

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 MAY -8 PM 12:49

Docket No. RCRA-08-2012-0002

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:	)	
	)	
	)	
Roosevelt County Road Shop	)	COMPLAINT, COMPLIANCE
	)	ORDER, AND NOTICE OF
EPA ID No. MTD0000370023,	)	OPPORTUNITY FOR HEARING
	)	
Respondent.	)	
	)	

**INTRODUCTION**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint or Order) is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 ("Consolidated Rules of Practice").
  
2. The authority to execute this Complaint is provided to the Regional Administrators by EPA delegation No. 8-9-A, dated May 11, 1994. The Regional Administrator for EPA Region 8 has properly delegated this authority to the Assistant Regional Administrator, Office of Enforcement and Environmental Justice, by delegation No. 8-9-A, dated December 20, 1996.
  
3. This proceeding is governed by the Consolidated Rules of Practice, a copy of which is enclosed.
  
4. The State of Montana has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
  
5. Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), authorize a civil penalty of not more than \$25,000 per day per violation of Subchapter III of RCRA. This figure has been adjusted upward for inflation pursuant to the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$37,500 per day per violation are now authorized. Based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the seriousness of the violations, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require, as more fully described in the RCRA Civil Penalty Policy (a copy of which also is attached hereto), EPA

proposes that Respondent be assessed a total civil penalty of \$47,170.00 for the violations alleged herein.

6. Pursuant to section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), EPA is authorized to issue compliance orders for violations of RCRA. The compliance order portion of this Complaint sets forth specific actions Respondent is required to conduct within specified schedules to return Respondent to compliance with RCRA. Pursuant to section 3008(c) of RCRA, 42 U.S.C. §§ 6928(c), respondents who fail to achieve compliance within the timeframe specified in a compliance order are liable for additional civil penalties, and where appropriate, the suspension or termination of RCRA permits.

## COMPLAINT

### General Allegations

7. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent operates a facility located at Highway 2 East, Wolf Point, Montana which is on county land within the exterior boundaries of the Fort Peck Indian Reservation at 48.10197 and - 105.61569 GPS coordinates. The facility mailing address is 400 2<sup>nd</sup> Avenue South, Wolf Point, Montana 59201. ("Facility")

9. Basic functions performed at, or from, the Facility include maintenance and repair of county roads, and maintenance of the vehicles and equipment used in road repair.

10. Respondent first notified as a generator of hazardous waste on June 13, 1994.

11. Respondent was assigned the EPA Facility Identification Number MTD0000370023.

12. On or about July 28, 2011, an EPA representative conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility.

13. During the CEI the EPA representative observed the following: approximately 100 unlabeled containers (drums) appearing to hold used oil; two used oil storage tanks with the words "used oil" on them; releases to the soil of what appeared to be used oil; and approximately 100 drums of what appeared to be waste paint stored in a field.

14. During the CEI, Respondent informed the EPA representative that Respondent had not made a determination of whether the wastes that appeared to be paint wastes were hazardous waste.

15. At the conclusion of the CEI, the EPA representative and Facility representative discussed the steps Respondent would need to perform to return to compliance, including: consolidating the used oil, labeling the drums, storing the drums on pallets; burning the used oil in the onsite burner; properly disposing of empty drums; and completing an inventory of the contents of, and proposing a disposal method for what appeared to be paint wastes, within 30 days of the CEI.

16. EPA contacted Respondent by telephone on September 9, 2011, and was informed that none of the waste paint was usable, some had separated, and it was either yellow or black. The representative for Respondent stated that an inventory of the paint waste drums had been done and given to the Ft. Peck Indian Reservation environmental staff but a copy had not been retained for the county records or provided to EPA. No sampling had been performed and Respondent had no plan to dispose of the waste paint.

17. During the September 9, 2011, telephone conversation Respondent informed EPA that it planned to deal with the used oil by taking the following steps: placing all oil drums in one location; placing the empty drums on pallets; burning the used oil in the onsite used oil burner, and disk the areas of soil impacted with used oil. Respondent verbally agreed to send EPA a letter detailing the actions taken. To date no letter has been received by EPA.

