



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. Environmental
Protection Agency-Reg 2

2015 OCT -1 AM 10:13

REGIONAL HEARING
CLERK

SEP 30 2015

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Mr. Yochiro Araki
Chief Operating Officer
Kawasaki Rail Car, Inc.
29 Wells Avenue
Yonkers, New York 10701

Re: **In the Matter of Kawasaki Rail Car, Inc.**
Docket Number RCRA-02-2015-7103

Dear Mr. Araki:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

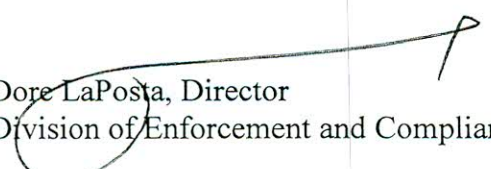
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. Environmental
Protection Agency-Reg 2
2015 OCT -1 AM 10:13
REGIONAL HEARING
CLERK

In The Matter of:

Kawasaki Rail Car, Inc.

Respondent

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2015-7103

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”).

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) serves notice of EPA’s preliminary determination that the **Kawasaki Rail Car, Inc.** has violated certain requirements of the authorized New York State hazardous waste program and the federal hazardous waste program.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), and 70 Fed. Reg. 1825 (January 11, 2005), 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), provides, in part, that “whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation.” Section

3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2) provides, in part, that “[i]n the case of a violation of any requirement of [Subtitle C of RCRA] where such violation occurs in a State which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order.” Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized State program and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA for which the State has not yet been authorized.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.

Respondent’s Background

3. Respondent is Kawasaki Rail Car, Inc., located at 29 Wells Avenue, Yonkers, New York 10701.
4. Respondent is a for-profit corporation organized pursuant to the laws of the State of New York in 1989. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations (“6 NYCRR”) § 370.2(b).¹
5. Respondent conducts assembly, rehabilitation, and fabrication and related activities of passenger rail cars in a facility located at 29 Wells Avenue, Yonkers, New York 10701 (“Facility” or “Yonkers Facility”).
6. Respondent has been and remains an “owner” and “operator” of the facility.

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

Past regulatory Filings

7. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification dated November 10, 1987 that it was an SQG (Small Quantity Generator) of hazardous waste under the name Kawasaki & Nissho Iwai (a previous corporate name). Kawasaki Rail Car, Inc. submitted a more recent SQG notification dated October 16, 2006 that it is a SQG (Small Quantity Generator) of hazardous waste.

8. In response to the Notification, EPA provided Respondent with EPA Identification Number NYD 982 278 160.

Respondent's Recent Generation of Hazardous Wastes

9. Upon information and belief, from at least December 2013, hazardous wastes generated at Respondent's facility have included, without limitation, waste paints, waste paint lacquers and thinners, spent solvents, paint booth filters, waste glues and adhesives, waste corrosives, gasoline and diesel waste, off-specification products (including flammables), spent fluorescent bulbs, and waste batteries (including those from fork lift vehicles).

10. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a "generator" of "hazardous waste" within the meaning of 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii) at its Yonkers facility.

11. As of December 2013, and at times both prior thereto and subsequent thereto, Respondent has generated, and continues to generate, on average, more than 100 kilograms ("kg") and less than 1000 kg of non-acute hazardous waste in a calendar month and is considered a "small quantity generator" as that phrase is defined in 6 NYCRR § 370.2(b).

12. The requirements for generators are set forth in 6 NYCRR § 372.2. A small quantity generator ("SQG") may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 6 NYCRR § 372.2(a)(8) including but not limited to 6 NYCRR § 372.2(a)(8)(iii)(v).

Prior Judicial Settlement

13. On or about June 27, 2006, a duly designated representative of EPA conducted a RCRA Compliance Evaluation Inspection of the Facility ("2006 Inspection").

14. On December 12, 2007, the Respondent was informed by the U.S. Department of Justice Southern District of New York, that a Judicial Complaint would be issued to it on behalf of the EPA, citing multiple violations of RCRA regulations observed during the 2006 Inspection.

