

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>TH</sup> STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the matter of: )

RONNIE GIBSON )

d/b/a GIBSON'S RECYCLING )

211 Commercial Street )

Neosho Rapids, Kansas )

Respondent )

Proceeding under 3008(a) and (g) )

of the Resource Conservation )

and Recovery Act of 1976, )

as amended, 42 U.S.C. § 6928(a) and (g) )

Docket No. RCRA-07-2010-0033

COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

## **I. PRELIMINARY STATEMENT**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (hereafter "Complaint") is issued pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g) (hereafter "RCRA"), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22 (1980). The Complainant is the Chief of the Waste Enforcement and Materials Management Branch, Air and Waste Management Division, United States Environmental Protection Agency (hereafter "EPA"), Region 7. The Respondent is Ronnie Gibson, d/b/a Gibson's Recycling, 211 Commercial Street, Neosho Rapids, Kansas, 66864. (hereafter "Gibson" or "Respondent"). The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

2. The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air and Waste Management Division of EPA Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Division Director has further delegated this authority to the Chief of the Waste Enforcement and Materials Management Branch by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

3. Complainant has determined that Respondent is in violation of Section 3007 of RCRA, 42 U.S.C. § 6927. Based upon the facts alleged in this Complaint and upon those factors

which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on June 23, 2003, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts on the part of the Respondent to comply with the applicable requirements, as well as other matters as justice may require, the Complainant proposes that the Respondent be assessed a civil penalty of \$72,380.00, pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations alleged in this Complaint.

## **II. COMPLAINT**

4. Respondent owns and operates a recycling business located in Neosho Rapids, Kansas, with outlets in Emporia, Kansas, and Council Grove, Kansas. As part of its recycling operations, Mr. Gibson, doing business as Gibson Recycling ("Gibson") salvages scrap metal from junk vehicles.

5. Truck Wholesale is a salvage yard located in Wellsville, Kansas.

6. The Kansas Department of Transportation ("KDOT") revoked Truck Wholesale's salvage license for failing to remove junked vehicles from the interstate highway right-of-way. After litigating the matter with the owners of Truck Wholesale, KDOT obtained an abatement order in a Kansas District Court in Miami County, Kansas, authorizing KDOT to remove the trucks, vehicles, and other scrapped materials from the Truck Wholesale facility.

7. Gibson was hired by KDOT to remove the vehicles from the Truck Wholesale facility, through a contract with KDOT that was effective January 28, 2009, and amended in March 2009, and July 2009.

8. As abatement proceeded, officials from the Kansas Department of Health and Environment (KDHE), as well as EPA officials, visited the facility at various times and observed that abatement actions being undertaken by Gibson were causing the discharge of oil, fuel, antifreeze, and other materials to a creek adjacent to the facility.

9. On October 1, 2009, EPA issued a Unilateral Administrative Order to KDOT and the owners of Truck Wholesale, ordering them to take action to prevent further releases to the creek and to clean up releases of oil, fuels, antifreeze, lead batteries, and other materials at the facility.

10. As part of its continuing investigation, EPA sent Gibson an information request letter pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, asking Mr. Gibson about Gibson's performance of abatement activities at the Truck Wholesale facility, as well as information about any similar activities at other locations. The letter was sent on January 26, 2010, via certified mail, and instructed Mr. Gibson to respond within fourteen days of receipt of the letter. The return receipt was signed by a Mr. Ray M. (illegible last name), and the address on the card had been crossed out and corrected to the Neosho Rapids address for Gibson (the letter had initially been mailed to the Emporia, Kansas Gibson location). The individual who signed the return receipt did not write down the date of receipt, but the signed card was received by EPA on February 4, 2010.

11. On April 5, 2010, EPA sent Gibson a Letter of Warning (LOW) regarding Gibson's failure to respond to the January 26, 2010, letter. Once again, the letter instructed Mr. Gibson to respond within fourteen days of receipt, and warned that administrative penalties could be assessed for his continued failure to respond. The return receipt for the April 5, 2010, letter was

signed by Mr. Ronnie Gibson on April 7, 2010, and was received by EPA on April 9, 2010.

Respondent has not responded to the letter, to date.

