



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 24, 2010

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RECEIVED
SEP 24 2010

In The Matter of: **John Sconiers (Maywood, Illinois)**
Docket Number: **RCRA-05-2010-0019**
Complaint Date: **July 12, 2010**
Total Proposed Penalty: **\$102,680.00**

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to conduct this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in black ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: John Sconiers
100 Hugh Muir Lane
Maywood, Illinois 60153
(630) 248-7099

Kevin Chow
Attorney
Office of Regional Counsel
U.S. EPA- Region 5
Chicago, Illinois 60604
(312) 353-6181

In the Matter of: John Sconiers

EPA Docket No. RCRA-05-2010-0019

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SEP 24 2010

Marcy A. Toney
Regional Judicial Officer
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

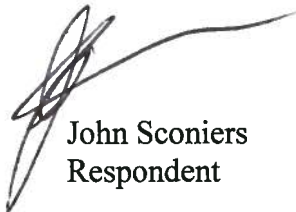
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Re: In the Matter of John Sconiers, EPA Docket No. RCRA-05-2010-0019
Answer to Complaint

Dear Ms. Toney:

Please find enclosed Respondent's Answer, and Certificate of Service, filed this date with the Regional Hearing Clerk. Respondent requests an Administrative hearing.

Sincerely,



John Sconiers
Respondent

cc: Regional Hearing Clerk (R-19J), Kevin Chow EPA, SPIROS BOURGIKOS

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U.S. EPA REGION 5

John R. Sconiers II
REGION 5

2010 SEP 24 PM 1:20

IN THE MATTER OF:)	
)	DOCKET NO. RCRA-05-2010-0019
JOHN SCONIERS)	
100 Hugh Muir Lane)	<u>ANSWER TO COMPLAINT</u>
Maywood, Illinois 60153)	<u>AND COMPLIANCE ORDER</u>
)	<u>AND</u>
U.S. EPA ID #: ILR 000150912)	<u>REQUEST FOR HEARING</u>
)	
Respondent.)	
_____)	

SERVING PARTY: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RESPONDING PARTING: JOHN R. SCONIERS II

Respondent John R. Sconiers II answers the United States Environmental Protection Agency's ("EPA") civil complaint as follows:

Preliminary Statement and Jurisdiction

- 1 Admit that Plaintiff's Complaint has promulgated regulations set forth in section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976 (RCA). Admits that Plaintiffs Complaint purports to be a civil administrative action. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 and explicitly denies the remainder.
- 2 Respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement including the legal conclusion the jurisdiction has been conferred upon by RCRA and explicitly denies any and all allegations in Paragraph 2.
- 3 The allegations of Paragraph 3 contains legal conclusions that the Respondent lacks knowledge or information sufficient to form a belief as to it's truth of paragraph 3 and explicitly denies any and all allegations.
- 4 Respondent admits he is an individual residing in the State of Illinois. Respondent denies he is doing business in the State of Illinois.

- 5 Respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement of Paragraph 5 and explicitly denies any and all allegations.

Statutory and Regulatory Background

- 6 The allegations in paragraph 6 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 7 The allegations in paragraph 7 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 8 The allegations in paragraph 8 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.

General Allegations

- 9 Respondent admits, at the current time, John R. Sconiers II is located at 100 Hugh Muir Lane, Maywood IL 60153. Denies any and all allegations and inferences of purported or conferred in the rest of paragraph 9.
- 10 The allegations in paragraph 10 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 11 The allegations in paragraph 11 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 12 The allegations in paragraph 12 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 13 Respondent admits that on or about October 27th, Respondent sold a semi dump trailer. Respondent denies any and all other allegations in paragraph 13 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 14 Respondent denies any and all allegations in paragraph 14 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.

