set forth in 35 IAC Part 721, Subpart C, for analyses conducted on the spilled material observed by the U.S. EPA representatives during the February 28, 2005 CEI and November 28, 2005 CDI. Respondent simply has not submitted a chemical analysis of the spilled material.

68. None of the documents described in paragraph 66, above, provide knowledge of the hazard characteristic of the waste in light of the materials or processes used. The documents

merely provide conclusory information that the material is “non-hazardous” and do not provide any detail regarding Respondent’s materials or process as to how Respondent reached the “nonhazardous” conclusion.

69. In U.S. EPA’s April-05 Information Request, U.S. EPA specifically requested that Respondent identify the green-colored liquid observed on the floor at the time of the February 28, 2005 CEI; describe how the material was produced; provide the dates on which it was removed from the floor; identify the transporters and facility that accepted the material; and provide all documents that describe or otherwise identify the material, including but not limited to waste profiles, analytical reports, chain of custody forms, material safety data sheets and manifests.

70. In Respondent’s April-05 Reply, Respondent stated that it was Respondent’s opinion that the green-colored liquid on the floor was a combination of electroless nickel plating solution and rinsewater that leaked out of piping that services the process tanks.

71. In Respondent’s April-05 Reply, Respondent stated that the material was removed from the floor on February 28, 2005, and placed in the facility’s batch holding tank for the wastewater treatment system where it was treated to remove metals and then discharged to the sewer.

72. In Respondent’s April-05 Reply, in specific response to U.S. EPA’s request for documents that describe or otherwise identify the material, including but not limited to waste profiles, analytical reports, chain of custody forms, material safety data sheets and manifests, Respondent provided several material safety data sheets for seven different chemicals.

73. None of the documents described in paragraph 72, above, describe the results of the test methods set forth in 35 IAC Part 721, Subpart C, for analyses conducted on the spilled

material observed by the U.S. EPA representatives during the February 28, 2005 CEI and November 28, 2005 CDI.

74. Two of the seven material safety data sheets do not provide knowledge of the material that could be used to determine if the material, possesses the characteristic of corrosivity described at 35 IAC § 721.122. These products are identified in the material safety data sheets as Millenium ACN-10CM and Millenium ACN-10AM.

75. One of the material safety data sheets reports that the product solution has a pH in the range of 1.5 to 2.4. This product is identified on the material safety data sheet as Zenith-A.

76. A solid waste possesses the characteristic of corrosivity if it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C (pH Electrometric Measurement) in “Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods,” USEPA publication number EPA-530/SW-846, incorporated by reference in 35 IAC § 720.111(a).

77. As the pH range reported in the material safety data sheet for the Zenith-A material includes a pH less than or equal to 2, the information in the Zenith-A material safety sheet cannot be used to determine that the Zenith-A product, when generated as waste, does not possess the characteristic of corrosivity.

78. None of the seven material safety data sheets provided by Respondent provide information that could be used to determine if the waste possessed the characteristic of toxicity, as defined at 35 IAC § 721.124.

79. The spilled materials observed by the inspectors during the February 28, 2005 CEI and November 28, 2005 CEI are solid wastes as defined at 35 IAC § 721.102.

80. Respondent did not follow the procedures at 35 IAC § 722.111 to determine if the above-mentioned solid waste is a hazardous waste.

81 Therefore, Respondent violated 35 IAC § 722.111.

II. PROPOSED CIVIL PENALTY

82. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997 and a civil penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.

83. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA’s June 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

84. The Complainant proposes, subject to the receipt and evaluation of further relevant information from Respondent, that the Administrator assess a civil penalty of \$55,748

for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheet."

85. Respondent may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of the check shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
77 West Jackson Blvd. (E-13J)
Chicago, Illinois 60604

Sherry L. Estes
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604

and

Todd C. Brown
RCRA Branch
Land and Chemicals Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard (LR-8J)
Chicago, Illinois 60604-3590

86. A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. COMPLIANCE ORDER

87. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules, to comply with the following requirements immediately upon the effective date of this Order:

A. Respondent shall follow the procedures of 35 IAC § 722.111 to determine if all waste materials generated as a result of spills and leaks from the electroless plating lines are hazardous wastes.

B. Respondent shall keep records of any test results, waste analyses, or other determinations made in accordance with 35 IAC § 722.111 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

IV. OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with the “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,” codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint. **To request a hearing, Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within 30 days after service of this Complaint.** Consolidated Rules at § 22.15(a). In counting the 30-day time

period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. Consolidated Rules at § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. The facts Respondent intends to place at issue; and
3. **Whether Respondent requests a hearing.**

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 fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at § 22.15.

Respondent must file its Answer with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent to Sherry L. Estes, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Ms. Estes may be telephoned at (312) 886 - 7164.

If Respondent fails to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order pursuant to § 22.17 of the Consolidated Rules. For purposes of this action

only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default will also result in the penalty proposed in the Complaint becoming due and payable by Respondent without further proceedings 30 days after issuance of a final order upon default under § 22.27(c) of the Consolidated Rules. In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.* The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

V. SETTLEMENT CONFERENCE

Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent should write to Todd C. Brown, RCRA Branch (LR-8J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Brown at (312) 886-6091.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director, Land and Chemicals Division, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

Dated this 26th day of September, 2007.



Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

Complaint Docket No.: **RCRA-05-2007-0015**

RCRA-05-2007-0015

**Attachment A. Penalty Summary Sheet
North American EN, Inc.
Elk Grove Village, IL**

Nature of Violation	Regulatory Citation	Potential for Harm/Extent of Deviation	Gravity Based Penalty	Multi-Day Penalty	Adjustments	Economic Benefit	Total Penalty
Count 1: Storage of Hazardous Waste without a Permit and without complying with permit exemption requirements for Large Quantity Generators (i.e. no contingency plan or training program).	35 IAC § 703.121(a)	Moderate/Major	\$6,448	\$14,490	\$0	\$22,013	\$42,951
Count 2: Failure to make a hazardous waste determination.	35 IAC § 722.111	Moderate/Major	\$12,250	\$0	\$0	\$547	\$12,797
Subtotals			\$18,698	\$14,490	\$0	\$22,560	\$55,748

Note: The gravity-based penalty amount is determined using the penalty assessment matrix found at page 18 of the RCRA Civil Penalty Policy, issued on June 23, 2003. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix found at page 26 of the RCRA Civil Penalty Policy. Policy adjustments and economic benefit are as explained in the RCRA Civil Penalty Policy. The gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996.

CASE NAME: North American EN, Incorporated

DOCKET NO: RCRA-05-2007-0015

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Complaint** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:


Silvano V. Boswell, General Manager
North American EN, Incorporated
776 Lunt Avenue
Elk Grove Village, IL 60007

Return Receipt # 1001 0320 0006 1448 5605

And via First Class Mail to:

Todd Marvel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62702-3998

Dated: 9/27/07



Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5882

2007 SEP 27 AM 10:16
REGIONAL HEARING CLERK
U.S. EPA
CHICAGO, IL