15. The Judicial Complaint alleged that, at the time of the 2006 Inspection, Kawasaki violated RCRA by (1) failing to make hazardous waste determinations; (2) storing hazardous waste without having obtained a RCRA permit or having taken the steps required to be exempted from the permitting requirements; and (3) failing to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste.

16. On October 4, 2009, Respondent agreed to settle environmental claims referred to in paragraph "15", above, in a Stipulation and Order which became effective October 1, 2009. Several "Whereas" clauses in that document mentioned steps the Respondent had taken to comply with RCRA requirements. The Stipulation and Order required the company to pay a civil penalty of \$130,000.

2013 Inspection and Repeat violations

17. On or about December 5, 2013, a duly designated representative of EPA ("Inspector") conducted a RCRA Compliance Evaluation Inspection of the Facility ("2013 Inspection").

18. At the time of the 2013 Inspection, the RCRA Inspector observed that several dozen containers of waste paints, paint thinners and solvents, enamels, discarded gasoline, hardeners, epoxies, adhesives, corrosives, used oil and cutting oils, and unknowns or unlabeled containers (including several marked "chemicals" and many that were inaccessible due to their positioning), were being haphazardly stored in two buildings located in a rear lot of the Facility designated by Respondent as the Hazardous Waste Storage Areas ("Hazardous Waste Storage Areas").

19. At the time of the 2013 Inspection, the Facility representative stated that he was "uncertain" as to the contents of many of the containers in the Hazardous Waste Storage Areas referred to in paragraph "18", above.

20. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Areas referred to in paragraph "18", above, appeared to have been stored for significant periods of time, including containers of "Loctite" an "extremely flammable" liquid that had an expiration date of June 7, 2006 and had been stored for greater than 180 days.

21. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Areas, referred to in paragraph "18", above, were corroded, were punctured, and several showed evidence of leakage.

22. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Area referred to in paragraph "18", above, had unreadable or no labels to identify their contents, and were not labeled with the words "hazardous waste".

23. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Area referred to in paragraph "18", above, were not marked with the date indicating when accumulation of hazardous waste in the containers began.

24. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Area referred to in paragraph “18”, above,” were not closed.

25. At the time of the 2013 Inspection, containers in the Hazardous Waste Storage Area referred to in paragraph “18”, above, were stated by the Facility representative to be “eyeballed” rather than the Respondent conducting an inspection of these containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Notice of Violation and Request for Information

26. On or about July 8, 2014, EPA issued to Respondent a combined Notice of Violation and Information Request Letter (“NOV-IRL”).

27. The NOV portion of the NOV-IRL, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified at least ten (10) RCRA violations at its Facility and asked Respondent to provide a description and documentation of the actions it had taken to correct the violations within thirty (30) calendar days from receipt of the NOV-IRL.

28. The IRL portion of the NOV-IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to the Facility’s handling and storage of hazardous waste, including requesting a complete inventory of the Hazardous Waste Storage Areas, referred to in paragraph “18”, above, at the time of the Inspection; the IRL also sought additional information or documentation regarding Facility operations that would assist the EPA in fully evaluating Respondent’s compliance with RCRA regulations.

29. On or about August 19, 2014, Respondent submitted its Response to the NOV-IRL (“Response”).

COUNT 1 - Storage of Hazardous Waste Without a Permit

30. Complainant re-alleges each allegation contained in paragraphs “1” through “29”, inclusive, with the same force and effect as if fully set forth herein.

Legal Requirements for Permits & Exemptions

31. Respondent stores hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurs in two buildings which are dedicated as hazardous waste storage area.

32. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:

- a. Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of a Facility for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and
- b. Six NYCRR § 373-1.2 provides that no person shall operate a hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.

33. Pursuant to 6 NYCRR § 372.2(a)(8)(iii)('d'), a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any calendar month may accumulate non-acute hazardous waste on-site for 180 days or less without being subject to the permitting requirements of 6 NYCRR Part 373 [*i.e.* without having obtained a permit or without having interim status], provided such generator complies with the requirements of, *inter alia*:

- a. Six NYCRR § 373-3.9 (except for 6 NYCRR § 373-3.9(f) and (h));
- b. Six NYCRR § 373-1.1(d)(1)(iii)('c')('2') - ('3');
- c. Six NYCRR § 373-3.3; and
- d. Six NYCRR § 376.1(g)(1)(iv).