Count I

- 15 The allegations in paragraph 7 are legal conclusions that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 16 Respondent denies any and all allegations in paragraph 16 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 17 Respondent denies any and all allegations in paragraph 17 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 18 Respondent denies any and all allegations in paragraph 18 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 19 Respondent denies any and all allegations in paragraph 19 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 20 Respondent denies any and all allegations in paragraph 20 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 21 Respondent denies any and all allegations in paragraph 21 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 22 Respondent denies any and all allegations in paragraph 22 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 23 Respondent denies any and all allegations in paragraph 23 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 24 Respondent denies any and all allegations in paragraph 24 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.
- 25 Respondent denies any and all allegations in paragraph 25 and lacks knowledge or information sufficient to form a belief as to the truth of the entire statement.

DEFENSES AND OTHER GROUNDS FOR DISMISSAL

1. The Civil Administrative Complaint fails to state facts sufficient to warrant the assessment of civil penalties against JOHN R SCONIERS II.

SECOND DEFENSE

2. The Civil Administrative Complaint is incorrect in its assumptions that the statutory and regulatory background can be applied to the Respondent for which penalty is sought

THIRD DEFENSE

3. The Civil Administrative Complaint is fatally flawed in that statutory requirements set forth in section 3007(a) of RCA have not been met as JOHN R SCONIERS is not a “person who has ever generated, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes”. EPA has no documentation, testimony or any factual evidence to base this claim. There for regulatory background can not be applied to the Respondent for which penalty is sought.

Fourth Defense

4. The Civil Administrative Complaint alleges the semi dump trailer sold by John R SCONIERS II contained drums and waste. The EPA has no documentation, testimony or any factual evidence as to whether or not the trailer contained the said waste prior to transfer of trailer to purchaser. In fact the attachment to the Complaint has a picture from ebay in which the trailer is pictured with tree branches, not waste.

FIFTH DEFENSE

5. The Civil Administrative Complaint infers that a representative of the respondent signed and returned the return receipt for request on June 24, 2009 and November 12, 2009 when in fact the Respondent appointed a representative to receive, handle or respond to the request, nor was she informed the request was for respondent.

SIXTH DEFENSE

6. Respondent never received the request for information from EPA until after March 23, 2010 during which Respondent was preparing for Bankruptcy filings as referenced the matter to an attorney. Respondent was unable to obtain all requested information documentation to do several floods at residence. While in process of obtaining documentation Respondent received complaint alleging failure to comply even though

the statute deems reasonable time must be granted. In this case reasonable time was not granted.

SEVENTH DEFENSE

7. Verbal Reply from Bankruptcy Attorney was given prior to filing of complaint stating that Respondent was obtaining documentation.

EIGHTH DEFENSE

8. Respondent never operated or handled said trailer. It was operated and administered by another individual.

NINTH DEFENSE

9. Respondent sent EPA full response on or around August 2nd 2010.

TENTH DEFENSE

10. The terms of any request, received or not received, did not make clear that failure to comply would result in enforcement action nor did it state what was deemed as a reasonable response time.

ELEVENTH DEFENSE

11. Respondent was out of Country at time of initial requests were sent.

TWELFTH DEFENSE

12. EPA is not only selectively seeking to enforce a section of the RCRA, but imposing undue financial burden on Respondent that made it impossible to respond to EPA in short time frame.

THIRTEENTH DEFENSE

13. EPA cannot impose a civil penalty on John R. Sconiers II given that there is no factual basis for their conclusions in regards of the sale of the semi trailer, there is no factual evidence as to reasonable time been given, and no confirmation of receipt or understanding of the requests.

FOURTEENTH DEFENSE

14. EPA's enforcement action violates the underlying congressional policy that act be carried out in a "reasonable and prudent manner" including consideration of "the environmental, economic, and social impact of any action that Administrator takes or purposes to take".

FIFTEENTH DEFENSE

15. EPA's information request should have went to the operator / handler / administrator of the trailer and not to the respondent who was simply transferring real property.

SIXTEENTH DEFENSE

16. EPA's enforcement action is in violation of both statutory requirements and congressional policy set forth in 15 USC 2505.

SEVENTEENTH DEFENSE

17. Respondent does not have equipment or machinery capable of loading the trailer with said mentioned wasted.

EIGHTTEENTH DEFENSE

18. Respondent was not said owner of property nor in contact with property to know what was occurring with un-owned property. Buyer took responsibility for tree limbs in rear of trailer.

