



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

September 17, 2010

BY HAND

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Re: Southern Maine Specialties, Inc.
Docket No. RCRA-01-2010-0052

Dear Ms. Santiago:

Enclosed are an original and one copy of the Complaint and Certificate of Service for filing with respect to the above-captioned matter.

Kindly file the documents in the usual manner. Thanks very much for your help.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Foot".

Christine M. Foot
Enforcement Counsel

Enclosures

Cc: Stuart B. Gannett, Jr., President

RECEIVED
SEP 17 2010
EPA ORC WS
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
BEFORE THE ADMINISTRATOR

RECEIVED

SEP 17 2010

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
)

SOUTHERN MAINE)
SPECIALTIES, INC.)
64 Industrial Park Road)
Saco, Maine 04072)
)
)

ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

EPA ID No. ME5000001271)
)

EPA DOCKET NO.
RCRA-01-2010-0052

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

ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR HEARING

I. STATEMENT OF AUTHORITY

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”).

2. The Respondent, Southern Maine Specialties, Inc. (“SMS” or “Respondent”), is hereby notified of EPA’s determination that it has violated Section 3002 of RCRA, 42 U.S.C. § 6922; the regulations promulgated thereunder at 40 C.F.R. Parts 262 and 265; Chapter 13 of Title 38 of the Maine Revised Statutes; and the regulations promulgated thereunder, found at Chapter 800, *et seq.* of the State of Maine Hazardous Waste Management Rules (“the Maine Rules”).

Complainant hereby provides notice of Respondent’s opportunity to request a hearing concerning this allegation.

3. Notice of commencement of this action has been given to the State of Maine pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. The information requested in this Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

II. NATURE OF ACTION

5. This Complaint, issued pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, seeks to obtain civil penalties and compliance. Specifically, Complainant seeks civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for Respondent’s violations of regulations promulgated pursuant to RCRA and Chapter 13 of the Maine Revised Statutes.

Complainant also seeks compliance under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with various violated regulations.

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

6. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (“HSWA”). RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. The

regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may authorize a state to administer the RCRA hazardous waste program *in lieu* of the federal program when the Administrator deems the state program to be substantially equivalent to the federal program.

8. The State of Maine received final authorization to implement its hazardous waste management program on May 6, 1988, with an effective date of May 20, 1988. *See* 53 Fed. Reg. 16,264 (May 6, 1988). The Maine regulations are codified at Chapters 850-860 of the Maine Rules.

9. On February 28, 1997, Maine submitted a final application for program revisions, which EPA approved with an effective date of August 25, 1997. On September 27, 2004, Maine submitted another final program revision application, seeking authorization for changes to its hazardous waste program that would allow it to meet EPA requirements. EPA granted Maine final authorization for the revisions, effective January 10, 2005. *See* 69 Fed. Reg. 64,861 (Nov. 9, 2004).

10. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA (Sections 3001-3023), 42 U.S.C. §§ 6921-6939e. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), the Administrator may enforce violations of any requirement of Subtitle C of RCRA, including the federally-approved Maine hazardous waste program and any federal regulations promulgated pursuant to HSWA for which the State did not receive authorization, by issuing orders requiring

compliance immediately or within a specified time.

11. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as amended, provides for the assessment of a civil penalty not to exceed \$25,000 per day of noncompliance for each violation of the requirements of Subtitle C of RCRA by issuing an order assessing a civil penalty for any past or current violation of RCRA and requiring immediate compliance. In accordance with the Civil Monetary Penalty Inflation Adjustment Rules, the maximum civil penalty was increased to \$27,500 for violations of Subtitle C of RCRA occurring from January 31, 1997 through March 15, 2004, *see* 61 Fed. Reg. 69,360 (Dec. 31, 1996), and to \$32,500 for violations occurring from March 16, 2005 through January 12, 2009, *see* 69 Fed. Reg. 7,121 (Feb. 13, 2004). The maximum penalty per day per violation occurring after January 12, 2009 is \$37,500. 73 Fed. Reg. 75,340 (Dec. 11, 2008).