12. In an effort to contact Mr. Gibson, EPA's RCRA Compliance Officer, Mr. Jim Aycock, made numerous telephone calls to Respondent, as follows:

- On April 28, 2010, Mr. Aycock placed telephone calls to Mr. Gibson's cell phone at 8:15 a.m., 8:45 a.m., and 3:30 p.m. The recorded greeting on the cell phone identified the number as belonging to Mr. Ronnie Gibson. Mr. Aycock left a message on Mr. Gibson's cell phone asking Mr. Gibson to return the call.
- On May 4, 2010, Mr. Aycock called Gibson's cell phone at 2:45 p.m. but was unable to reach Mr. Gibson. Mr. Aycock again left a message on Mr. Gibson's cell phone asking him to return the call.
- On May 5, 2010, Mr. Aycock again called Mr. Gibson's cell phone at 10:30 a.m. and left another message asking Mr. Gibson to return the call.
- On May 6, 2010, Mr. Aycock called Mr. Gibson's cell phone at 11:15 a.m. and left a message asking Mr. Gibson to return the call.

13. As of the date of the issuance of this Complaint, Mr. Gibson had neither responded to the RCRA Section 3007 information request letters nor returned any of Mr. Aycock's telephone messages.

14. Section 3007 of RCRA requires "any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes" to "furnish information

relating to such wastes” “upon request of any officer, employee or representative of the Environmental Protection Agency.”

15. Used motor oil usually contains metals such as cadmium, chromium, and lead, as well as small amounts of gasoline or diesel, antifreeze and polycyclic aromatic hydrocarbons (PAHs), which come from the burning of gasoline or diesel in the engine of a vehicle. Benzene, toluene, ethylbenzene and xylene are known human carcinogens and are found in vehicle fuels. Mercury is commonly found in various thermostats and switches in motor vehicles. Lead is used in motor vehicle batteries and as weights to balance wheels.

16. The hazardous wastes or hazardous constituents identified herein may have the following effects on human health or the environment:

A. CHROMIUM is a metal and, when a waste contains more than 5 parts per million chromium as analyzed using the Toxic Characteristic Leachate Procedure (TCLP), is a D007 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Human exposure occurs through inhalation, ingestion, and dermal absorption. The lungs, kidneys, liver, and skin, and the immune system may also be affected. Long-term exposure to chromium may cause lung cancer.

B. LEAD is a metal and, when a waste contains more than 5 parts per million as analyzed using the TCLP, is a D008 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Humans may be exposed to lead through ingestion of contaminated water or soils or by inhalation of lead particles in the air. Lead has many toxic effects on human health and is classified by EPA as a probable human carcinogen. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect. Children are especially vulnerable to the effects of lead exposure.

C. ARSENIC is a metal, and when a waste contains more than 5 parts per million as analyzed using the TCLP, is a D004 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. The EPA has determined that inorganic arsenic is a human carcinogen. Lower doses of ingested inorganic arsenic may cause irritation of the stomach and intestines, with symptoms such as stomach ache, nausea, vomiting, and diarrhea. Children may be more susceptible to health effects from inorganic arsenic than adults.

D. CADMIUM is a metal, and when a waste contains more than 1 part per million as analyzed using the TCLP, is a D006 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Cadmium can enter the body through ingestion and inhalation. Most of the cadmium that enters the body goes to the kidney and liver and can remain there for many years.

E. MERCURY is a metal, and when a waste contains more than 1 part per million as analyzed using the TCLP, is a D009 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Mercury is found in automotive brake system actuator switches, temperature gauges, trunk and hood light switches, automotive batteries, and other automotive components. Mercury can enter the body through ingestion, dermal contact and inhalation. The human nervous system is very sensitive to all forms of mercury. The EPA has determined that methyl mercury and mercuric chloride are possible human carcinogens. Methyl mercury is produced by the breakdown of mercury in water or soil by microscopic organisms.

F. BENZENE, which is one of the BTEX compounds, is a colorless liquid with a sweet odor. When wastes exceed more than 0.5 parts per million as analyzed using the TCLP, it is a D018 characteristic hazardous waste. It evaporates into the air very quickly and dissolves slightly in water. Benzene is a natural part of crude oil, gasoline and diesel. Benzene is a known human carcinogen. Benzene can pass through the soil and water into the air. It breaks down more slowly in soil, and can pass through the soil into the groundwater.

G. POLYAROMATIC HYDROCARBONS (PAHs) are a group of over 100 different chemicals that are formed during a manufacturing process or the incomplete burning of coal, oil and gas, garbage, or other organic substances. PAHs can enter the body through dermal contact, ingestion and inhalation. Some PAHs can readily evaporate into the air from soil or surface waters. Most PAHs do not dissolve easily in water. They stick to solid particles and settle to the bottoms of lakes or rivers. In soils, PAHs are most likely to stick tightly to particles and certain PAHs move through the soil to contaminate groundwater. The Department of Health and Human Services has determined that some PAHs may reasonably be expected to be carcinogens.

