

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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:

**Kawasaki Motors Manufacturing Corp., U.S.A.**  
**6600 NW 27<sup>th</sup> Street**  
**Lincoln, Nebraska 68524**

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)  
) **COMPLAINT, COMPLIANCE**  
) **ORDER AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
)  
)

EPA ID No. NED068652981

Respondent.

)  
)  
) **Docket No. RCRA-07-2006-0262**  
)

Proceeding under Section 3008 (a) and (g) of  
the Resource Conservation and Recovery Act  
as amended, 42 U.S.C. § 6928(a) and (g).

**I. PRELIMINARY STATEMENT**

This Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA" or "the Act"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's 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 ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of the United States Environmental Protection Agency ("EPA") Region VII, who has been duly delegated the authority to bring this action. The Respondent is Kawasaki Motors Manufacturing Corp., U.S.A., a company incorporated under the laws of and authorized to conduct business in the State of Nebraska.

The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated May 11, 1994. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated June 14, 2005. The Director of the Air, RCRA and Toxics Division of EPA, Region VII, has delegated this authority to the Branch Chief of the RCRA

Enforcement and State Programs Branch, Region VII, by EPA Delegation No. R7-Div-8-9-A, dated June 15, 2005.

The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of Neb. Admin. Code Title 128. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997, and before March 15, 2004. In addition, penalties of up to \$32,500 per day are now authorized for violations occurring after March 15, 2004. 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, and attached hereto, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. These factors include the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

## **II. COMPLAINT**

### **ALLEGATIONS COMMON TO ALL COUNTS**

1. Kawasaki Motors Manufacturing Corp., U.S.A. (hereafter "Kawasaki" or "Respondent") is a Nebraska corporation authorized to conduct business in the State of Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. Respondent, located at 6600 NW 27<sup>th</sup> Street in Lincoln, Nebraska, manufactures parts and assembles motorcycles, personal watercraft, all-terrain vehicles, industrial robots, light rail cars, and small engines.

3. Respondent began operations at this facility in 1973 and the facility currently has approximately 1,300 employees.

4. On or about January 8, 1998, Respondent submitted a Notification of Regulated Waste Activity as a generator of 1000 kilograms per month or more of D005, D006, D007, and D035 characteristic hazardous wastes and F003 and F005 listed hazardous wastes.

5. Respondent has been assigned the EPA Facility Identification Number NED068652981.

6. On or about September 14-16, 2004, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") at Kawasaki.

7. Based on the facility's generation rates of hazardous waste before and during the EPA inspection, Respondent was operating at that time as a large quantity generator of hazardous waste (defined in the Neb. Admin. Code at Title 128, Chapter 12, as any generator who generates 1000 kilograms or more of hazardous waste per calendar month). Respondent is therefore subject to the regulations under Neb. Admin. Code Title 128, Chapter 10 (40 C.F.R. § 262.34(a)) applicable to large quantity generators.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, and Neb. Admin. Code Title 128, Chapter 12, provides that treatment, storage or disposal facilities for hazardous wastes must obtain a permit or interim status.

**COUNT 1**  
**FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

9. Complainant hereby incorporates the allegations contained in paragraphs 1 through 8 above, as if fully set forth herein.

10. Pursuant to Neb. Admin. Code Title 128, Chapter 4, 002 (40 C.F.R. § 262.11) a generator of "solid waste," as that term is defined in Neb. Admin. Code Title 128, Chapter 2, 003 (40 C.F.R. § 261.2), is required to determine if the solid waste is a hazardous waste using the methods stated in Chapter 4, 002.

11. On or about September 14-16, 2004, Respondent was generating waste aerosol cans from touch up painting, cleaning solutions, and adhesives used throughout the facility. Respondent had not conducted a hazardous waste determination on this waste and was disposing of the cans in the general trash.

12. Respondent's failure to make a hazardous waste determination on the aerosol cans containing paint, cleaning solvents, and adhesives, is a violation of Neb. Admin. Code Title 128, Chapter 4, 002 (40 C.F.R. § 262.11).

13. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that a civil penalty of \$34,571 be assessed against Respondent for its failure to comply with Neb. Admin. Code Title 128, Chapter 4, 002 (40 C.F.R. § 262.11).

