

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

BEFORE THE ADMINISTRATOR

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IN THE MATTER OF: )  
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**Learjet Inc.** )  
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**One Learjet Way** )  
**Wichita, Kansas 67209** )

**RCRA I.D. No. KSD007234313** )  
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Respondent. )  
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Docket No. RCRA-07-2005-0402

**COMPLAINANT'S PREHEARING EXCHANGE**

Pursuant to the Prehearing Order issued on June 23, 2006, and the Order Granting Joint Motion for Extension of Time, dated August 23, 2006, and in accordance with the requirements of 40 C.F.R. § 22.19, the United States Environmental Protection Agency, Region VII (EPA or Complainant) respectfully submits the following Prehearing Exchange.

**I. COMPLAINANT'S EXPECTED WITNESSES**

EPA intends to call the following witnesses at hearing:

1. Trevor L. Urban. Mr. Urban is an Environmental Scientist with the Environmental Services Division of Region VII of the U.S. Environmental Protection Agency. His duties include conducting RCRA compliance evaluation inspections at facilities which may generate, treat, store and/or dispose of hazardous waste. At the request of the Environmental Services Division and the Air, RCRA & Toxics Division of EPA Region VII, Mr. Urban

conducted a RCRA compliance evaluation inspection of the Respondent's facility in Wichita, Kansas on May 25-27, 2004. Mr. Urban will testify as to his observations and findings during the RCRA compliance evaluation inspection, and any statements made by Respondent's employees, contractors and representatives as a part of that inspection.

2. Debbie Travis. Ms. Travis is an Environmental Technician with the Kansas Department of Health and Environment (KDHE). Ms. Travis conducted a routine hazardous waste compliance inspection at the Learjet facility on August 6-7, 2003, to determine compliance with state and federal hazardous waste regulations. Ms. Travis was also present during the May 25-27, 2004, RCRA compliance evaluation inspection conducted by Mr. Urban. Ms. Travis will testify as to her observations and findings during the above-mentioned inspections and any statements made by Respondent's employees, contractors and representatives during the inspections.

3. Edwin G. Buckner. Mr. Buckner is an Environmental Engineer with the RCRA Enforcement & State Programs Branch of the Air, RCRA and Toxics Division at EPA Region VII. He will testify as to his review of the evidence compiled as a result of EPA's regulatory oversight of Respondent's facility, and the factual basis for his determination that Respondent violated RCRA and the regulations promulgated thereunder, including Mr. Buckner's record review and correspondence between the EPA and Respondent.

Mr. Buckner will also testify regarding how the penalty proposed in EPA's Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) was calculated applying the statutory penalty factors set forth within Section 3008(a) of RCRA, as explained by EPA's RCRA Civil Penalty Policy (Complainant's Exhibit 2). He will offer his opinion regarding the appropriateness of the penalty proposed in the Complaint, considering the seriousness of the

violations, any good faith efforts on the part of Respondent to comply with RCRA, the history of Respondent's noncompliance with RCRA, the economic benefit gained by Respondent as a result of its noncompliance with the applicable statutes and regulations, and the actual harm and potential for harm caused by the violations. Mr. Buckner is also expected to testify as to the purpose of RCRA and the role of EPA in its enforcement.

4. Don Toensing. Mr. Toensing is the Branch Chief of the Air, RCRA and Toxics Division at EPA Region VII. He will testify that in his capacity as Branch Chief, he signed the Complaint that was filed in this case. Mr. Toensing will also testify as to his role, as Branch Chief of RCRA, in ensuring consistency in enforcement and penalty amounts across the 4-state region that Region VII encompasses.

5. Elizabeth Koesterer. Ms. Koesterer is an Environmental Engineer with the RCRA Enforcement & State Programs Branch of the Air, RCRA and Toxics Division at EPA Region VII. Ms. Koesterer will testify about the January 11, 2005 Letter of Warning/Request for Information (Complainants Exhibit 7).

6. Dean Markham. Mr. Markham is a former employee of Learjet who will testify as to the management of hazardous waste while he was employed at Learjet. Mr. Markham will also testify as to the TCLP analyses he had conducted on the roll-off containers referenced in the Complaint.

## II. COMPLAINANT'S EXHIBITS

EPA hereby proposes to incorporate by reference as Exhibits the following documents, copies of which have already been filed with the Court and which all parties possess:

1. EPA's Complaint, Compliance Order and Notice of Opportunity for Hearing, Docket Number RCRA-7-2005-0402, filed on September 30, 2005 against Respondent.

