

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2008 JUN -6 AM 10: 11

IN THE MATTER OF:)
)
Sunrise Electronics Incorporated)
130 Martin Lane) DOCKET NO. RCRA-05-2007-0013
Elk Grove Village, Illinois 60007)
)
ILD 984 767 129)
)
Respondent.)
_____)

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

In accordance with the Prehearing Order issued by this Honorable Court on May 1, 2008, Complainant, the Chief, Enforcement & Compliance Assurance Branch, Waste, Pesticides & Toxics Division, Region 5, United States Environmental Protection Agency (U.S. EPA), through his undersigned attorney, hereby files the instant Complainant's Initial Prehearing Exchange pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

1. Complainant's Witnesses and Exhibits

A. Witnesses

Complainant may call the following individuals as witnesses in the hearing in this matter:

1. Ms. Diane Sharrow
Environmental Scientist/Senior Inspector
Land and Chemicals Division
RCRA Branch, Compliance Section 1
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Ms. Sharrow may be called as a fact witness to testify about her inspection of the Sunrise Electronics, Inc. facility on November 16, 2004, and her observations and actions during that inspection. She may also testify about her presence during the second inspection of the facility on November 28, 2005, and her observations and actions during that inspection. She may further testify about her role in U.S. EPA's issuance of a Request for Information to Sunrise under the authority of Section 3007 of RCRA, 42

U.S.C. § 6927; and about her receipt of responses to that Request for Information. She may also testify about her role in the issuance of a Notice of Violation (NOV) to Sunrise on or about February 28, 2005, and on her receipt of responses to the (NOV). If necessary, Ms. Sharrow will provide testimony sufficient to authenticate certain photographs, documents and other exhibits contained in her inspection report.

2. Mr. Bradley Grams
Environmental Scientist/Inspector
Land and Chemicals Division
Enforcement and Compliance Assurance Branch
Compliance Section 1
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Mr. Grams may be called as a fact witness to testify about his inspection of the Sunrise facility on November 28, 2005, and his observations and actions during that inspection. Mr. Grams may also testify about his role in the calculation of the penalty proposed in this matter. If necessary, Mr. Grams will provide testimony sufficient to authenticate certain photographs, documents and other exhibits contained in her inspection report and penalty calculations.

3. Dr. Christopher Weis
Senior Toxicologist
National Enforcement Investigations Center
U.S. EPA

Dr. Weis is a Senior Toxicologist at the National Enforcement Investigations Center in Denver, Colorado. He may be called as an expert witness to testify about the constituents and characteristics of the different hazardous wastes at issue in this case. Dr. Weis may testify about his review of records and other information about the specific hazardous wastes involved in this case. Dr. Weis may testify about his research of the constituents and characteristics of these hazardous wastes and the substances that comprise such wastes. Dr. Weis may offer expert opinion testimony about the specific hazards or potential hazards to human health or the environment that were posed by the hazardous wastes at issue in this case. Dr. Weis may also testify in U.S. EPA's rebuttal case, in response to testimony and other evidence presented by Respondents. Dr. Weis' CV is attached as CX 17.

4. Mr. Ashok Patel
President
Sunrise Electronics, Inc.
130 Martin Lane
Elk Grove Village, Illinois 60007

Even if he is not called as a witness by Respondent, Mr. Ashok Patel may be called as a witness by Complainant. Mr. Patel will be examined about the operations at the Sunrise facility, the violations at issue in the Complaint, and such other matters as Complainant deems relevant (as allowed by the Court). Given Mr. Patel's position as President of Sunrise Electronics, Inc., Complainant requests the right to treat this witness as an adverse or hostile witness and to examine him through the use of leading questions should Complainant elect to call Mr. Patel as a witness in Complainant's case-in-chief.

5. Financial Expert – To Be Determined

Should Respondent respond to Paragraph 3(B) of this Honorable Court's May 1, 2008 Prehearing Order by claiming that it can not pay the penalty proposed in the Complaint, Complainant may call a financial expert. That expert may be called to testify as an expert witness in the areas of the forensic analysis of financial information and the analysis of ability to pay, or, the effect of a penalty on a person's ability to continue in business.

B. Documents and Other Exhibits

Complainant expects to offer the following documents/exhibits into evidence, which are numbered as Complainant's Exhibits (CX) 1 through 18:

CX 1: U.S. EPA's Compliance Evaluation Inspection Report, U.S. EPA, Region 5, Sunrise Electronics, Inc. November 16, 2004.

CX 2: November 22, 2004 Correspondence from Respondent to Complainant, referencing "Hazardous Waste Records Request Form."

