

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
American Railcar Industries, Inc.)
)
1101 Bedford Avenue)
North Kansas City, Missouri, 64116)
)
EPA ID# MOT300010022)
)
Respondent.)

Docket No: RCRA-07-2006-0282

ANSWER

COMES NOW Respondent, American Railcar Industries, Inc. (Respondent) and responds to the Complaint, Compliance Order and Notice of Opportunity for Hearing as follows:

A. PRELIMINARY STATEMENT

1. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and, therefore, denies the allegations.

2. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 and, therefore, denies the allegations.

3. Respondent admits that the State of Missouri 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 Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations, Chapter 25. Respondent denies that § 3008 of RCRA authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder in the manner asserted in the present action. Respondent lacks sufficient knowledge or information to form a belief as to whether the State of Missouri has

been notified of this action in accordance with Section 3008(a)(2) of RCRA, and, therefore, denies that allegation.

4. With respect to paragraph 4 of the Complaint, the first two sentences cite provisions of law, to which no answer is required. To the extent an answer is required to those sentences, Respondent denies the allegations. With respect to sentences 3, 4 and 5, Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, and, therefore, denies the allegations.

B. COMPLAINT – ALLEGATIONS COMMON TO ALL COUNTS

- 5. Respondent admits the allegations in Paragraph 5 of the Complaint.
- 6. Respondent admits the allegations in Paragraph 6 of the Complaint.
- 7. Respondent denies the allegations in Paragraph 7.
- 8. Respondent admits the allegations in Paragraph 8 of the Complaint.
- 9. Respondent admits the allegations in Paragraph 9 of the Complaint.
- 10. Respondent denies the allegations in Paragraph 10.
- 11. Respondent denies the allegations in Paragraph 11
- 12. With respect to Paragraph 12, Respondent admits that it has generated more than one thousand kilograms of hazardous wastes during certain months, but denies that it generates more than one thousand kilograms of hazardous waste per month every month. Respondent, therefore denies the allegations in Paragraph 12.

13. Respondent admits the allegations in Paragraph 13 of the Complaint.

14. With respect to Paragraph 14, Respondent admits the first sentence but denies the second sentence.

COUNT I – FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION

15. Respondent incorporates by reference its response to the allegations contained in

Paragraphs 5 through 14 above as if fully set forth herein.

16. Respondent denies the allegations in Paragraph 16 of the Complaint.

17. Paragraph 17 cites a provision of law, to which no response is required. To the extent a response is required, Respondent denies the allegations.

18. Respondent denies the allegations in Paragraph 18 of the Complaint.

19. Respondent denies the allegations in Paragraph 19 of the Complaint.

COUNT II – OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITY WITHOUT A PERMIT

II.a. Failure to meet generator requirements

20. Paragraph 20 cites a provision of law, to which no response is required. To the extent a response is required, Respondent denies the allegations.

21. Respondent denies the allegations in Paragraph 21 of the Complaint.

Failure to have an contingency plan which complies with applicable requirements

22. Paragraph 22 cites a provision of law, to which no response is required. To the extent a response is required, Respondent denies the allegations.

23. Respondent denies the allegations in Paragraph 23 a., b., c, and d. of the Complaint.

24. Respondent denies the allegations in Paragraph 24 of the Complaint.

25. Respondent denies the allegations in Paragraph 25 of the Complaint.

26. Respondent denies the allegations in Paragraph 26 of the Complaint.

C. COMPLIANCE ORDER

27. Respondent denies that it should be required to pay a penalty of \$13,710.00 because it did not commit the violations alleged.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. With the filing of this document, Respondent has filed an answer and hereby

requests a public hearing.

29. Respondent is filing a copy of its written Answer in accordance with Paragraph 29 of the Complaint.

30. Respondent is filing a copy of its written Answer in accordance with Paragraph 30 of the Complaint.

31. With respect to Paragraph 31, Respondent admits that a total proposed penalty for Counts I and II is \$13,701 and agrees that the penalty may be adjusted if it establishes a bona fide defense. Respondent denies the remaining allegations.

E. SETTLEMENT CONFERENCE

32.-35. Respondent has participated in an informal conference, but the parties have not yet been able to resolve the matter.

AFFIRMATIVE DEFENSES

1. Complainant lacked authority to conduct the inspection and issue the penalties due to the fact that the primary enforcement of RCRA in the State of Missouri is the Missouri Department of Natural Resources, not USEPA.

2. At the time of the inspection, there is no indication that Respondent was a large quantity generator of hazardous waste so as to be subject to the regulations cited in Count II.

3. With respect to Count I, the items referenced in Paragraph 16 were not waste. Alternatively, Respondent performed a hazardous waste determination of these materials through process knowledge. In addition, there is no indication that the materials referenced had been stored for more than 90 days.

4. With respect to Count II, specifically the allegations in Paragraph 23(a), (b), (c) and (d), Respondent's Contingency Plan was adequate, given the degree of hazard presented by these materials present in Respondent's facility and the volume of material present in

Respondent's facility, to meet any applicable requirements of 40 C.F.R. Part 265.

5. With respect to Count II, it was impossible and infeasible for Respondent to comply with the requirement to provide a Contingency Plan to local emergency agencies. Respondent had previously offered its Contingency Plan to the local fire department, and the local fire department indicated that it neither wanted nor needed another copy of Respondent's program.

6. With respect to Count I and Count II, Respondent had substantially complied with the cited regulations.

7. With respect to the penalty computation worksheet, the gravity bases are unduly high, given the alleged violations. Respondent did not warrant a 25% increase in the penalty based upon any history of noncompliance. Respondent attempted in good faith to modify its Contingency Plan as can be seen by the fact that Respondent's Contingency Plan tracks the language of RCRA. Respondent's good faith effort to comply with the regulations does not warrant a 25% increase in the penalty assessed.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of October, 2006, a true and correct copy of the foregoing document was served via U.S. Mail, postage prepaid, upon

the following:

Ms. Belinda L. Holmes
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 7
901 North Sixth Street
Kansas City, Kansas 66101