34. Six NYCRR §372.2(a)(8)(i)(a) provides that a generator of hazardous waste can be exempt from the permit requirements and still accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, and provided further that the generator complies with the use and management standards set forth in 6 NYCRR § 373-3.9(b)-(d), and marks the containers with the words “Hazardous Waste” and with other words that identify the contents of the containers.

35. Pursuant to 6 NYCRR § 373-3.9 (d)(1), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

36. Pursuant to 6 NYCRR § 373-3.9(e), a generator must inspect areas where hazardous waste containers are stored at least weekly, and to look for leaking containers, deterioration of containers and problems in the containment system caused by corrosion or other factors.

Respondent’s Failure to Qualify for an Exemption from Permitting Requirements

a. Label containers with the words “Hazardous Waste” and mark containers with accumulation start dates

37. Pursuant to 6 NYCRR § § 372.2(a)(8)(iii)(‘d’) and 373-3.9(d)(3), a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that containers are labeled with the words “Hazardous Waste” and with other words identifying their contents.

38. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘d’) and 373-1(d)(1)(iii)(‘c’)(‘2’), a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

39. At the time of the 2013 Inspection, Respondent had failed to label containers located in the Facility’s designated Hazardous Waste Storage Areas with the words “Hazardous Waste” and with other words identifying their contents.

40. At the time of the 2013 Inspection, Respondent had failed to mark with an accumulation start date (*i.e.*, the date when hazardous waste started to be stored in the container) containers of hazardous waste stored by the Respondent in designated Hazardous Waste Storage Areas.

b. Keep containers of hazardous waste closed

41. Pursuant to 6 NYCRR § 373-3.9(d)(1) an owner or operator is required to keep containers of hazardous waste closed during storage except when it is necessary to add or remove waste.

42. At the time of the Inspections, Respondent failed to keep containers of hazardous waste closed during storage except when it is necessary to add or remove waste.

c. Conduct weekly inspections of hazardous waste containers

43. Pursuant to 6 NYCRR § 373-3.9(e) requires an owner or operator to inspect, at least weekly, areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors.

44. At the time of the 2013 Inspection, Respondent had failed to conduct weekly inspections of areas where containers of hazardous waste are stored to look for leaking containers and for deterioration of containers caused by corrosion and other factors.

d. Failure to Minimize Risks of Fire, Explosion and Releases, and Failure to Keep Containers in Good Condition

45. Pursuant to 6 NYCRR § 373-3.3(b), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

46. Pursuant to 6 NYCRR § 373-3.9(b) requires generators to keep containers in good condition and to transfer hazardous waste from a leaking container to a container that is in good condition.

47. At the time of the 2013 Inspection, Respondent stored hazardous waste in containers that were corroded or had already breached and released their contents at its Facility which could threaten human health or the environment.

e) Greater than 180 Day Storage of Hazardous Waste

48. Pursuant to 6 NYCRR § 372.2(a)(8)(iii), a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate

been amended to take inflation into account, provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

A penalty calculation worksheet and narrative explanation to support the penalty figure for the violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of the penalty are included as Attachment II, below.

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply at its Facility with all applicable federal and state regulatory requirements for hazardous waste generators, including those provisions for the short-term on-site storage of hazardous waste by the generator of such waste, including, but not limited to, those rules cited in this Complaint.
2. Respondent shall submit a written report within 30 days of the effective date of this Compliance Order reporting on its compliance status.
3. Any responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Ronald Voelkel
Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (40 C.F.R Part 19).

V. PROCEDURES GOVERNING THIS LITIGATION

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

The rules of procedure governing civil administrative litigation were set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Stuart N. Keith, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3217

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.


Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date SEPTEMBER 30, 2015

To: Yochiro Araki
Chief Operating Officer
Kawasaki Rail Car, Inc.
29 Wells Avenue
Yonkers, New York 10701

cc: Kelly Lewandowski, Chief
Site Control Section
Bureau of Technical Support
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

ATTACHMENT 1

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT Penalty Computation Worksheet (Count 1)

Respondent: Kawasaki Rail Car, Inc.