IV. FINDINGS OF FACT

12. At all times relevant to this Complaint, the Respondent, SMS, with its offices located at 64 Industrial Park Road, Saco, Maine 04072 (“Facility”), is and has been located in the State of Maine. Accordingly, SMS is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. At all times relevant to the allegations set out in this Complaint, Respondent has been and is the owner and/or operator of the Facility, a metal finishing and electroplating shop.

14. On or about March 21, 1997, the Respondent notified the Maine Department of Environmental Protection that SMS was operating as a small quantity generator of hazardous waste by submitting a Notification of Hazardous Waste Activity pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. On January 23, 1998, SMS submitted a Biennial Report indicating

that its status had changed from small to large quantity generator.

15. On January 20, 2010, duly authorized representatives of EPA conducted a RCRA compliance evaluation inspection at the Facility (“Inspection”). During the Inspection, EPA personnel observed that Respondent uses a variety of chemicals and generates wastes at the Facility that are “hazardous wastes,” as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); 38 M.R.S. § 1303-C(15); and Chapter 850, § 3A(3) of the Maine Rules, including: spent corrosive plating and rinse solutions, and corrosive sodium hydroxide sludge and solid debris.

16. EPA evaluated conditions observed at the Facility during the Inspection and reviewed various documents supplied by the Respondent, including (but not necessarily limited to) hazardous waste inspection logs, training records, an Integrated Contingency Plan, and hazardous waste manifests and waste profiles. EPA also reviewed documentation provided to it by SMS after the inspection, including a manifest, a lab-pack container content sheet, and a Land Disposal Restriction form dated March 19, 2010.

17. At all times relevant to the allegations set out in this Complaint, Respondent has been and is a “generator” of hazardous waste, as that term is defined at Chapter 851, section 3C of the Maine Rules.

18. Respondent, therefore, is subject to the federal and state standards applicable to generators of hazardous waste found at Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*; 40 C.F.R. Parts 262 and 265; and Chapters 851, 854, 855, and 856 of the Maine Rules.

V. VIOLATIONS

19. Based on Complainant’s inspection of the Facility and review of documentation

contained in Complainant's and Respondent's files, the following violations were identified:

COUNT I – Failure to Conduct Hazardous Waste Determinations

20. Paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.
21. Pursuant to Chapter 851, § 5 of the Maine Rules, a generator of waste must determine if the waste is hazardous using the following process: a) determine whether the waste is excluded from regulation; b) determine whether the waste is listed as hazardous in Chapter 850; and if neither of those, c) determine whether the waste has a hazardous waste characteristic identified in Chapter 850 by either testing the waste or applying knowledge of the hazardous characteristics of the waste in light of the materials or process used. Forty C.F.R. § 268.7(a) (a federal HSWA regulation) also requires generators to determine the hazardous characteristics of a waste so that the generator can determine how the waste must be treated before disposal in a landfill. These waste determination requirements apply to all generators of hazardous waste, regardless of whether the waste is being stored in a satellite accumulation area or a less-than-ninety-day storage area.
22. At the time of the Inspection, Respondent had not conducted waste determinations for materials in small containers in two cardboard boxes stored in the rear of the chemical storage area. Respondent indicated that these materials were chemicals that were no longer being used, had not been disposed of as intended, and needed disposal. Following the Inspection, Respondent provided a manifest with lab-pack container content sheet indicating that these materials were subsequently shipped as hazardous waste.
23. Respondent's failure to conduct hazardous waste determinations for these materials constitutes a violation of Chapter 851, § 5 of the Maine Rules and of 40 C.F.R. § 268.7(a).