2. Respondent's Answer and Request for Hearing, Docket Number RCRA-7-2005-0402, filed January 6, 2006.

Copies of all other documents and exhibits which Complainant intends to introduce into evidence at the hearing are numbered and attached hereto as Complainant's Exhibits as follows:

Complainant's Exhibit 1. RCRA Compliance Inspection Report, with attachments and photographs, for a RCRA compliance evaluation inspection conducted at Respondent's facility on May 25-27, 2004, by Trevor Urban of EPA Region VII.

Complainant's Exhibit 2. EPA's RCRA Civil Penalty Policy, dated June 2003.

Complainant's Exhibit 3. EPA's Penalty Computation Worksheets and Narrative for Counts I, II, III and IV of the Complaint, by Edwin G. Buckner, P.E.

Complainant's Exhibit 4. Notification of Hazardous Waste Activity, Kansas Department of Health and Environment, dated June 26, 1991 and signed by Learjet representative Richard Shepherd.

Complainant's Exhibit 5. Notification of Enforcement Action at Learjet, Wichita, Kansas, dated September 20, 2005 and signed by Don Toensing, Chief, RCRA Enforcement and State Programs Branch, Region VII.

Complainant's Exhibit 6. Letter and Attachments A through K, from Learjet to Mr. Urban of EPA Region VII, dated June 24, 2004, in response to the May 27, 2004 Notice of Violation (see Complainant's Exhibit 1).

Complainant's Exhibit 7. Letter of Warning/Request for Information, with attachments, dated January 11, 2005, and signed by Elizabeth Koesterer for Donald Toensing of EPA Region VII.

Complainant's Exhibit 8. Response to Letter of Warning/Request for Information and attached photographs, manifests and LDR Copies, dated February 11, 2005, and signed by Brett Harding of Learjet.

Complainant's Exhibit 9. RCRA Compliance Inspection Summary, with attachments and photographs, for a routine hazardous waste compliance inspection conducted at Respondent's facility on August 6-7, 2003, by Steff Fackrell and Debbie Travis of KDHE.

Complainant's Exhibit 10. Notice of Non-Compliance to Learjet, dated August 7, 2003 and signed by Steff Fackrell of KDHE and Allen Schrandt of Learjet.

Complainant's Exhibit 11. Letter from Allen R. Schrandt of Learjet to Steff Fackrell of KDHE documenting actions taken in response to the August 6-7, 2003 KDHE inspection, dated August 19, 2003.

Complainant's Exhibit 12. Kansas Guidance Document HW 97-03 "Closed Containers".

Complainant's Exhibit 13. Kansas Guidance Document HW 95-02 "Solvent Contaminated Towels or Rags".

### III. JUDICIAL NOTICE OF DOCUMENTS

Complainant hereby requests the Presiding Officer to take judicial notice of the following:

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1. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 United States Code (U.S.C.) § 6901 et seq., and the regulations promulgated thereunder.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, found at 40 C.F.R. Part 22, as amended.
3. Kansas Hazardous Waste Management Act, K.S.A. § 65-3430 et seq., and the regulations promulgated thereunder.
4. Federal Register notices published by EPA pertaining to the RCRA regulations that define solid waste and hazardous waste and establish standards for generators of hazardous waste, including but not limited to: 68 Fed. Reg. 65586 (Nov. 20, 2003).

#### IV. LOCATION OF HEARING/ TIME FOR PRESENTATION OF CASE

Complainant requests that the hearing in this matter be held in or near Kansas City, Kansas, which is where the EPA Region VII office is located. Complainant is also aware that Respondent’s attorney is located in Kansas City, Missouri, in the vicinity of the EPA Region VII office. However, 40 C.F.R. § 22.21(d) states that the location of the hearing may be held in the county where the Respondent resides or conducts the business in which the hearing concerns. Thus, because Respondent’s facility is located in Wichita, Sedgwick County, Kansas, Complainant would not object to conducting the hearing in Wichita, Kansas, which is the county seat of Sedgwick County.

Complainant estimates that it will require approximately sixteen (16) hours to present its direct case.

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V. DETERMINATION OF THE PROPOSED PENALTY AMOUNT

Complainant hereby offers this explanation of how the proposed penalty amount was calculated in accordance with the criteria set forth in RCRA.