**COUNT 2**  
**OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY**  
**WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

14. Complainant hereby incorporates the allegations contained in paragraphs 1 through 13 above, as if fully set forth herein.

15. The regulations at Neb. Admin. Code Title 128 Chapter 10, 001 state that a large quantity generator is one who generates in a calendar month 1,000 kilograms or more of hazardous waste. Large quantity generators are subject to the requirements in Neb. Admin. Code Title 128, Chapter 10.

16. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004 (40 C.F.R. § 262.34 (a)) state that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that the generator complies with the requirements of Neb. Admin. Code Title 128, Chapter 10, 004.01A through 004.01H.

**Open Satellite Accumulation Container**

17. The regulations at Neb. Admin. Code Title 128, Chapter 10, 005.01 (40 C.F.R. § 262.34(c)(1)) state that a generator may accumulate as much as 55 gallons of hazardous waste at or near any point of generation where wastes initially accumulate without a permit or interim status, provided the generator complies with Neb. Admin. Code Title 128, Chapter 10, 004.01A1 and 004.01A2 (federal regulations at 40 C.F.R. §§ 265.171 – 265.173(a)).

18. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01A2 (40 C.F.R. § 265.173(a)) require that a container holding hazardous waste must always be closed except when it is necessary to add or remove waste.

19. On or about September 14-16, 2004, at a time when a waste was not being added or removed, Respondent was accumulating spent solvent, disposed as D001 and D035 characteristic and F003 and F005 listed hazardous waste, in the satellite accumulation container located between paint booth one and two which was not closed.

20. On or about September 14-16, 2004, at a time when a waste was not being added or removed, Respondent was accumulating still bottom waste, disposed as D001 and D035 characteristic and F003 and F005 listed hazardous waste, in a satellite accumulation container located next to the distillation unit which was not closed.

#### **Storage of Incompatible Wastes**

21. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01A5 (40 C.F.R. § 262.34(a)(1)(i)) require that while being accumulated on-site, the waste is placed in containers and the generator complies with Neb. Admin. Code Title 128, Chapter 16 (federal regulations at 40 C.F.R. Part 265, subparts I, AA, BB, and CC).

22. The regulations at Neb. Admin. Code Title 128, Chapter 16, 002.01B (40 C.F.R. § 265.177(c)) require that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall or other device.

23. On or about September 14-16, 2004, Respondent was storing four (4) 55-gallon drums of spent phosphoric acid and containers of methyl ethyl ketone ("MEK") near each other in the hazardous waste container storage area without providing separation or protection as required by Neb. Admin. Code Title 128, Chapter 16, 002.01B (40 C.F.R. § 265.177(c)).

#### **Failure to Conduct Weekly Inspections**

24. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01A4 (40 C.F.R. § 265.174) state that a generator must inspect areas where hazardous waste containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion and other factors.

25. In the year 2003, Respondent failed to conduct weekly inspections of the hazardous waste storage containers in thirteen (13) different weeks. In 2004, Respondent failed to conduct weekly inspections in four (4) different weeks.

#### **Contingency Plan**

26. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01H (40 C.F.R. § 262.34(a)(4)) require, in part, that the generator complies with the requirements of Neb. Admin. Code Title 128, Chapters 17, 18, 19, and 20 (federal regulations at 40 C.F.R. Part 265, Subparts C and D).

27. The regulations at Neb. Admin. Code Title 128, Chapter 18, 002 (40 C.F.R. § 265.51) require that each owner or operator must have a contingency plan for its facility. The

contingency plan must contain the elements described in Neb. Admin. Code Title 128, Chapter 18, 003.

28. At the time of the September 14-16, 2004, inspection, Respondent did not have a contingency plan containing the elements required by Neb. Admin. Code Title 128, Chapter 18, 003. The following deficiencies were noted:

- a. The contingency plan did not describe arrangements agreed to by local police and/or fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services, as required under Section 003.03.
- b. The contingency plan did not include the home addresses for the persons authorized to act as emergency coordinators, as required by Section 003.04.
- c. The contingency plan did not include a list of all emergency equipment, the locations and physical descriptions of the equipment, or a brief outline of its capabilities, as required by Section 003.05.