COUNT II – Failure to Separate Containers of Incompatible Waste and Materials

24. Paragraphs 1 through 23 are incorporated by reference as if fully set forth herein.
25. Chapter 851, § 8C of the Maine Rules allows a generator to accumulate up to fifty-five (55) gallons of hazardous waste at the point of generation in a satellite accumulation area provided that the generator complies with all other generator requirements, including those of section 8B(2). Chapter 851, § 8B(2) requires that waste accumulated at the site of generation be managed in accordance with, *inter alia*, the standards of Chapter 855, § 9C. Chapter 855, § 9C, in turn, incorporates by reference, *inter alia*, the standards of 40 C.F.R. § 265.177, which require a generator of hazardous waste to keep containers of incompatible hazardous waste and materials separated from each other by means of a dike, berm, wall, or other device.
26. At the time of the Inspection, Respondent was storing containers of hazardous waste adjacent to containers of incompatible materials in the Tank Room 2 satellite accumulation area. Specifically, Respondent was storing a drum containing acid sludge, one containing acidic floor debris, and one containing waste oil, alongside a container labeled as “M10 alkaline strip,” which was described as containing sodium hydroxide and cyanide. Appendix V of 40 C.F.R. Part 265 provides examples of potentially incompatible materials that should not be stored together, including acidic waste with either alkaline corrosive liquid or cyanide. The comingling of acidic waste and alkaline corrosive liquid can generate heat and cause a violent reaction, while the comingling of acidic waste and cyanide can generate toxic hydrogen cyanide or hydrogen sulfide gas.
27. Respondent’s failure to keep incompatible waste and materials separated from each other by means of a dike, berm, wall, or other device constitutes a violation of Chapter 851, § 8C of

the Maine Rules.

COUNT III – Failure to Provide Hazardous Waste Training to Employees Managing Hazardous Waste

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. Pursuant to Chapter 851, § 8B(5) of the Maine Rules, which incorporates by reference the requirements of 40 C.F.R. § 264.16, a generator of hazardous waste must ensure that facility personnel with hazardous waste management responsibilities successfully complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulatory requirements. These personnel must also participate in an annual review of the initial training.

30. At the time of the Inspection, necessary SMS personnel had not received the required RCRA hazardous waste training. Documentation showed that two SMS personnel, President Stuart Gannett and Vice President Wanda Blais, both of whom are responsible for hazardous waste management and handling at the Facility, last received hazardous waste training in 2006 and so had not met the annual review requirement for the subsequent years. In addition, SMS employee John Haley, who was observed at the inspection handling hazardous waste and who conducted most of the hazardous waste area inspections in 2009, had never received hazardous waste training.

31. Respondent's failure to provide adequate hazardous waste management training to employees with hazardous waste management responsibilities at the facility constitutes violations of Chapter 851, § 8B(5) of the Maine Rules, incorporating by reference the requirements of 40 C.F.R. § 264.16.

COUNT IV – Failure to Manage Hazardous Wastes in Accordance with Requirements for a Satellite Accumulation Area

32. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

33. Pursuant to Chapter 851, § 8C of the Maine Rules, a generator of hazardous waste may accumulate up to fifty-five (55) gallons of a given hazardous waste at the point of generation if the containers of hazardous waste are managed in accordance with all other requirements of the rules applicable to generators.

34. At the time of inspection, Respondent had accumulated two fifty-five gallon drums of the hazardous waste sodium hydroxide sludge in its Tank Room 1 Satellite Accumulation Area.

35. Respondent's accumulation of hazardous waste at the point of generation in excess of the fifty-five gallon limit constitutes a violation of Chapter 851, § 8C of the Maine Rules.

COUNT V – Failure to Comply with Tank Management Standards

36. Paragraphs 1 through 35 are incorporated by reference as if fully set forth herein.

37. Pursuant to Chapter 851, § 8B(3) of the Maine Rules, a generator of hazardous waste must clearly label tanks in which hazardous waste is being accumulated with the words "Hazardous Waste." Additionally, Chapter 851, § 8B(2) requires a generator of hazardous waste that is placed in tanks to comply with the requirements of Chapter 855, § 9(D), which incorporates by reference the operating standards of 40 C.F.R. §§ 265.191-265.200. These standards include requirements to perform integrity tests and daily inspections of the tank system and to provide for detection and secondary containment in case of leaks.

38. At the time of inspection, plating tank #S24, which contained approximately forty gallons of hazardous waste that had been vacuumed off of the floor of Tank Room 1, was not labeled with the words "Hazardous Waste" and was not being managed in accordance with the

applicable tank management standards, including performing integrity tests and daily inspections of the tank system and providing for detection and secondary containment in case of leaks.

39. Respondent's failure to label with the words "Hazardous Waste" and to follow applicable tank management standards for hazardous waste tank #S24, violates the requirements of Chapter 851, § 8B of the Maine Rules.

VI. ORDER

40. Based on the foregoing findings, Respondent is hereby **ORDERED** to comply with the following requirements:

41. Immediately upon receipt of this Complaint, Respondent shall determine whether all wastes at the Facility are hazardous at the time of their generation, in accordance with Chapter 851, § 5 of the Maine Rules and 40 C.F.R. § 268.7(a).