**1. Background**

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the imposition of a civil penalty of up to \$25,000 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA and its implementing regulations. This figure has been adjusted upward pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, such that penalties of up to \$27,500 per day of noncompliance are authorized for violations that occur between January 30, 1997 and March 15, 2004. For violations that occur after March 15, 2004, penalties of up to \$32,500 per day are authorized.

Complainant has relied on the RCRA Civil Penalty Policy, dated June 2003 (“Penalty Policy”) (Complainant’s Exhibit 2), in the calculation of the proposed penalty in this matter. The Penalty Policy is based on the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which are “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” In accordance with the Penalty Policy, a penalty is made up of four components: 1) gravity-based component; 2) multi-day component; 3) adjustments to the sum of gravity-based and multi-day components for case-specific circumstances, and 4) economic benefit of noncompliance component.

The first step in the penalty calculation is to determine the gravity-based component. In determining the seriousness of each violation, the Penalty Policy establishes a penalty calculation method that requires the calculation of the gravity-based component by determining: 1) the potential for harm, and 2) the extent of deviation of the violation from a statutory or regulatory

requirement. Penalty Policy, pg. 2. The respective degrees for each of these two factors, which are major, moderate, and minor, have assigned ranges of penalty amounts which are set forth in nine cells, one for each of the nine possible combinations of degrees. Once the appropriate cell in the matrix is determined for a given violation, the selection of the exact penalty amount from the range within the designated cell is left to the discretion of the enforcement personnel. The range of amounts provided in each cell serves as a fine-tuning device to allow enforcement personnel to better adapt the penalty amount to the gravity of the violation and its surrounding circumstances. In selecting an exact dollar figure from this range, enforcement personnel consider such factors as the seriousness of the violation in relation to other types of violations falling within the cell, efforts at remediation or the degree of cooperation evidenced by the facility, the size and sophistication of the violator, and any other relevant factors. Penalty Policy, pg. 19.

After the calculation of the gravity-based penalty, the second step is to determine the multi-day component. If an alleged violation has continued for more than one day, enforcement personnel are to determine whether a multi-day component is mandatory, presumed, or discretionary, based upon which cell the violation is placed into during step one above. Penalty Policy, page 23. For a violation that falls into either a major-major or major-moderate, a multi-day component is considered mandatory. A violation which falls into a major-minor, moderate-major, or moderate-moderate cell is presumed to require a multi-day component. A multi-day component is considered discretionary if the violation falls into a minor-major, moderate-minor, minor-moderate or minor-minor cell. Penalty Policy, pg. 26.

Once the determination is made to include a multi-day component, the actual figure is selected from a specific cell in a second matrix in much the same manner as the exact gravity-



based component was selected in step one. This second, multi-day matrix closely parallels the first, gravity-based matrix, with the major difference being that the penalty ranges in each cell are only approximately 5 to 25 percent of those in the matrix used to determine the gravity-based component. Depending on the date of the violation, the amounts in both of these matrices require an upward adjustment due to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. Once the exact multi-day amount is selected from within the range of the appropriate cell, it is multiplied by the number of days of violation, minus one day, to account for the first day of violation at the gravity-based penalty rate. The result is the total multi-day component amount. The number of days of violation is limited to a maximum of 180 days in typical circumstances. However, additional days may be used to calculate the multi-day component where case-specific factors suggest that it is appropriate to do so. The multi-day component determined during this step is added to the gravity-based component calculated in step one above.

The third step in the penalty calculation is to make adjustments to the sum of the gravity-based and multi-day components. This step takes into consideration any good faith efforts to comply, as required by Section 3008(a)(3) of RCRA. Other factors that EPA will consider during this step are: the degree of willfulness and/or negligence of the Respondent, history of noncompliance, ability to pay, and other unique factors. Penalty Policy, page 30. Consideration of these factors has the effect of increasing, decreasing, or having no change on the amount of the penalty. These adjustments are designed to allow enforcement personnel flexibility to consider legitimate differences between separate violations of the same provision.

The fourth and final step in the penalty calculation is the determination of the economic benefit of noncompliance component using EPA's BEN computer model. Penalty Policy, page

25. This component eliminates the economic incentive for not complying with the RCRA statutes and regulations and ensures that facilities are not allowed to profit from violating the law.