CX 3: December 22, 2004, Request for Information, from U.S. EPA, Region 5, to Sunrise Electronics, Inc. (Request for Information)

CX 4: January 28, 2005, Response of Sunrise Electronics, Inc., to U.S. EPA's Request for Information, with attachments.

CX 5: February 22, 2005 Notification by U.S. EPA to State of Illinois regarding issuance of a Notice of Violation to Sunrise Electronics, Inc.

CX 6: February 28, 2005 Notice of Violation (NOV) sent to Sunrise Electronics, Inc. by U.S. EPA.

CX 7: Email correspondence between Ms. Sharrow and Mr. Andy Neulander, consultant for Sunrise Electronics, Inc., regarding the NOV.

- CX 8: March 28, 2005, Response of Sunrise Electronics, Inc., to U.S. EPA's NOV.
- CX 9: U.S. EPA's Case Development Inspection Report, U.S. EPA, Region 5, Sunrise Electronics, Inc. November 28, 2005.
- CX 10: November 30, 2005, Response of Sunrise Electronics, Inc. to U.S. EPA's November 28, 2005 inspection.
- CX 11: December 5, 2005, "Assessment of Existing Tank Containment System" performed by C.T. Engineering for Sunrise Electronics, Inc., and submitted to U.S. EPA on December 15, 2005.
- CX 12: Notice of Intent to File Complaint against Sunrise Electronics, Inc., sent to Illinois Environmental Protection Agency by U.S. EPA, September 22, 2006.
- CX 13: Pre-filing Notice of Intent to File Complaint, sent to Sunrise Electronics by U.S. EPA, dated September 22, 2006.
- CX 14: Dun & Bradstreet Business Information Report for Sunrise Electronics, Inc., printed September 26, 2005.
- CX 15: RCRA Civil Penalty Policy, July 2003
- CX 16: Curriculum Vitae of Dr. Christopher Weis, National Enforcement Investigations Center.
- CX 17: Action Notices and Memoranda from Office of Environmental Information, U.S. EPA, demonstrating OMB approval of Information Collection Requests associated with regulations cited in Complaint.

Copies of these exhibits are attached to this Prehearing Exchange.

C. Complainant's views as to the appropriate place of hearing, and an estimate of the time needed to present its direct case.

Complainant believes that Chicago, Illinois, would be the appropriate location of the hearing. Complainant estimates that its case-in-chief will be presented within two full business days. Complainant does not expect translation services to be necessary in regard to any of Complainant's witnesses.

2. Complainant's Required Submissions

Paragraph 2(A) of this Honorable Court's Prehearing Order requires Complainant to submit a copy of Respondent's Notice of Hazardous Waste Activity at the relevant facility as referenced in Paragraph 26 of the Complaint. Complainant has requested a copy of Respondent's Notice of Hazardous Waste Activity from its Federal Record Center, but at the time of filing had not received this copy. Respondent's annual hazardous waste reports, however, are additional evidence of Respondent's generator status, and Complainant has included several of these in this Initial Prehearing Exchange, including reports for 2001, 2002, and 2003, which are included in CX 2 at Bates nos. 74-85. Complainant will move this Honorable Court to admit a supplemental prehearing exchange to include Respondent's Notice of Hazardous Waste Activity when Complainant receives the copy from the Federal Record Center. Additionally, Complainant respectfully notes that Respondent has admitted in its Answer that Respondent submitted the Notice of Hazardous Waste Activity as alleged in Paragraph 26 of the Complaint.

Paragraph 2(B) of this Honorable Court's Prehearing Order requires Complainant to submit a copy of any and all documents in regard to Complainant's November 16, 2004 Compliance Evaluation Inspection report. These documents are found in this Initial Prehearing Exchange at CX 1. Complainant notes that the Inspector, Ms. Sharrow, took no additional field notes other than those found in the inspection checklist in CX 1 at Bates nos. 12-23. Similarly, Paragraph 2(D) of this Honorable Court's Prehearing Order required Complainant to submit a copy of any and all documents in regard to Complainant's November 28, 2005 Case Development Inspection. These documents are found in this Initial Prehearing Exchange at CX 9. Complainant notes that the Inspector, Mr. Grams, took no additional field notes other than those found in the inspection checklist in CX 9 at Bates nos. 301-313.

Paragraph 2(I) of this Honorable Court's Prehearing Order requires Complainant to submit a copy of any policy other than the U.S. EPA's 2003 RCRA Civil Penalty Policy, upon which Complainant relied in calculating the penalty proposed in the Complaint. Complainant relied on no other policy when calculating the penalty proposed in the Complaint.

