

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Pulsar, Inc.)
Franklin Park, Illinois)

Respondent.)

DOCKET NO.: RCRA-05-2009-0026

Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6928(a)

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ANSWER TO COMPLAINT

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

NOW COMES Pulsar, Inc., by and through its attorneys, Stone Pogrud & Korey LLC,
and for its Answer to Complaint states as follows:

I. COMPLAINT

Preliminary Statement

1. This is an administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).

ANSWER: Respondent admits the allegations of paragraph 1.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

ANSWER: Respondent admits the allegations of paragraph 2.

3. 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).

ANSWER: Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 3, and therefore denies the same.

4. 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.

ANSWER: Respondent admits the allegations of paragraph 4.

5. Respondent is Pulsar, Inc., a corporation doing business and incorporated in the State of Illinois.

ANSWER: Respondent admits the allegations of paragraph 5.

Statutory and Regulatory Background

6. 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, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

ANSWER: Respondent admits the allegations of paragraph 6.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6962, 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.

ANSWER: Respondent admits the allegations of paragraph 7.

8. 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 on January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

ANSWER: Respondent admits the allegations of paragraph 8.

9. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

ANSWER: Respondent admits the allegations of paragraph 9.

10. 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 \$32,500 per day for each violation of Subtitle C of RCRA that occurred from March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

ANSWER: Respondent admits the allegations of paragraph 10.

General Allegations

11. Respondent is a “person” as defined by 35 IAC § 720.110 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

ANSWER: Respondent admits the allegations of paragraph 11.

12. Respondent is an “owner” or “operator,” as those terms are defined under IAC § 720.110 and 40 C.F.R. § 260.10, of a facility, located at 9901 West Pacific Avenue, Franklin Park, Illinois, that manufactures bare printed circuit boards (“Facility”).

ANSWER: Respondent admits the allegations of paragraph 12.

13. At all times relevant to this Complaint, the facility consisted of land and structures, other appurtenances, and improvement on the land, used for treating, storing, or disposing of hazardous waste.

ANSWER: Respondent denies the allegations of paragraph 13 and affirmatively states that the facility was used for the manufacturing of printed circuit boards.

14. Respondent's facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER: Respondent admits the allegations of paragraph 14.

15. At all times relevant to this complaint, Respondent generated hazardous waste, including corrosive hazardous waste.

ANSWER: Respondent admits the allegations of paragraph 15.

16. Respondent collected the corrosive hazardous waste in a sump pit and in a hazardous waste storage tank (new tank system), which were located in the hazardous waste storage area of the Facility.

ANSWER: Respondent admits the allegations of paragraph 16.

17. A "new tank system" is defined as a tank system, under 35 IAC § 720.110 and 40 CFR § 260.10, that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986.

ANSWER: Respondent admits the allegation of paragraph 17.

18. At all times relevant to this Complaint, Respondent held corrosive waste, a discarded material, for temporary periods in the new tank system before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

ANSWER: Respondent admits the allegations of paragraph 18.

19. Respondent characterized its corrosive waste as hazardous waste code D002.

ANSWER: Respondent admits the allegations of paragraph 19.

20. Respondent stored, transported, disposed of, or otherwise handled its corrosive waste in its new tank system.

ANSWER: Respondent admits the allegations of paragraph 20.

21. At all times relevant to this Complaint, Respondent's corrosive waste was a "solid waste" as that term is defined under 35 IAC § 721.102 and 40 C.F.R. § 261.2.

ANSWER: Respondent admits the allegations of paragraph 21.

22. At all times relevant to this Complaint, Respondent's corrosive waste was a "hazardous waste" as that term is defined under 35 IAC § 721.103 and 40 C.F.R. § 261.3.

ANSWER: Respondent admits the allegations of paragraph 22.

23. At all times relevant to this Complaint, Respondent's holding of corrosive waste in the new tank system constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER: Respondent admits the allegations of paragraph 23.

24. Respondent is a "generator," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 26.10.

ANSWER: Respondent admits the allegations of paragraph 24.

25. Respondent generated and managed hazardous waste at the Facility on or before January 5, 1998.

ANSWER: Respondent admits the allegations of paragraph 25.

26. On June 19, 2008, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility.

ANSWER: Respondent admits the allegations of paragraph 26.

27. On November 7, 2008, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

ANSWER: Respondent admits the allegations of paragraph 27.

28. On December 7, 2008, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

ANSWER: Respondent admits the allegations of paragraph 28.

29. At all times relevant to this Complaint, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the Facility.

ANSWER: Respondent admits the allegations of paragraph 29, and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

30. At all times relevant to this Complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the Facility.

ANSWER: Respondent admits the allegations of paragraph 30 and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

31. On or about January 5, 1998, Respondent submitted a Hazardous Waste Notification to U.S. EPA for the Facility.

ANSWER: Respondent admits the allegations of paragraph 31.