## **2. Penalty Calculation**

In this matter, Edwin Buckner made the penalty determinations for Complainant. A limited description of the penalty calculation is given below. The reasoning is set forth in greater detail in Complainant's Exhibit 3.

### **A. Count I**

For Count I (Failure to do a Hazardous Waste Determination), Mr. Buckner determined that the violation fell into moderate potential for harm/major extent of deviation category, and selected a gravity based component of \$12,100 since the violations occurred after January 31, 1997 but before March 15, 2004. This amount reflects the top of the cell's range. This value was chosen based on the seriousness of the violation (relative to other violations falling within the same matrix cell), the size and sophistication of the violator, and the number of days of violation.

Specifically, the gravity based component was chosen because Learjet failed to make a hazardous waste determination on each waste stream at the point of generation, commingled the waste streams with other waste streams, and tested the commingled waste using the Toxicity Characteristic Leaching Procedure (TCLP). Some of the waste streams above were collected in hazardous waste satellite accumulation containers, but were commingled in a 40 cubic yard container that was not managed as a hazardous waste storage container. Learjet shipped approximately 76,340 lbs. of waste to a hazardous waste disposal facility, but indicated that the

waste was non-hazardous, based on flawed waste characterization practices. Furthermore, Learjet has a large environmental staff and is regarded as a sophisticated regulated entity.

A multiple occurrence component was included in the penalty calculation. Because there were four separate waste streams for which Respondent did not conduct a hazardous waste determination, the gravity-based penalty was multiplied by a factor of four. Therefore, the subtotal of the gravity-based and multiple occurrence components is \$48,400 (4 x \$12,100).

An upward adjustment factor of 25% was applied to the subtotal of the gravity-based and multiple occurrence component. This increase was based on Respondent's willfulness and/or negligence in its failure to conduct a hazardous waste determination. The amount of adjustment was based on the amount of control Learjet had over the violation; the foreseeability of the events constituting the violation; whether reasonable precautions were taken against the events that led to the violation; whether the Learjet knew or should have known of the hazards associated with the conduct; and whether Learjet knew or should have known of the legal requirement violated. Specifically, Learjet previously managed the 4 waste streams contained in Count I as hazardous, and began commingling the waste streams with other waste streams. Learjet ran an incomplete TCLP analysis prior to each shipment of waste off-site. Learjet knew or should have known that this conduct would lead to a violation of RCRA.

The final penalty for Count I was calculated by adding all of the components: \$12,100 (gravity-based component) x 4 (multiple occurrence component) + \$12,100 (25% adjustment factor of gravity and multiple occurrence total) = \$60,500.

## **B. Count II**

For Count II (Failure to Comply With the Manifest System, Failure To Provide LDR Notice), Mr. Buckner determined that the violation fell into a moderate potential for

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harm/moderate extent of deviation category, and selected a gravity based component of \$8,800. This amount reflects a dollar value at the top of the cell. This value was chosen based on the seriousness of the violation (relative to other violations falling within the same matrix cell), the size and sophistication of the violator, and the number of days of violation.

Specifically, the gravity based component was chosen because Learjet generated rags contaminated with spent MEK solvent (MEK rags), commingled the MEK rags with other waste streams, and shipped the MEK rags off-site without indicating that the MEK rags were hazardous on a manifest document. In addition, Learjet failed to provide a Land Disposal Restriction Notice with each shipment of waste to the disposal facility. Learjet generated two fifty-five gallon bags of rags and wipes each month in the paint graphics room, of which 30% is comprised of MEK rags. Although Learjet has indicated that it did not think that MEK rags had been generated since 1998 when MEK was switched to MPK, EPA has only alleged that the manifests were incorrect for 8 shipments beginning on June 20, 2003.

The Penalty Policy states that a multi-day penalty for a violation in the moderate potential for harm/moderate extent of deviation category is presumed. This means that multi-day penalties must be sought unless case-specific facts overcoming the presumption for a particular violation are documented by Respondent. The first day of violation is assessed at the gravity-based penalty rate. The remaining days are assessed according to the multi-day penalty matrix. The multi-day component of \$1,760 was selected for the incorrect manifests that accompanied the shipments of hazardous waste prior to March 15, 2004. This component represents that top of the cell and was selected based on the considerations above. This figure was multiplied by 5, the number of shipments prior to March 15, 2004. The multi-day component of \$2,063 was selected for the incorrect manifests that accompanied the shipments of hazardous waste after March 15,

2004. This figure was multiplied by 2, the number of shipments after March 15, 2004. The multi-day component of Count II was calculated using the above figures to yield \$12,926.