42. Immediately upon receipt of this Complaint, Respondent shall segregate all incompatible wastes and materials, including those in the Tank Room 2 Satellite Accumulation Area, and implement management standards to ensure that all incompatible wastes and materials are kept separated from each other by means of a dike, berm, wall, or other device, in accordance with Chapter 851, § 8C of the Maine Rules.

43. Within sixty (60) days of receipt of this Complaint, and annually thereafter, Respondent shall provide hazardous waste management training to all employees at the Facility with hazardous waste management responsibilities, in accordance with Chapter 851, § 8B(5) of the Maine Rules.

44. Immediately upon receipt of this Complaint, Respondent shall label, date, inspect, and manage all hazardous waste identified at the Facility in accordance with federal and state

standards, including: Chapter 851, §§ 8B(2), 8B(3), 8B(4), 8B(5), and 8C of the Maine Rules.

45. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in paragraphs 41 through 44, above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

46. Respondent shall submit the above required information and notices to:

Richard Hull
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OSRR07-1
Boston, Massachusetts 02109-3912

47. If Respondent fails to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$37,500 for each day of continued noncompliance.

48. This Complaint shall become effective immediately upon receipt by Respondent.

VII. PROPOSED PENALTY

49. Section 3008 of RCRA, 42 U.S.C. § 6928, provides that any person who violates any order or requirement of Subtitle C of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rules and 40 C.F.R. Part 19, violations occurring from March 16, 2005 through January 12, 2009 are subject to a penalty of up to \$32,500, and violations occurring after

January 12, 2009 are subject to a penalty of up to \$37,500 per day for each violation.

50. Based on the nature, circumstances, extent, and gravity of the above-cited violations, a civil penalty in the amount of \$54,397 is hereby proposed to be assessed against Respondent (see Attachment I to this Complaint explaining the reasoning for this penalty). The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

51. By this Complaint, Complainant seeks to assess Respondent the following civil penalties:

<u>COUNT</u>	<u>PENALTY</u>
1. Failure to make hazardous waste determinations	\$9,210
2. Failure to keep incompatible wastes and materials separated	\$9,210
3. Failure to conduct hazardous waste training	\$22,145
4. Failure to properly manage hazardous waste in a satellite accumulation area	\$377
5. Failure to comply with tank management standards	\$13,455
TOTAL PROPOSED PENALTY	<u>\$54,397</u>

52. Payment of the penalty may be made by a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (EPA Docket No. RCRA-01-2010-0052). The check should be forwarded to:

EPA - Region I
P.O. Box 360197M
Pittsburgh, PA 15251

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Christine Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

53. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondent has the right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty or compliance order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22, a copy of which is provided with this Complaint. **A request for a hearing must be incorporated into a written answer filed with the Regional Hearing Clerk within thirty**

(30) days of receipt of this Complaint.

54. In its answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

55. Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Christine Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

IX. DEFAULT ORDER

56. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

X. SETTLEMENT CONFERENCE

57. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. In addition, where circumstances so warrant, a recommendation that any or all of the charges be dropped may be made to the Regional Judicial Officer. Any settlement shall be made final by the issuance of a written Consent Agreement and Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

58. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Christine Foot, Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above, at (617) 918-1333, or at foot.christine@epa.gov. Ms. Foot has been designated to

represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

9/17/10
Date

In the Matter of: Southern Maine Specialties, Inc.
DOCKET NO. RCRA-01-2010-0052

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Copy of Complaint (with the Consolidated
Rules of Practice and Penalty Policy),
first class mail, return receipt
requested:

Mr. Stuart B. Gannett, Jr.
Southern Maine Specialties, Inc.
64 Industrial Park Road
Saco, Maine, 04072

Dated: Sept. 17, 2010


Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912
Phone: 617-918-1333
Fax: 617-918-0333
E-mail: foot.christine@epa.gov

ATTACHMENT I

In the Matter of Southern Maine Specialties, Inc. RCRA-01-2010-0052 Explanation of Proposed Penalty

The following represents the penalty calculation and justification for Southern Maine Specialties, Inc. ("SMS") located in Saco, Maine, addressing violations of certain requirements under the Maine Department of Environmental Protection's ("MEDEP") Hazardous Waste Management Rules ("H.W.M.R.") set forth at Chapter 800, *et seq.* and federal regulations promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 for which Maine is not authorized.