29. The regulations at Neb. Admin. Code Title 128, Chapter 18, 004.02 (40 C.F.R. § 265.53) require that a copy of the facility's contingency plan and all revisions to the plan must be submitted to the Director, all local police and/or fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services.

30. Respondent previously submitted a copy of its contingency plan, dated September 1996, to the Nebraska Department of Environmental Quality ("NDEQ").

31. At the time of the September 14-16, 2004, inspection, Respondent had not submitted a copy of its revised contingency plan, dated July 17, 2003, to the Director of NDEQ.

#### **Failure to Conduct Personnel Training**

32. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01H (40 C.F.R. § 262.34(a)(4)) require, in part, that the generator complies with the requirements of Neb. Admin. Code Title 128, Chapters 17, 18, 19, and 20 (federal regulations at 40 C.F.R. Part 265, Subparts C and D).

33. The regulations at Neb. Admin. Code Title 128, Chapter 19, 001 (40 C.F.R. § 265.16), require that facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures compliance with the requirements of these regulations.

34. The regulations at Neb. Admin. Code Title 128, Chapter 19, 003 (40 C.F.R. § 265.16), require that facility personnel take part in an annual review of the initial training required under Neb. Admin. Code Title 128, Chapter 19, 001.

35. The regulations at Neb. Admin. Code Title 128, Chapter 19, 004 (40 C.F.R. § 265.16), require that Respondent must maintain documents and records on-site describing the job title of each employee engaged in hazardous waste management and the name of the employee filling each job, the specific written job description for each position (including the requisite skill, education, or other qualifications, and duties of personal assigned to each position), a written description of the type and amount of introductory and continuing training to be given to employees engaged in hazardous waste management and records that document that completion of training or job experience have been given to, and have been completed by personnel.

36. At the time of the September 14-16, 2004, inspection, Respondent did not have documentation of the annual training completed by facility personnel. Specifically, two facility employees had not received the annual training review, one of whom conducted the facility's weekly hazardous waste container inspections.

37. At the time of the September 14-16, 2004, inspection, Respondent did not have documentation of the skill, qualifications, and duties for job titles of personnel assigned to manage the facility's hazardous waste.

**Failure to Comply with Subpart J**

38. The regulations at Neb. Admin. Code Title 128, Chapter 10, 004.01B require a generator to comply with 40 C.F.R. Part 265, Subpart J, as incorporated by reference in Neb. Admin. Code Title 128, Chapter 22, 010, for waste placed in tanks.

39. Pursuant to 40 C.F.R. § 265.193, generators must provide secondary containment (40 C.F.R. § 265.193) for tank systems used for storing hazardous waste.

40. At the time of the September 14-16, 2004, inspection, Respondent did not have secondary containment for the 120 gallon hazardous waste holding tank feeding the solvent distillation unit.

**Failure to Comply with Subparts BB and CC**

41. The State of Nebraska has not been authorized to administer and enforce the provisions at 40 C.F.R. Part 265, Subparts BB and CC; therefore, the EPA can enforce these federal regulations directly in the State of Nebraska.

42. The federal regulations at 40 C.F.R. § 262.34(a) state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 C.F.R. § 262.34(a)(1) – (a)(4).

43. The federal regulations at 40 C.F.R. § 262.34(a)(1)(ii) state that the generator must comply with the requirements of 40 C.F.R. Part 265, Subparts BB and CC for hazardous waste stored in tanks.

44. 40 C.F.R. Part 265, Subpart BB sets air emission standards for equipment leaks. Pursuant to 40 C.F.R. § 265.1050(b)(3), equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that is managed as a unit that is exempt from permitting under the provisions of 40 C.F.R. § 262.34(a), is subject to the requirements of Subpart BB.

45. At the time of the September 14-16, 2004, inspection, the equipment connecting paint booths 1, 2, and 3 to the solvent distillation unit at Respondent's facility contained or contacted hazardous wastes with organic concentration of at least 10 percent by weight and Respondent was managing the equipment as a unit exempt from permitting under 40 C.F.R. § 262.34(a).