An upward adjustment factor of 25% was applied to the subtotal of the gravity-based and multi-day component. This increase was based on Respondent's willfulness and/or negligence in its failure to properly manifest the hazardous waste and provide LDR notices for each shipment. The amount of adjustment was based on the amount of control Learjet had over the violation; the foreseeability of the events constituting the violation; whether reasonable precautions were taken against the events that led to the violation; whether the Learjet knew or should have known of the hazards associated with the conduct; and whether Learjet knew or should have known of the legal requirement violated. Specifically, Learjet previously managed the MEK rags contained in Count II as hazardous, and began commingling the MEK rags with other waste streams. Learjet ran an incomplete TCLP analysis prior to each shipment of waste off-site. Learjet claims that it did not know it was generating MEK waste, but MEK was detected through TCLP analysis prior to one of the shipments. Learjet knew or should have known that this conduct would lead to a violation of RCRA.

The final penalty for Count II was calculated by adding all of the components: \$8,800 (gravity-based component) + \$12,926 (multi-day component) + \$5,432 (25% adjustment factor of gravity and multi-day total) = \$27,158.

### **C. Count III**

For Count III (Operating as a Treatment, Storage, or Disposal Facility without a RCRA Permit or RCRA Interim Status), Mr. Buckner determined that the violation fell into a minor potential for harm/moderate extent of deviation category, and selected a gravity based component of \$1,650. This amount reflects a dollar value at the top of the cell. This value was

chosen based on the seriousness of the violation (relative to other violations falling within the same matrix cell), the size and sophistication of the violator, and the number of days of violation.

Specifically, the gravity based component was chosen because Learjet failed to properly close, date and/or label approximately 15-20% of the hazardous waste containers on-site. In addition, 200 lab pack containers were stored in the hazardous waste storage area that were not labeled and dated. Learjet representatives estimated that approximately 90% of the lab pack containers would be considered hazardous waste. Two days after the EPA inspection, Learjet shipped off the lab pack containers utilizing manifests that indicate the waste is hazardous. Furthermore, Learjet has a large environmental staff and is regarded as a sophisticated regulated entity.

The Penalty Policy states that a multi-day penalty for a violation in the minor potential for harm/moderate extent of deviation category is discretionary. A multi-day penalty should be sought where case-specific factors support such an assessment. A multi-day penalty was assessed because EPA obtained information from the inspection and information requests that supported a multi-day penalty.

For Count III, a multi-day penalty was assessed for 126 days, the number of days between EPA inspection and the date that the lab-pack hazardous waste had been shipped off-site. The first day of violation is assessed at the gravity-based penalty rate. The remaining days are assessed according to the multi-day penalty matrix. The multi-day component of \$330 was selected for the days the hazardous waste had illegally accumulated prior to March 15, 2004. This component represents that top of the cell and was selected based on the considerations above. This figure was multiplied by 53, the number of days of violation, excluding the first day of violation, prior to March 15, 2005. The multi-day component of \$387 was selected for the

days the hazardous waste had illegally accumulated after March 15, 2004. This figure was multiplied by 79, the number of days of violation after March 15, 2004. The multi-day component of Count II was calculated using the above figures to yield \$47,778.

An upward adjustment factor of 25% was applied to the subtotal of the gravity-based and multi-day component. This increase was based on Respondent's history of noncompliance. The amount of adjustment was based on how similar the previous violations were; how recent the previous violations were; the number of previous violations; and Learjet's response to previous violations in regard to correction of the problem. Specifically, during the August 6-7, 2003 KDHE inspection, Learjet was cited for having 14 open satellite containers. This violation was contained in a Notice of Violation, issued by KDHE. This violation was corrected during the inspection.

The final penalty for Count III was calculated by adding all of the components: \$1,650 (gravity-based component) + \$46,128 (multi-day component) + \$11,945 (25% adjustment factor of gravity and multiple occurrence total) = \$59,723.

#### **D. Count IV**

For Count IV (Failure to Label and Date Universal Waste and Used Oil), Mr. Buckner determined that the violation fell into a minor potential for harm/moderate extent of deviation category, and selected a gravity based component of \$1,933. This amount reflects a dollar value at the top of the cell for violations that occur after March 15, 2004. This value was chosen based on the seriousness of the violation (relative to other violations falling within the same matrix cell), the size and sophistication of the violator, and the number of days of violation.

