

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 SEP 28 PM 4:17
REGIONAL HEARINGS CLERK
EPA REGION VI

IN THE MATTER OF: §
§
TEXAS BARGE AND §
BOAT, INC. § DOCKET NO. RCRA 06-2012-0947
§
ID NO. TX0000095695 §
§
RESPONDENT §

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY FOR HEARING

I. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for a Hearing (“Complaint”) is issued to initiate an administrative action against Texas Barge and Boat, Inc., Freeport, Texas (“Respondent”) as authorized by Section 3008(a) of the Resource Conservation and Recovery Act (the “Act” or “RCRA”), 42 U.S.C. § 6928(a) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The Complainant is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6, who has been delegated the authority to issue such complaints in EPA Region 6.

2. Respondent is hereby notified of EPA’s determination that Respondent has violated regulations promulgated under RCRA Subtitle C (Sections 3001 – 3023 of RCRA, 42 U.S.C. §§ 6921 – 6939e) and regulations promulgated under the Texas Solid Waste Disposal Act,

Tex. Health & Safety Code Ann. (Vernon, 2001), as amended, including Texas Commission on Environmental Quality (“TCEQ”) regulations codified as 30 Texas Admin. Code Part 335 (Hazardous Waste Management).

3. Through this action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Complainant seeks an order assessing a civil administrative penalty and requiring Respondent to comply with applicable statutory and regulatory requirements.

4. Notice of this action was given to the State of Texas prior to the issuance of this Complaint, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. RCRA STATUTORY AND REGULATORY BACKGROUND

5. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (the “HSWA”). RCRA established a comprehensive program to be administered by the Administrator of the EPA regulating the generation, treatment, storage and disposal of hazardous waste. RCRA hazardous waste regulations promulgated by the Administrator are codified as 40 C.F.R. Parts 260-272.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when he or she determines that the state program is substantially equivalent to the federal program.

7. The State of Texas received final authorization to implement its hazardous waste management program effective December 26, 1984, with multiple program revisions approved by EPA since that time, as provided by 40 C.F.R. § 272.2201.

8. The State of Texas's hazardous waste management program is administered by the TCEQ through regulations published as Chapter 335 of Title 30 of the Texas Administrative Code ("Chapter 335").

9. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce the federally-approved Texas hazardous waste management program, as well as the federal regulations promulgated under the HSWA, by issuing compliance orders assessing a civil penalty for any past or current violation and/or requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA (Sections 3001-3023 of RCRA), 42 U.S.C. §§ 6921-6939e. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 C.F.R. § 19.4, EPA may assess a civil penalty of up to \$32,500 per day of violation for a violation occurring between March 15, 2004 and January 12, 2009 and \$37,500 per day of violation for a violation occurring after January 12, 2009.

10. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. TCEQ administers Texas's authorized hazardous waste management program through Chapter 335. Therefore, a violation of any requirements of Chapter 335 is a violation of Subtitle C of RCRA.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Respondent is a corporation incorporated under the laws of the Texas on October 8, 1991.

12. Respondent is a "person" as that term is defined in 30 Texas Administrative Code (TAC) § 335.1, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

13. Respondent's registered agent for service is Mr. Mickey W. Tiner, 4115 E Floodgate Rd., Freeport, Texas 77541.

14. Respondent owns and operates a barge cleaning and repair business located at 4115 E. Floodgate Road, Freeport, Texas.

15. Respondent's place of business described in paragraph 14 above is a "Facility" as defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

16. Respondent is the "owner" and "operator" of the Facility as those terms are defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

17. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), Respondent notified EPA and Texas Commission of Environmental Quality that it is a large quantity generator of hazardous waste.

18. Respondent identified that it generates greater than 1,000 kg/month (2,200 lbs/month) of:

a. solid waste which exceeds RCRA characteristic waste toxicity levels for the following: D001, D002, D003, D008, D018, D019, D022, D028, D039 and D040; and

b. the following listed hazardous waste: F001, F002, U002, U012, U019, U044, U055, U056, U077, U080, U83, U154, U210 and U228.

19. The material identified in paragraph 18 above is a “solid waste” as that term is defined at 30 TAC § 3351, 40 C.F.R. § 261.2, Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

20. “Hazardous Waste” is defined at 30 TAC § 335.1 to mean “any solid waste identified or listed as a hazardous waste by the Administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended.”

21. The material identified in paragraph 18 above is a hazardous waste”, as defined in 30 TAC § 335.1 [40 C.F.R. § 261.3].

22. Respondent is a “generator” of hazardous waste as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

IV. VIOLATIONS

23. Paragraphs 1 – 22 of this Complaint are hereby incorporated by reference.

24. Pursuant to 30 TAC § 335.2(b) [40 CFR262.12(c)], no generator or any other person may allow or permit waste to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit.

25. Respondent prepared manifests showing the following instances of shipping wastes with the hazardous characteristics for both corrosiveness (D002) and reactivity (D003) to U.S. Oil Recovery , LLC, 400 North Richey St, Pasadena, Texas 77571 (“USOR”):

<u>Manifest Number</u>	<u>Date</u>	<u>Quantity</u>
UHW 003505112JJK	01/24/2008	38,956 lbs.
UHW 003505113JJK	01/25/2008	40,057 lbs.
UHW 003505114JJK	04/29/2008	41,800 lbs.