46. 40 C.F.R. Part 265, Subpart CC sets air emission standards for tanks, surface impoundments, and containers. Pursuant to 40 C.F.R. § 265.1080, owners and operators of facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subparts I, J, or K of this part are required to comply with the subpart.

47. At the time of the September 14-16, 2004, inspection, Respondent's 120 gallon hazardous waste holding tank feeding the solvent distillation unit was subject to Subpart J, as described above in paragraphs 38 through 40.

48. At the time of the September 14-16, 2004, inspection, a representative for Respondent stated that the facility had not determined whether the 120 gallon hazardous waste storage tank, the solvent recovery unit, and the associated piping equipment were subject to the requirements of 40 C.F.R. Part 265, Subparts BB and CC, and therefore had not been complying with the regulations.

49. Respondent subsequently determined that the 120 gallon hazardous waste storage tank and associated piping equipment was not in compliance with the requirements of 40 C.F.R. Part 265, Subparts BB and CC.

50. Respondent's failure to comply with the conditions set forth in Neb. Admin. Code Title 128, Chapter 10 (40 C.F.R. § 262.34(a)) subjects Respondent to the requirement to have a permit or interim status for its storage of hazardous waste.

51. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA and Neb. Admin. Code Title 128, Chapter 12.

52. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the



allegations contained above, it is proposed that a civil penalty of \$173,840 be assessed against Respondent for its failure to comply with Section 3005 of RCRA and the regulations as described above.

### **III. COMPLIANCE ORDER**

IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$208,411. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Regional Hearing Clerk  
U.S. EPA, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101,

and

Kristi Denney  
Assistant Regional Counsel  
U.S. EPA, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

The check must reference the EPA Docket Number of this Complaint and Respondent by name.

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

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Compliance Order shall become final unless Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of the Complaint.

A written answer to the Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 901 N. 5<sup>th</sup> St., Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Kristi Denney, Office of Regional Counsel, at the same address.

Respondent's failure to file a written answer and request 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. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, and 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.

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

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 Kristi Denny, Office of Regional Counsel, U.S. EPA, Region VII, 901 N. 5<sup>th</sup> St., Kansas City, Kansas 66101, (913) 551-7294.

Please note that 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.

The 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 a conference shall be embodied in a written Consent Agreement and Final Order which may be issued by the Regional Judicial Officer, EPA Region VII.

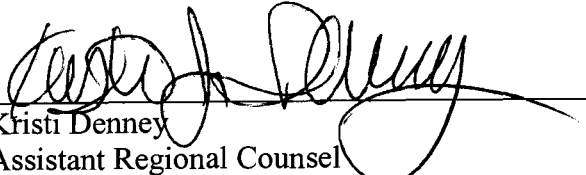
If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

#### **VI. TERMINATION**

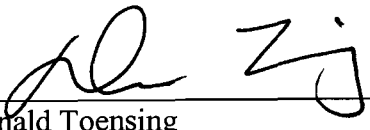
This Order shall only be terminated upon receipt of written notice from EPA that all requirements herein have been satisfied.

IT IS SO ISSUED AND ORDERED:

9/28/06  
Date

  
\_\_\_\_\_  
Kristi Denney  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

9-28-06  
Date

  
\_\_\_\_\_  
Donald Toensing  
Chief  
RCRA Enforcement and State Programs Branch  
U.S. Environmental Protection Agency  
Region VII

Attachments: Penalty Calculation Summary  
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  
RCRA Civil Penalty Policy (June 23, 2003)  
Notice of Securities and Exchange Commission Registrants' Duty to Disclose  
Environmental Legal Proceedings

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint, Compliance Order and Notice of Opportunity for Hearing; a copy 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; a copy of the RCRA Civil Penalty Policy (June 23, 2003); and a copy of the Civil Penalty Calculation Summary; and a copy of the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings to the following registered agent for Kawasaki Motors Manufacturing Corp., U.S.A.:

Registered Agent for Kawasaki Motors Manufacturing Corp., U.S.A.  
C T Corporation System  
301 S.13<sup>th</sup> Street, Suite 500  
Lincoln, Nebraska 68508

Dated this 29<sup>th</sup> day of Sept., 2006.

Josh Zragzo  
Name