32. In its Hazardous Waste Notification, Respondent identified itself as a generator.

ANSWER: Respondent admits the allegations of paragraph 32.

Count 1: Storage of Hazardous Waste without a Permit or Interim Status.

33. Complainant incorporates paragraphs 1 through 32 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent incorporates its answers to paragraphs 1 through 32 of the Complaint as though set forth herein.

34. Pursuant to 3005(a) of RCRA, 42 U.S.C § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

ANSWER: Respondent admits the allegations of paragraph 34.

35. Pursuant to 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator

complies with all applicable conditions set forth in 35 IAC § 722.134(a)(1)-722.134(a)(4) and 40 C.F.R. § 262.34(a)(1)-262.34(a)(4), including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 724 and 35 IAC § 724.116 and Subpart J of 35 IAC Part 724.

ANSWER: Respondent admits the allegations of paragraph 35.

36. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC Part 724 or 725 and the permit requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123 unless he has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or attain interim status.

ANSWER: Respondent admits the allegations of paragraph 36.

37. At all time relevant to this Complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

ANSWER: Respondent admits the allegations of paragraph 37 and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

38. At the time of the inspection, Respondent was storing hazardous waste in a new tank system over the 90-day limit without obtaining or applying for a permit, in violation of 35 IAC § 722.134(b) [40 C.F.R. § 262.34(b)].

ANSWER: Respondent denies the allegations of paragraph 38, and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

39. Additionally, at all times relevant to this Complaint, Respondent failed to satisfy the following conditions for maintaining its exemption from the requirement that it have an operating permit or interim status:

ANSWER: Respondent denies the allegations of paragraph 39.

40. 35 IAC § 722.134(a)(3) [40 C.F.R. 262.34(a)(3)] In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or

interim status, it must label or mark each container holding hazardous waste clearly with the words, "Hazardous Waste."

ANSWER: Respondent admits the allegations of paragraph 40.

41. At the time of the inspection, Respondent had not labeled or marked a container of corrosive waste with the words, "Hazardous Waste."

ANSWER: Respondent denies the allegations of paragraph 41 and affirmatively alleges that such container(s) did not contain hazardous waste.

42. 35 IAC § 722.134(A)(2) [40 C.F.R. § 262.34(a)(2)] In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must clearly mark each container holding hazardous waste with the date upon accumulation.

ANSWER: Respondent admits the allegations of paragraph 42.

43. At the time of the Inspection, Respondent was storing hazardous waste in a container without an accumulation date.

ANSWER: Respondent denies the allegations of paragraph 43 and affirmatively alleges that such container(s) did not contain hazardous waste.

44. 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)] In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, facility personnel must 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 § 725.116 [40 C.F.R § 265.16].

ANSWER: Respondent admits the allegations of paragraph 44.

45. 35 IAC § 725.116(a)(2) [40 C.F.R. § 265.16(a)(2)] requires that the program of classroom instruction or on-the-job training be directed by a person trained in hazardous waste management procedures, and include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

ANSWER: Respondent admits the allegations of paragraph 45.

46. 35 IAC § 725.116(b) [40 C.F.R. § 265.16(b)] requires that facility personnel successfully complete the program required in paragraph (a) of 35 IAC § 725.116 [40 C.F.R. § 265.16] within six months after the effective date of the regulations or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later.

ANSWER: Respondent admits the allegations of paragraph 46.

47. 35 IAC § 725.116(c) [40 C.F.R. § 265.16(c)] requires that facility personnel take part in an annual review of the initial training required in 35 IAC § 725.116(A) [40 C.F.R. § 265.16(a)].

ANSWER: Respondent admits the allegations of paragraph 47.

48. In 2006, 2007 and 2008, Respondent did not ensure that all classroom instruction or on-the-job training received by Facility personnel satisfied the criteria of 35 IAC 725.116(a)(2) relevant to the positions in which Facility personnel were employed.

ANSWER: Respondent denies the allegations of paragraph 48.

49. In 2006, 2007 and 2008, Respondent did not ensure that all Facility personnel filling a hazardous waste management position received initial training or annual review of the initial training.

ANSWER: Respondent denies the allegations of paragraph 49.

50. **35 IAC § 722.134(a)(4) [40 C.F.R. §262.34(a)(4)]** In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, a hazardous waste storage facility's contingency plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

ANSWER: Respondent admits the allegations of paragraph 50.

51. At the time of the Inspection, Respondent had failed to submit the storage facility's contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

ANSWER: Respondent denies the allegations of paragraph 51, and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

52. 35 IAC § 722.134(a)(1)(B) [40 C.F.R. § 262.34(a)(1)(ii)] In order for a generator of hazardous waste to maintain its exemption from the requirement to have and operating permit or interim status, a facility owner must have secondary containment that meets the requirements of subparts J, AA, BB, and CC of Part 265 for all new and existing tank systems or components, prior to their being put into service.