### Count 1

#### Failure to Make a Hazardous Waste Determination

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

19. Pursuant to 40 C.F.R. § 262.11 each person who generates a solid waste shall determine if that waste is a hazardous waste.

20. On or about July 28, 2011, Respondent had not made a hazardous waste determination on the waste paint.

21. Respondent's failure to make a hazardous waste determination on the solid waste paint is a violation of 40 C.F.R. § 262.11.

### Count 2

#### Failure to Comply with Used Oil Requirements

22. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

23. Pursuant to 42 C.F.R. § 279.20, a used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. On the date of the July 2011 inspection, the facility was subject to regulations applicable to used oil generators.

24. Pursuant to 40 C.F.R. § 279.22(b)(1), containers and aboveground tanks used to store used oil must be in good condition (no severe rusting, apparent structural defects or deterioration). The drums observed during the July 2011 inspection were rusted and had structural defects.

25. Pursuant to 40 C.F.R. § 279.22(b)(2)(c), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil." At the time of

the July 2011 inspection, the facility had two tanks and approximately 50 used oil drums which were unlabeled.

26. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials. Several areas of soils stained from used oil release were observed during the July 2011 inspection.

27. Respondent's failure to label used oil containers, failure to store used oil in units in good condition, and failure to respond to releases of used oil are violations of 40 C.F.R. §§ 279.22(b)(1), 279.22(b)(2)(c), and 279.22(d), respectively.

### PROPOSED CIVIL PENALTY

Sections 3008(a)(3) and 3008(g) of RCRA, 42 U.S.C. § 6908(a)(3) and (g), as modified pursuant to the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes the assessment of a civil penalty of up to \$37,500.00 per day per violation of Subchapter III of RCRA. Based on the facts alleged in this Complaint and taking into account the factors set forth in Section 3008(a), including the seriousness of the violations, and any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require, as more fully described in the RCRA Civil Penalty Policy (a copy of which also is attached hereto), Complainant proposes to assess a total civil penalty for the violations alleged herein as follows.

Count 1	\$ 31,430.00
<u>Count 2</u>	<u>\$ 15,740.00</u>
Total	\$ 47,170.00

The proposed penalty was developed based on the totality of information available to Complainant at the time of issuance of this Complaint, and may be adjusted if Respondent establishes a bona fide inability to pay the proposed penalty, or submits mitigating information relevant to the appropriate amount of the proposed penalty.

### COMPLIANCE ORDER

Based upon the allegations of the Complaint, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6908(a), Respondent is hereby ordered to take the following actions in the specified timeframes.

A Within 15 days of receipt of this Order, Respondent shall

1) For the waste paint drums

- a) individually and permanently number each drum of waste paint remaining at the facility;
- b) complete a **separate** inventory sheet for **each** drum of waste paint (a copy of the inventory sheet is included as Attachment 1 to this Complaint); and

- c) develop a Facility layout map showing the major structures and features at the Facility, and the location of each and every container of waste paint.

2) For the used oil containers and used oil

- a) provide a detailed description of how each drum of used oil and its contents has been managed since the date of the CEI;
- b) provide photographs demonstrating that the containers and tanks presently being used to store used oil are in good condition and properly labeled with the words "Used Oil";
- c) provide a description of how the areas of soil impacted by used oil releases have been remediated and provide photographs of these areas; and
- d) if remedial measures have not yet been implemented, provide a schedule for EPA's review and approval, with all work to be completed by June 29, 2012, unless a substantial justification for delay beyond that date is provided by Respondent, and accepted by EPA.

3) submit all information and photographs required in A.1 and A.2 above to the EPA contact below.

B Within 45 days of receipt of this Order, Respondent shall submit to EPA a proposed sampling plan and schedule to characterize the drums of waste paint inventoried in Item A for EPA review, comment, and approval. Upon approval by EPA, the sampling plan shall become an enforceable component of this Order.

C Within 15 days of receipt of approval or approval with comment and modification, Respondent will implement the sampling plan according to the approved schedule. Within 45 days of completion of the sampling plan work, the Respondent will submit an analytical results report along with a proposed disposal plan and schedule to EPA for appropriate disposal of the waste paint and waste drums for EPA review, comment, and approval. Upon approval by EPA (with or without comment), the waste paint disposal plan shall become an enforceable component of this order.