26. Respondent sent the hazardous waste identified in paragraph 18 above to USOR.

27. USOR is authorized under Waste Permit No. 52123 to manage flammable (D001), corrosive wastes (D002), wastes exhibiting the hazardous characteristic of benzene toxicity (D018), cresol toxicity (D023 – D026), dinitrotoluene toxicity (D030), methyl ethyl ketone toxicity (D034), and nitrobenzene toxicity (D036).

28. USOR is not authorized to receive, manage, store, treat, or dispose waste exhibiting the hazardous characteristic of reactivity (D003) sent by Respondent.

29. Therefore, Respondent violated 30 TAC § 335.2(b) [40 CFR 262.12(c)], by failing to send hazardous waste to an authorized facility.

V. COMPLIANCE ORDER

30. Pursuant to 42 U.S.C. § 6928, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:

- a. Provide to EPA a copy of the facility's waste analysis plan.
- b. Develop and implement standard operating procedures to ensure that hazardous waste is sent only to those facilities permitted to receive that waste stream.
- c. Provide a certification to EPA that the facility has developed and implemented standard operating procedures to ensure hazardous waste is sent only to facilities permitted to receive that waste and a copy of those standard operating procedures.

d. Provide certification that facility personnel who prepare manifests and arrange for the transport of hazardous waste have been trained how to do so in compliance with state and federal regulations.

31. In all instances in which this Complaint requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official:"

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a "responsible official" of a Respondent means a person with the authority to bind Respondent as to the truth, accuracy, and completeness of all certified information.

32. All documents required under this Complaint shall be sent to the following persons:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
Attn: Wilkin Shannon

33. NOTICE: Pursuant to 40 C.F.R. § 22.37(b), this Compliance Order shall automatically become a final order unless, no later than 30 days after this Complaint was served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15, as described below in Section VII. (Opportunity to Request a Hearing).

34. If Respondent fails to take the required actions within times specified in the Order, Respondent is liable for additional penalties of up to \$37,500.00 for each day of continued noncompliance, and be subject to further enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), including injunction, as may be necessary to achieve compliance with Subtitle C of RCRA.

35. Notwithstanding any other provision of this Complaint, an enforcement action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility presents an imminent and substantial endangerment to human health or the environment.

VI. PROPOSED PENALTY

36. In light of the facts alleged in this Complaint, and having considered the factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts to comply with the applicable requirements, the extent of deviation from the statutory or regulatory requirements, the duration of the violation, and the economic benefit derived from non-compliance, Complainant proposes to assess a civil administrative penalty of \$37,500.00 for the violations alleged in Section IV of this Complaint.

37. The Penalty was calculated as follows:

Gravity-based penalty from matrix - \$37,500.00

a. Potential for harm - Major

b. Extent of deviation - Major

Multi-day penalty from matrix - \$0

Days of violation minus 1 for which a penalty is proposed – N/A

Total multi-day penalty - \$0

Gravity-based penalty –\$0

Economic benefit – \$256

Total Penalty - \$37,756.00

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

38. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

39. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty days after being served with this Complaint.

40. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge.

If Respondent has no knowledge of a particular factual allegation and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

41. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes, (c) the basis for opposing any proposed relief and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 and 556, and the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is included.

42. The Answer must be sent to:

Regional Hearing Clerk
Mail Code 6RC-D
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

43. In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jay Przyborski
Assistant Regional Counsel
Mail Code 6RC-ER
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

44. As provided in 40 C.F.R. § 22.17, if Respondent fails to file a written Answer within 30 days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings 30 days after a Default Order becomes final.

45. As provided in 40 C.F.R. § 22.37(b), if Respondent fails to request a hearing pursuant to 40 C.F.R. § 22.15 within 30 days of service of this Complaint, the Compliance Order contained herein shall automatically become a Final Order.

46. Respondent is further informed that 40 C.F.R. Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

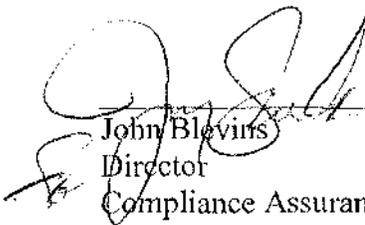
VIII. SETTLEMENT CONFERENCE

47. Whether or not Respondent requests a formal hearing, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jay Przyborski, Assistant Regional Counsel, by phone at (214) 665-6605 or by email at przyborski.jay@epa.gov.

48. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

49. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 C.F.R. § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: 9-28-2012


John Blevins
Director
Compliance Assurance and
Enforcement Division

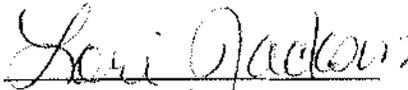
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7010106000218726575

Mr. Mickey W Tiner
4115 E Floodgate Rd.
Freeport, Texas 77541

Date: 9-28-2012


U.S. EPA, Region 6
Dallas, Texas