The Penalty Policy states that a multi-day penalty for a violation in the minor potential for harm/moderate extent of deviation category is discretionary. A multi-day penalty should be

sought where case-specific factors support such an assessment. For Count IV, a multi-day penalty was not assessed because the information obtained from the inspection and information request did not support a multi-day assessment.

An upward adjustment factor of 25% was applied to the subtotal of the gravity-based and multi-day component. This increase was based on Respondent's history of noncompliance. The amount of adjustment was based on how similar the previous violations were; how recent the previous violations were; the number of previous violations; and Learjet's response to previous violations in regard to correction of the problem. Specifically, although Count IV relies on separate regulations, the violations in Count III are very similar to Count IV. The history of noncompliance indicated in Count III provides a basis for the upward adjustment in Count IV.

The final penalty for Count IV was calculated by adding all of the components: \$1,933 (gravity-based component) + \$483 (25% adjustment factor of gravity total) = \$2,416.

#### VI. APPLICATION OF THE PAPERWORK REDUCTION ACT

The Prehearing Order dated 6-23-2006 requests Complainant's position regarding the applicability of the Paperwork Reduction Act ("PRA"), 44 U.S.C. § 3501 *et seq.*, to this proceeding, including whether there is a current Office of Management and Budget control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

Section 3512 of the PRA states that no person shall be subject to a penalty for failing to comply with a collection of information if either the information collected does not display a valid OMB control number or if the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond unless it displays a valid OMB control number. Complainant believes that Section 3512 of the PRA is inapplicable to this



proceeding with respect to Counts I, II, III and IV because valid OMB control numbers are assigned to the information collected.

For Count I (Failure to Conduct a Hazardous Waste Determination - violation of 40 C.F.R. § 262.11), Complainant asserts that the PRA is not applicable to this Count because it does not involve collection of information.

For Count II, 40 C.F.R. §§ 262.20 and 262.22-23 are referenced for the failure to comply with the manifest system and 40 C.F.R. § 268.7 is referenced for the failure to provide LDR notices. According to 40 C.F.R. § 9.1, OMB control number 2050-0039 is assigned to 40 C.F.R. §§ 262.20 and 262.22-23 and OMB control number 2050-0085 is assigned to 40 C.F.R. § 268.7. With respect to the other requirements referenced in Count II, Complainant asserts that the PRA is inapplicable because they do not involve the collection of information.

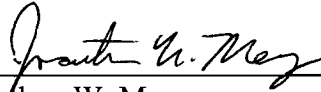
Count III (Operating as a Treatment, Storage or Disposal Facility without a RCRA Permit or RCRA Interim Status) references 40 C.F.R. § 262.34(a). According to 40 C.F.R. § 9.1, OMB control numbers 2050-0035 and 2050-0085 are assigned to 40 C.F.R. § 262.34(a). With respect to the other requirements referenced in Count III, Complainant asserts that the PRA is inapplicable because they do not involve the collection of information.

For Count IV, 40 C.F.R. § 273.14 is referenced for the Failure to Label Universal Waste, 40 C.F.R. § 273.15 is referenced for the Failure to Date Universal Waste. According to 40 C.F.R. § 9.1, OMB control number 2050-0145 is assigned for 40 C.F.R. §§ 273.14 and 273.15. With respect to the other requirements referenced in Count IV, Complainant asserts that the PRA is inapplicable because they do not involve the collection of information.

VII. RESERVATIONS

Complainant reserves the right to call all witnesses named by Respondent. Complainant further reserves the right to submit the names of additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon timely notice to the Administrative Law Judge and to the Respondent.

Respectfully Submitted,



Jonathan W. Meyer  
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Region VII  
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Tel: 913-551-7140  
Fax: 913-551-9140

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2006, I filed the original and one copy of Complainant's Prehearing Exchange with the Regional Hearing Clerk, EPA, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, and mailed to the addressees below:

Copy by Pouch Mail to:

The Honorable Barbara A. Gunning  
United States Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Copy by Regular Mail to:

James T. Price, Esquire  
Spencer, Fane, Britt & Browne, LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106

Date

Oct 2, 2006

Joan W. Meyer