ANSWER: Respondent admits the allegations of paragraph 52.

53. 35 IAC § 725.293(b)(1) [40 C.F.R. § 265.193(b)(1)] requires that secondary containment systems must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system.

ANSWER: Respondent admits the allegations of paragraph 53.

54. 35 IAC § 725.293(b)(2) [40 C.F.R. § 265.193(b)(2)] requires that secondary containment systems must be capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

ANSWER: Respondent admits the allegations of paragraph 54.

55. 35 IAC § 725.293(f) [40 C.F.R. § 265.193(f)] requires that ancillary equipment must be provided with secondary containment that meets the requirements of this part.

ANSWER: Respondent admits the allegations of paragraph 55.

56. 35 IAC § 725.294(b) [40 C.F.R. § 265.194(b)] requires that appropriate controls and practices should be used to prevent spills and overflows from tank or containment systems.

ANSWER: Respondent admits the allegations of paragraph 56.

57. 35 IAC § 725.295(a) [40 C.F.R. § 265.195(a)] requires a schedule and procedure for inspecting overfill controls.

ANSWER: Respondent admits the allegations of paragraph 57.

58. 35 IAC § 725.295(b) [40 C.F.R. § 265.195(b)] requires that data gathered from monitoring and leak detection equipment, to ensure that the tank system is being operated according to its design, must be inspected at least once each operating day.

ANSWER: Respondent admits the allegations of paragraph 58.

59. 35 IAC § 725.295(b) [40 C.F.R. § 265.195(c)(1)] requires that the above ground portions of the tank system, if any, to detect corrosion or release of waste, must be inspected at least once per operating day.

ANSWER: Respondent admits the allegations of paragraph 59.

60. 35 IAC § 725.295(b) [40 C.F.R. § 265.195(c)(2)] requires that the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system to detect erosion or signs of releases of hazardous waste, must be inspected at least once per operating day.

ANSWER: Respondent admits the allegations of paragraph 60.

61. At the time of the inspection, Respondent failed to provide a secondary containment system to the new tank system, including the ancillary equipment, and failed to provide a leak detection system for the new tank system pursuant to 35 IAC §§ 725.293(a), (b) and (f) [40 C.F.R. §§265.193(a), (b) and (f)].

ANSWER: Respondent denies the allegations of paragraph 61.

62. At the time of the inspection, Respondent failed to use appropriate controls and practices to prevent spills and overflows from the new tank system and containment systems pursuant to 35 IAC § 725.294(b) [40 C.F.R. § 265.194(b)].

ANSWER: Respondent denies the allegations of paragraph 62.

63. At the time of the inspection, Respondent failed to have a schedule and procedure for inspecting overfill controls, failed to inspect data gathered from monitoring and leak detection equipment once each operating day, failed to inspect the above ground portions of the tank system once each operating day and failed to inspect the construction materials and the area

immediately surrounding the externally accessible portion of the tank once each operating day, pursuant to the relevant subsections of 35 IAC § 725.295 [40 C.F.R. §265.195].

ANSWER: Respondent denies the allegations of paragraph 63, and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

64. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

ANSWER: Respondent denies the allegations of paragraph 64.

65. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF) subject to the requirements of 35 IAC Part 724 [40 C.F.R. Part 264].

ANSWER: Respondent denies the allegations of paragraph 65.

66. At the time of the inspection, Respondent was storing hazardous waste without obtaining or applying for a permit.

ANSWER: Respondent admits the allegations of paragraph 66, and affirmatively states that at all relevant times it was not a large quantity generator, but instead a conditionally exempt small quantity generator.

67. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

ANSWER: Respondent denies the allegations of paragraph 67.

Civil Penalty

Respondent denies any civil penalty is due, required or appropriate, and contests Complainant's proposed Civil Penalty as the amount of the proposed Civil Penalty does not bear a reasonable relationship to the alleged violations, nor does the proposed Civil Penalty take into account Respondent's ability to pay, which has been substantially and adversely affected by the economic downturn.

Compliance Order

Respondent requests that the Court deny Complainant's proposed Compliance Order.

Opportunity to Request a Hearing

Respondent hereby requests a hearing to contest all of the material facts in the Complaint and to contest the amount of the proposed penalty sought by Complainant, as provided for in Section 22.15 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."

Settlement Conference

Respondent hereby requests an informal conference to discuss the facts of this case and to discuss settlement.

Respectfully submitted,

PULSAR, INC.

By: _____



Stuart M. Sheldon

One of Respondent's attorneys

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CERTIFICATE OF SERVICE

I hereby certify that today I caused to be filed with the Regional Hearing Clerk (E-13J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, the original document Answer to Complaint, and that I issued to the Office of Regional Counsel by first class mail a copy of the original document:

James Morris
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590


Stuart M. Sheldon
10/30/09
Dated

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