A gravity-based penalty is being proposed for the violations in accordance with the RCRA Civil Penalty Policy ("Policy") dated June 2003, as revised on September 21, 2004, and in accordance with the Civil Monetary Inflation Adjustment Rules, which became effective on March 15, 2004 and January 13, 2009. Adjustment factors examined by EPA in determining the amount of the proposed penalty include: economic benefit of noncompliance; history of non-compliance; the degree of willfulness or negligence; good faith efforts; and other unique factors. Adjustments for some of these factors have been deemed appropriate, as discussed below.

The alleged violations are based upon observations made by inspectors from the U.S. Environmental Protection Agency ("EPA") during a Compliance Evaluation Inspection conducted at the SMS facility on January 20, 2010 ("Inspection").

The following violations have been documented and are included in the complaint issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), against SMS:

1. Failure to Conduct Hazardous Waste Determinations

Provisions Violated - Maine H.W.M.R. Chapter 851, § 5; 40 C.F.R. § 268.7(a)

At the time of the Inspection, SMS was storing two cardboard boxes with various small containers of materials, including expired lab-related chemicals, in the rear of its chemical storage area. The materials in the boxes were disorganized, not readily identifiable, and covered with dust. Subsequent to the inspection, SMS provided a copy of a manifest indicating that the materials were subsequently shipped as hazardous waste.

Potential for Harm - Moderate

SMS's failure to conduct hazardous waste determinations on the materials stored in the chemical storage area poses or may pose a risk of exposure of humans or other environmental receptors to hazardous waste or constituents and may have an adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA

program. The materials were in containers that were in good condition and were stored in a locked area and the total volume was minimal (approximately less than 20 gallons). The potential for harm is therefore deemed to be moderate.

Extent of Deviation - Moderate

SMS's failure to conduct adequate hazardous waste determinations deviates significantly from the regulatory or statutory requirements, but the amount of waste not characterized was relatively small compared to the total volume of waste that is regularly generated and adequately characterized by SMS. Additionally, none of the uncharacterized waste was toxic. The extent of deviation is therefore deemed to be moderate.

Penalty Assessment:

EPA has determined that SMS's violation of this requirement warrants a classification of Moderate/Moderate.

Matrix Cell Range (gravity-based penalty): \$7,090 - \$11,330
Penalty Amount: **\$9,210** (mid-point)¹

Multiple/Multi-day Assessment

Failure to conduct an adequate hazardous waste determination for the containers of lab-related materials is considered a one-time violation and no multiple/multi-day adjustment will be assessed. Although there were multiple small containers, it is considered one wastestream (expired lab-related chemicals) for the purpose of this count.

TOTAL PENALTY AMOUNT: \$9,210

2. Failure to Separate Containers of Incompatible Waste and Materials

Provision Violated - Maine H.W.M.R. Chapter 851, § 8C, which references Chapter 851, § 8B(2), which incorporates by reference Chapter 855, § 9C, incorporating the requirements of 40 C.F.R. § 265.177.

At the time of the Inspection, SMS was storing containers of hazardous waste along with materials in the Tank Room 2 satellite accumulation area ("SAA") that were incompatible. Specifically, there were three 55-gallon drums of waste stored at the SAA, one each of acid sludge, acidic floor debris, and waste oil. Also present was one 55-gallon container labeled "M10 alkaline strip," which was indicated to contain sodium

¹ When no extenuating circumstances warrant selection of either the high or low end of the gravity-based penalty range, the mid-point is selected.

hydroxide and cyanide.

Potential for Harm - Moderate

The storage of incompatible waste and materials in close proximity to each other poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents. If the incompatible wastes were released and mixed together, the reaction could include the generation of heat and violent or toxic chemical reactions. But, because the containers of waste and materials were in good condition and were regularly inspected, a moderate designation is assigned.

Extent of Deviation - Moderate

SMS's failure to separate containers of incompatible waste and materials deviates significantly from the requirements of the regulations. The violation involved 3 55-gallon containers of wastes and materials that were incompatible. The extent of deviation is therefore deemed to be moderate.