Paragraph 2(J) of this Honorable Court's Prehearing Order requires Complainant to submit a detailed explanation of the economic benefit component of the penalty referenced in Attachment A of the Complaint. Complainant did not include an economic benefit component in the penalty proposed in the Complaint. Section VIII of the 2003 RCRA Civil Penalty Policy states that U.S. EPA should recover economic benefit if it is "significant." For penalties over \$50,000, economic benefit is significant under the policy if it is greater than \$5,000. See CX 15, Bates no. 417. The penalty proposed in this matter is greater than \$50,000. Complainant evaluated the economic benefit of each count and determined that the total economic benefit of the violations was less than \$5,000. Complainant therefore considered the economic benefit of Respondent's non-compliance, but did not include the economic benefit in the penalty proposed in the complaint.

Paragraph 2(K) of this Honorable Court's Prehearing Order requires Complainant to submit a statement regarding whether the Paperwork Reduction Act (PRA), 44 U.S.C.

§ 3501, et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein, and whether the provisions of Section 3512 of the PRA are applicable in this case.

The provisions of the Paperwork Reduction Act (PRA), including Section 3512 of the PRA, may apply to portions of the Complaint, specifically to the violations involving the failure to obtain a certified written integrity assessment of hazardous waste storage tanks, failure to document hazardous waste training, failure to document daily tank inspections, and the failure to obtain hazardous waste treatment, storage or disposal permit. However, because there have been no lapses in OMB approval of any information collection requests (ICRs) associated with these regulatory requirements during the time periods relevant to the Complaint, the provisions of the PRA do not affect this case.

The OMB control numbers that apply to regulatory information collection requests (ICRs) are listed at 40 C.F.R. § 9.1. According to that regulation, the following OMB control numbers may apply to ICRs contained in the regulations at issue in this case:

40 C.F.R. § 262.34 (Illinois Administrative Code (IAC) § 722.134)	–	OMB Control No. 2050-0035 OMB Control No. 2050-0085
40 C.F.R. § 265.16 (IAC § 725.116)	–	OMB Control No. 2050-0120
40 C.F.R. § 265.53 (IAC § 725.153)	–	OMB Control No. 2050-0120
40 C.F.R. § 265.192 (IAC § 725.292)	–	OMB Control No. 2050-0035
40 C.F.R. § 265.193 (IAC § 725.293)	–	OMB Control No. 2050-0050
40 C.F.R. § 265.195 (IAC § 725.295)	–	OMB Control No. 2050-0120

At the request of Complainant, Spencer T. Clark, a Program Analyst in the Collection Strategies Division of the Office of Environmental Information (OEI), U.S. EPA in Washington, D.C., conducted an investigation of all OMB action notices for the relevant OMB Control Numbers and associated ICRs identified above. This investigation revealed that there have been no lapses in OMB approval of any ICRs applicable to the regulations at issue in this case during the time periods relevant to the Complaint. Therefore, the Paperwork Reduction Act has no impact on this proceeding. The results of OEI's investigation are contained in the records included as CX 17.

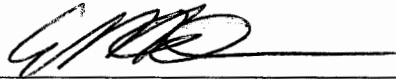
Paragraphs 2(C), 2(E), 2(F), 2(G), and 2(H) of this Honorable Court's Prehearing Order required Complainant to submit copies of documents that are identified above in Section 1(B), but do not require any additional discussion here.

3. Reservation of Rights.

Complainant respectfully reserves the right to file a motion in the future seeking leave to supplement its list of witnesses and its list of exhibits upon reasonable notice to Respondent, and by order of this Honorable Court.

Complainant's Initial Prehearing Exchange for In the Matter of Sunrise Electronics, Inc., is hereby respectfully submitted.

Respectfully Submitted,



Erik H. Olson
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(312) 886-0813

In re Sunrise Electronics
Docket No. RCRA-05-2007-0013

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CERTIFICATE OF SERVICE

I hereby certify that the original of the attached Complainant's Initial Prehearing Exchange was filed with the Regional Hearing Clerk, U.S. EPA, Region V, and that true, accurate and complete copies of Complainant's Initial Prehearing Exchange were served on Chief Administrative Law Judge Susan L. Biro (service by pouch mail) and Mr. Christopher Nowotarski, Counsel for Respondent (service by Federal Express) on the date indicated below.

Dated in Chicago, Illinois, this 6th day of June, 2008.



Erik H. Olson
Associate Regional Counsel
U.S. EPA - Region V