D EPA may choose to comment on any proposed work plan submitted pursuant to this Order. Respondent is required to incorporate all of EPA's comments and resubmit the work plan within 14 days of receipt of EPA's comments. EPA also may choose to approve a proposed work plan with comments, in which case, the approved work plan will be the proposed work plan as modified by EPA comments. Finally, EPA may reject a proposed work plan if it is unacceptable in significant part, and draft and approve a work plan. In each case, the work plan becomes an enforceable component of this Order upon EPA approval.

E All documents required to be submitted by this Order shall be sent to the attention of:

Ms. Linda Jacobson  
8ENF-RCRA  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80201-1129

## **POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES**

Pursuant to section 3008(c) of RCRA, 42 U.S.C. §§ 6928(c), respondents who fail to achieve compliance within the timeframe specified in a compliance order are liable for additional civil penalties, and where appropriate, the suspension or termination of RCRA permits.

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

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

A written answer to the Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice (a copy is enclosed) and must be filed with the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Chuck Figur, 8ENF-L, at the address above.

Respondent's failure to file a written answer and request for hearing within thirty (30) days of service of this Complaint may be found to be a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order thereafter may be issued by the Regional Judicial Officer, and the civil penalty proposed herein may become due and payable without further proceedings.

## **OPPORTUNITY FOR SETTLEMENT CONFERENCE**

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written consent agreement and final order which may be issued by the Regional Judicial Officer, EPA Region 8.

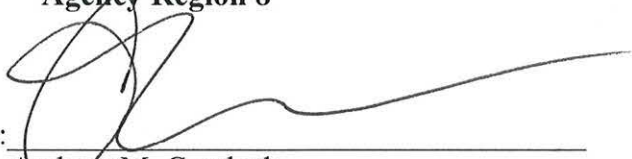
If you want to pursue the possibility of settling this matter, or have any technical questions, please contact Linda Jacobson at 1 800 277 8917, extension 6503. For legal questions please contact Chuck Figur, Senior Enforcement Attorney, at 1 800 227 8917, extension 6915, or 303 312 6915, or at the EPA address above.

***Please note that calling the attorney or otherwise requesting a settlement conference does NOT delay or toll the running of the 30 day period for filing an answer and requesting a hearing.***

**United States Environmental Protection  
Agency Region 8**

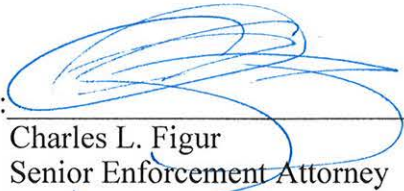
Date: May 8, 2012

By: \_\_\_\_\_

  
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

Date: May 8, 2012

By: \_\_\_\_\_

  
Charles L. Figur  
Senior Enforcement Attorney  
Legal Enforcement Program

IN THE MATTER OF  
DOCKET NUMBER :

ROOSEVELT COUNTY ROAD SHOP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a true copy of the COMPLAINT AND COMPLIANCE ORDER was hand-carried to the Regional Hearing Clerk, EPA, Region VIII, 1595 Wynkoop Street Denver, Colorado 80202-1129, and that a true copy of the same was sent by certified mail, return receipt requested to:

Mr. KEN NORGAARD  
ROAD FOREMAN  
ROOSEVELT COUNTY ROAD SHOP  
400 2<sup>ND</sup> AVENUE SOUTH  
WOLF POINT, MONTANA 59201-1637

And true copies were sent by first class mail to:

MR. RALPH PATCH, COUNTY ATTORNEY  
ROOSEVELT COUNTY  
400 2<sup>ND</sup> AVENUE SOUTH  
WOLF POINT, MONTANA 59201-1637

CHAIRMAN FLOYD AZURE  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
P.O. BOX 1027  
POPLAR, MONTANA 59255-1027

MS. DEB MADISON  
ENVIRONMENTAL PROGRAM MANAGER  
ASSINIBOINE AND SIOUX TRIBES  
OFFICE OF ENVIRONMENTAL PROTECTION  
603 COURT AVENUE, BOX 1027  
POPLAR, MONTANA 59255

May 8, 2012  
Date

Judith M. Mc Ternan  
Name