Penalty Assessment:

EPA has determined that SMS's violation of this requirement warrants a classification of Moderate /Moderate.

Matrix Cell Range (gravity-based penalty): \$7,090 - \$11,330

Penalty Amount: **\$9,210** (mid-point)

TOTAL PENALTY AMOUNT: \$9,210

3. **Failure to Provide Hazardous Waste Training to Employees Managing Hazardous Waste**

Provisions Violated - Maine H.W.M.R. Chapter 851, § 8B(5), incorporating by reference 40 C.F.R. § 264.16.

At the time of the Inspection, SMS had not provided adequate hazardous waste training to employees who manage hazardous waste. Two SMS employees, Stuart Gannett and Wanda Blais, had received hazardous waste training in 2006, but had not completed annual reviews of the training since then. Additionally, SMS employee John Haley is responsible for handling and managing hazardous waste, yet he had never received hazardous waste training.

Potential for Harm - Moderate

SMS's failure to provide annual hazardous waste training to employees responsible for handling and managing hazardous waste poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents. Mr. Gannett, Ms. Blais, and Mr. Haley are responsible for properly managing and handling hazardous waste at SMS. This responsibility is significantly jeopardized if adequate and updated training is not provided. The potential for harm is not considered major as Mr. Gannett and Ms. Blais did receive initial hazardous waste training in 2006 and they, along with Mr. Haley, were relatively familiar with the hazardous waste management requirements that applied to SMS. The potential for harm is therefore deemed to be moderate.

Extent of Deviation - Moderate

SMS's failure to provide annual hazardous waste training during 2007, 2008, and 2009 deviated significantly from the requirements of the regulations. Although Mr. Gannett and Ms. Blais did receive training in 2006, they had not received any since then. Further, Mr. Haley had never received hazardous waste training despite having responsibilities like handling hazardous waste, conducting weekly inspections, and signing inspection logs. The extent of deviation is deemed to be moderate.

Penalty Assessment:

EPA has determined that SMS's violation of this requirement warrants a classification of Moderate/Moderate.

Matrix Cell Range (gravity-based penalty): \$6,448 - \$10,315²
Penalty Amount: **\$8,382** (mid-point)

Multiple/Multi-day Assessment

At least three SMS employees should have received hazardous waste training during 2009 (Haley, Blais, Gannett) and at least Mr. Gannett and Ms. Blais should have received training during 2007 and 2008. In accordance with the Policy, an initial gravity penalty is assessed for Mr. Haley's failure to receive training in 2009 and a multiple is applied for the 6 remaining instances for 2009, 2008 and 2007.

² The penalty range was selected from the 2005 Revised Penalty Matrices for violations occurring after March 15, 2004. Conservatively assuming that the 2009 training violation occurred at the start of the year, the 2005 revised penalty amounts would apply rather than the 2009 revised penalty amounts.

First Violation	\$8,382
Multiples for two employees for three years (6 x \$1,193 ³)	<u>\$7,158</u>
	\$15,540

Adjustment to Penalty Amount for History of Non-Compliance:

SMS employees did receive hazardous waste training in 2006 and the responsible officials were familiar with the annual training requirement due to training violations previously cited by the MEDEP in a Notice of Violation issued June 2, 2006, and in a Final 3008(A) Compliance Order executed on September 13, 2001. An upward adjustment of 20% is proposed based on the hazardous waste violations previously cited by the MEDEP, including the failure to provide hazardous waste training.

History of Non-Compliance Adjustment = \$15,540(1.20) = **\$18,648**

Economic Benefit:

An economic benefit was calculated for SMS's failure to conduct hazardous waste training during 2007, 2008, and 2009. Following the inspection, St. Germain & Associates, Inc. provided onsite hazardous waste training to SMS employees at a cost of \$1,500. This cost was used as an avoided annually recurring cost to determine the economic benefit using the BEN model.

	\$3,497
	<u>\$18,648</u>
TOTAL PENALTY AMOUNT =	<u>\$22,145</u>

4. Failure to Manage Hazardous Wastes in Accordance with Requirements for a Satellite Accumulation Area

Provisions Violated - Maine H.W.M.R. Chapter 851, § 8C

At the time of the Inspection, SMS was storing two 55-gallon drums of waste sodium hydroxide sludge at the Tank Room 1 SAA.