Facility Address: 29 Wells Avenue, Yonkers, New York 10701

Requirements Violated: 42 U.S.C § 6925, 6 NYCRR §§ 373-1.2. - Operating a Hazardous Waste Storage Facility Without a Permit

Respondent operated a hazardous waste management facility without having obtained a permit or qualifying for interim status. Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint. Small and large quantity generators must comply with the hazardous waste container management and storage area requirements, and must meet certain preparedness and prevention requirements to be exempt from permitting.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix \$32,915	
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$1,420
3. Multiply line 2 by number of days of violation minus 1.	\$41,180
4. Add line 1 and line 3	\$74,095
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	\$14,819
8. Total lines 5 through 7.	\$14,819
9. Calculate economic benefit.	Not applicable
10. Add lines 4 and 8 for penalty amount to be inserted into the complaint.	\$88,900

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

12. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in these violations was determined to be MAJOR. Operation without a permit is a serious violation and has a substantial adverse effect on the program and creates the potential for improper management of the hazardous waste. The Respondent's failure to comply with many of the regulatory requirements resulted in a heightened potential for harm. The Respondent stored a large number of containers of hazardous waste for a significant period of time and in a haphazard manner to the extent that corrosion occurred allowing for the potential uncontrolled release of hazardous waste into the environment.
- b. Extent of Deviation - The Respondent did not comply with many hazardous waste storage and management requirements, including, among other requirements: marking the containers with the words "hazardous waste" and marking the start date of accumulation, not allowing containers to remain open and to corrode or become punctured, conducting weekly inspections. The extent of deviation present in this violation was determined to be MAJOR. Most of the conditions that must be met to be exempt from RCRA permitting requirements were not satisfied

The applicable cell ranges from \$28,330 to \$37,500. The mid-point for the cell matrix was selected.

1. Multiple/Multi-day – From the condition of many of the containers of hazardous waste observed at the time of the inspection, it appeared evident that the containers had been stored for a considerable length of time. Therefore, it is deemed appropriate that a multi-day component be added to the penalty. The Agency will use its enforcement discretion to limit the multi-day component to 30 days.

The applicable multi-day matrix cell ranges from \$1,420 to \$7,090. The low point of the cell matrix was selected given that the containers were stored in a secure structure.

13. Adjustment Factors

1. Good Faith - Based upon facility specific factors and available information, that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

2. Willfulness/Negligence - Not applicable
3. History of Compliance - The count was cited in a previous judicial Complaint by the U.S. Department of Justice resulting from alleged violations of RCRA regulations observed during a previous RCRA Inspection; therefore a twenty (20) percent increase in base penalty is warranted. Factors considered in determining the increase include length of time since the last complaint and similarity of the violations cited in that complaint.
4. Ability to Pay - Not applicable
5. Environmental Project - Not applicable
6. Other Unique Factors - Not applicable
14. Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant (\$5,000) under the 2003 RCRA Civil Penalty Policy. Although there was some economic benefit gained due to avoided cost (missed inspections and keeping containers in good condition), the Respondent ultimately incurred much of the expense associated with properly disposing its waste.

ATTACHMENT II

Gravity-based penalty matrix
to supplement the RCRA Civil Penalty Policy
for violations that occur after January 12, 2009*

EXTENT OF DEVIATION FROM REQUIREMENT

**POTENTIAL
FOR HARM**

	MAJOR	MODERATE	MINOR
MAJOR	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
MODERATE	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
MINOR	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

* All penalties calculated in this action have been rounded to the nearest \$100.

Multi-Day Matrix of Minimum Daily Penalties
 To Supplement the RCRA Civil Penalty Policy
 For Violations That Occur After January 12, 2009*

EXTENT OF DEVIATION FROM REQUIREMENT

**POTENTIAL
 FOR HARM**

	MAJOR	MODERATE	MINOR
MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
MINOR	\$850 to \$150	\$430 to \$150	\$150

* All penalties calculated in this action have been rounded to the nearest \$100

CERTIFICATE OF SERVICE

This is to certify that on the day of October 1, 2015, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2015-7103, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to Mr. Yochiro Araki, Chief Operating Officer, Kawasaki Rail Car, Inc., 29 Wells Avenue, Yonkers, New York. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: Yochiro Araki, 2015
New York, New York