NINETEENTH DEFENSE

19. Request to respondent were sent in name of deceased father JOHN SCONIERS and not of Respondent JOHN R SCONIERS II.

OPPOSITION TO PROPOSED CIVIL PENALTY

EPA has requested a civil penalty of 10,316 and multi day penalty of \$92,364, totaling \$102,680. JOHN R SCONIERS opposes the imposition of such penalty on several grounds. First, one or more of the defenses outlined aboe precludes the imposition of any civil penalty on JOHN R SCONIERS II. Second, imposing of such fees is not in general accordance with like represented cases and would cause an undue harm to respondent. Third lack of fair notice, Due process, timely requests and required statutory time allotted. Fourth assuming the penalty is imposed upon JOHN R SCONIERS II, such penalty should be far below the intended penalty

based on lack of history of any prior such violations, the lack of direct or indirect evidence, and the fact that JOHN R SCONIERS II never operated said trailer.

Complainant, by Kevin C. Chow, Associate Regional Counsel, on behalf of the Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA"), and the Respondent, Mr. John Sconiers, hereby make this joint motion before the Regional Judicial Officer to request that the date by which Respondent's Answer in this matter is due, August 13, 2010, be continued for an additional forty-five (45) days from that date, i.e., to September 27, 2010. Complainant is acting on behalf of Respondent in this instance only and solely for the purpose of filing this joint motion, and for no other purpose.

REQUEST FOR HEARING

JOHN R SCONIERS II hereby requests an administrative hearing on the issues raised by the Civil Administrative Complaint and this Answer.

Respectfully submitted,

JOHN R SCONIERS II

DATED SEPTEMBER 23rd, 2010

PRAYER

WHEREFORE, JOHN R. SCONIERS II prays for judgment or relief against the Plaintiffs as follows:

1. That the claim against JOHN R. SCONIERS II is dismissed with prejudice and that the Plaintiffs take nothing;
2. That JOHN R. SCONIERS II be awarded its attorneys' fees, costs and disbursements incurred in defending this matter; and
3. Such other and further relief, including declaratory, equitable relief and damages, as this Court deems just and proper.

Respectfully submitted,

JOHN R SCONIERS II

DATED SEPTEMBER 23rd, 2010

In the Matter of: John Sconiers

EPA Docket No. RCRA-05-2010-0019

REQUEST FOR SETTLEMENT CONFERENCE

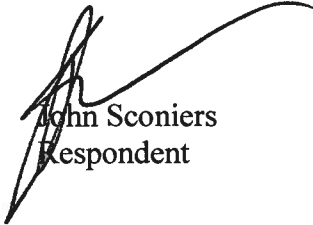
Spiros Bourgikos
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: In the Matter of John Sconiers, EPA Docket No. RCRA-05-2010-0019
REQUEST FOR SETTLEMENT CONFERENCE

Dear Mr. Bourgikos:

Please find enclosed Respondent's Answer, and requests for a SETTLEMENT CONFERENCE.

Sincerely,



John Sconiers
Respondent

cc: Regional Hearing Clerk (R-19J), Kevin Chow EPA, SPIROS BOURGIKOS

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CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this Answer to Complaint in the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5.

I further certify that I then caused true and correct copies of the filed document to be delivered in the following manner to the persons below:

By U.S. Mail, First Class Postage

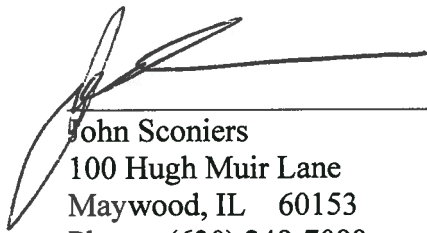
Marcy A. Toney
Regional Judicial Officer
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

By U.S. Mail, First Class Postage

Kevin C. Chow
Associate Regional Counsel
United States Environmental
Protection Agency (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604-3590
(312) 353-6181

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: 9-24-10, 2010



John Sconiers
100 Hugh Muir Lane
Maywood, IL 60153
Phone: (630) 248-7099