Potential for Harm - Minor

SMS's failure to manage containers of hazardous waste in a SAA in accordance with applicable requirements poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents. The intent of the limits applied to hazardous waste accumulated at or near the point of generation is to ensure that quantities of hazardous waste greater than 55-gallons are accounted for and not improperly managed for extended periods of time outside of the requirements applicable to less-than 90-day storage areas. Although SMS did not comply with SAA storage requirements by exceeding the 55-gallon limit, the waste observed was being managed as

³ Again, the penalty range was selected from the 2005 Revised Penalty Matrices for a moderate/moderate violation and the mid-point of the range was selected.

hazardous and was transferred to the less-than 90-day storage area subsequent to the Inspection. The potential for harm is therefore deemed to be minor.

Extent of Deviation - Minor

SMS's accumulation of hazardous waste in a SAA without complying with applicable standards deviates somewhat from the applicable regulations. Although the 55-gallon limit was exceeded, the containers of hazardous sodium hydroxide sludge were closed, were being inspected, and were labeled with the words "hazardous waste." Therefore, the extent of deviation is deemed to be minor.

Penalty Assessment:

EPA has determined that SMS's violation of this requirement warrants a classification of Minor/Minor.

Matrix Cell Range (gravity-based penalty): \$129 - \$624

Penalty Amount: **\$377** (mid-point)

TOTAL PENALTY AMOUNT: \$377

5. Failure to Comply with Tank Management Standards.

Provisions Violated - Maine H.W.M.R. Chapter 851, § 8B(3) and Chapter 851, § 8B(2), incorporating by reference Chapter 855, § 9(D), incorporating by reference 40 C.F.R. §§ 265.191-265.200.

At the time of the inspection, waste liquid was being accumulated and stored in plating tank #S24 in Tank Room 1. The 120-gallon tank was about 33% full and was not in compliance with applicable tank standards, including tank integrity, design, inspection, leak detection, containment, and operating standards.

Potential for Harm - Moderate

SMS's failure to comply with tank management standards poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents. The tank that was being used for the accumulation of hazardous waste was not designed for hazardous waste storage, had not been integrity tested or inspected daily, and was not equipped for detection and secondary containment of leaks. However, the tank contained approximately forty gallons of hazardous waste, which is a relatively small amount compared to the total volume of hazardous waste being adequately managed at the Facility. The potential for harm is therefore deemed to be moderate.

Extent of Deviation - Major

SMS's accumulation of hazardous waste in a tank without complying with applicable tank management standards deviates completely from the applicable regulations. SMS made no effort to comply with the tank management standards with respect to #S24. Therefore, the extent of deviation is deemed to be major.

Penalty Assessment:

EPA has determined that SMS's violation of this requirement warrants a classification of Moderate/Major.

Matrix Cell Range (gravity-based penalty): \$11,330 - \$15,580

Penalty Amount: **\$13,455** (mid-point)

TOTAL PENALTY AMOUNT: \$13,455

Count #	Description	Penalty Amount
1	Failure to make adequate hazardous waste determinations in accordance with Maine H.W.M.R. Chapter 851, § 5 and 40 C.F.R. § 268.7(a)	\$9,210
2	Failure to keep containers of incompatible waste separate in accordance with Maine H.W.M.R. Chapter 851, § 8C, which incorporates Chapter 851, § 8B(2), incorporating Chapter 855, § 9C, incorporating by reference 40 C.F.R. § 265.177	\$9,210
3	Failure to conduct hazardous waste training in accordance with Maine H.W.M.R. Chapter 851, § 8B(5), incorporating by reference 40 C.F.R. § 264.16	\$22,145
4	Failure to manage containers of hazardous waste in a satellite accumulation area in accordance with Maine H.W.M.R. Chapter 851, § 8C	\$377
5	Failure to comply with tank management standards in accordance with Maine H.W.M.R. Chapter 851, § 8B(3) and Chapter 851, § 8B(2), which references Chapter 855, § 9D, incorporating by reference 40 C.F.R. §§ 265.191-265.200	\$13,455
	Total:	\$54,397