17. The materials described in paragraphs 15 and 16 above are “hazardous wastes” within the meaning of Section 1004 of RCRA, 42 U.S.C. § 6903.

18. Respondent’s salvage activities constitute “generation,” “dispos[al] of” or “otherwise handl[ing]” hazardous wastes within the meaning of Section 3007 of RCRA, 42 U.S.C. § 6927.

19. Section 3008(g) of RCRA authorizes a civil penalty of not more than \$25,000 per day for each day of violation of Subchapter III of RCRA. Pursuant to the Civil Penalties Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties up to \$37,500 per day for each day of violation may be assessed.

20. Pursuant to Sections 3008(a) and (g) of RCRA and based on the allegations set forth above, it is proposed that a civil penalty of \$72,380.00 be assessed against Respondent for failure to comply with Section 3007 of RCRA, 42 U.S.C. § 6927.

### **III. RELIEF SOUGHT/COMPLIANCE ORDER**

21. Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), authorize EPA to seek civil penalties in the amount of up to \$25,000 per day for each day of violation of Subtitle C of RCRA. Pursuant to the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, penalties of up to \$37,500 per day for each day of violation may be assessed for violations of RCRA that occur after January 12, 2009. The penalty proposed in paragraph 20 above is based upon the facts alleged in this Complaint, and upon consideration of: (a) the seriousness of the violation; (b) any good faith efforts on the part of the Respondent to comply with applicable requirements; (c) Respondent's ability to pay based on information available to EPA at the time this Complaint was filed; and (d) the RCRA Civil Penalty Policy. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

22. The proposed penalty set forth in paragraph 20 is based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the

Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

23. If Respondent does not contest the findings and assessments set forth above, payment of the penalties proposed herein may be remitted as follows. Within thirty (30) calendar days of receipt of this Order, Respondent shall submit a certified or cashier's check payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

The Respondent shall reference the Docket Number on the check or transfer. A copy of the check or transfer shall also be mailed to EPA's representative identified in paragraph 25 below.

IT IS ORDERED that Respondent shall take the following action within the time periods specified:

24. Within thirty (30) days of receipt of this Complaint, provide a complete written response to the January 26, 2010, RCRA Section 3007 request for information. A copy of the letter is enclosed with this Complaint as Attachment A.

25. All documents required to be submitted by this Complaint shall be sent to Mr. Jim Aycock, Environmental Scientist, AWMD/WEMM, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

26. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), this Complaint shall become final unless Respondent files a written answer and makes a written request for a public hearing no later than thirty (30) days after service of this Complaint.

27. A written answer to the Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto as Attachment B. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Belinda L. Holmes, Senior Counsel, Office of Regional Counsel, at the same address.

28. Respondent's failure to file a written answer and request for 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 Respondent's right to a hearing on those allegations. A

Default Order may thereafter be issued by the Presiding Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

#### **V. SETTLEMENT CONFERENCE**

29. 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 Belinda L. Holmes, Senior Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, or by telephone at 913-551-7714.

30. 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.

31. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order (CA/FO) issued by the Regional Administrator, U.S. EPA, Region 7. The issuance of such a CA/FO shall constitute a waiver of Respondent's right to request a hearing on any matter therein.

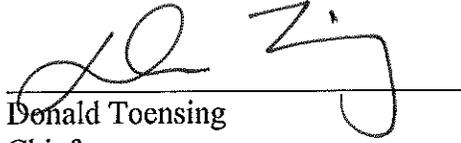
32. If Respondent has neither reached a settlement by informal conference nor requested a hearing within the thirty (30) day time period set forth in this Complaint, the proposed penalties will become due and payable.

*In the matter of  
Ronnie Gibson, d/b/a Gibson's Recycling  
Complaint, Compliance Order, and  
Notice of Opportunity for Hearing  
Docket No. RCRA-07-2010- 0033  
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IT IS SO ORDERED:

8-25-10

Date



Donald Toensing

Chief

Waste and Materials Management Branch

Air and Waste Management Division

8-25-10

Date



Belinda L. Holmes

Senior Counsel

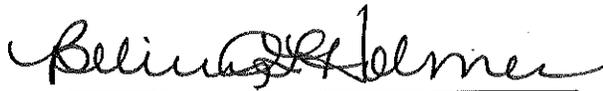
Office of Regional Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that the original of this document has been filed with the Regional Hearing Clerk and that true copies of the foregoing have been served by certified mail, return receipt requested, upon:

this 25 day of August, 2010.



Belinda L. Holmes  
Belinda L. Holmes  
Senior Counsel  
Office of Regional Counsel