UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

MEMORANDUM

TO: Art Spratlin, Director
Air, RCRA, and Toxics Division

THRU: Leslie Humphrey, Branch Chief
RGAE/CNSL

FROM: Phillip S. Page PSP
Assistant Regional Counsel

SUBJECT: RCRA COMPLAINT VII-98-0017-H
EPCRA COMPLAINT VII-98E-377

DATE: September 15, 1998

This memo provides the basis for issuing a RCRA Complaint and Compliance Order and an EPCRA Complaint against Willert Home Products, Inc., 4044 Park Avenue, St. Louis, Missouri. Two separate complaints are issued based on separate incidents and separate environmental laws. However, the Complaints will be filed on the same day and will constitute a multi-media enforcement effort.

First, on October 10, 1996, there was a release of 1500 pounds of 1,4 -dichlorobenzene, a CERCLA hazardous substance, from the Willert facility. Both CERCLA and its progeny, EPCRA, have reporting requirements for the release of hazardous substances from a facility. Specifically, under CERCLA, a facility is required to immediately report the release of a reportable quantity (100 pounds for 1,4- dichlorobenzene) of a hazardous substance to the National Response Center (NRC) maintained by the U.S. Coast Guard. Likewise, under EPCRA, there must be an immediate notification to the State Emergency Response Commission or the Local Emergency Planning Committee when there is knowledge of a release. In the instant case, Willert failed to notify anyone until October 11, 1996 when the NRC was first notified. The Missouri Department of Natural Resources was also notified on October 11, 1996. A civil penalty of $50,000 ($25,000 per count) was assessed against Willert.

Next, the RCRA Complaint is based on an EPA inspection conducted in October, 1997. During that inspection, 50 55-gallon drums labeled, "Charcoal w/Para Non-Hazardous Waste" were found on site at the facility. The EPA inspector determined that while some testing and analysis had been performed on the drums, the proper TCLP test had not been performed. This is the basis for Count I. Willert immediately conducted the proper test and determined the waste to be D027 Hazardous Waste (1,4 Dichlorobenzene), a characteristic hazardous waste for

CONCURRENCES

SYMBOL	CNSL	CNSL	ARTD	ARTD	ARTD	ARTD
SURNAME	Page	Humphrey	Mitchell	Slugantz	Heiman	Spratlin
	PSP	LAH	BGM			
DATE	9.21.98	9/22/98	9/22/98	9/23/98	9/23/98	9/23/98

RECYCLE
PAPER CONTAINS RECYCLED FIBERS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:	)	
	)	
	)	
Willert Home Products	)	RCRA Docket No. VII-98-H-0017
Saint Louis, Missouri	)	
	)	
	)	COMPLAINT, COMPLIANCE
Respondent.	)	ORDER, AND NOTICE OF
	)	OPPORTUNITY FOR HEARING

A. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984, Title 42, United States Code, Section 6901, et seq., (42 U.S.C. §) in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, found at Title 40, Code of Federal Regulations (40 C.F.R.), Part 22. The Complainant is the Director, Air, RCRA and Toxic Division, United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to institute this action. The authority to execute this Complaint and Compliance Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air,

RCRA and Toxic Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Respondent is Willert Home Products, located at 4044 Park Avenue, Saint Louis, Missouri.

2. The State of Missouri has been granted final authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations, Chapter 25 (10 C.S.R. 25). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928.

3. Complainant has determined that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. 270, 40 C.F.R. 262.34(a) and (b)/10 C.S.R. 25-5.262(2)(C)(1) and (2); 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1); and 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1). 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), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty of $86,511.00 pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

B. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

4. Willert Home Products, is a Missouri corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

5. Respondent operates a facility located at 4044 Park Avenue, Saint Louis, Missouri 63110 ("Facility"). Respondent manufactures products such as toilet bowl cleaners, potpourri, air fresheners, moth repellants, ash trays, etc. at the Facility. As a result of manufacturing operations, Respondent generates solid wastes and hazardous wastes.

6. On or about April 18, 1985, Respondent notified EPA that it was generating regulated quantities of hazardous waste at its Facility. On or about April 24,

1985, Respondent's Facility was assigned EPA Identification Number MOD006289680.

7. A representative of EPA inspected Respondent's Facility on October 28 and 29, 1997. During this inspection, the representative of EPA identified 50 55-gallon containers that were labeled "Charcoal w/Para Non-Hazardous Waste". None of the 50 55-gallon containers were dated with the accumulation start date. Additionally, none of the 55-gallon containers were labeled with the words, "Hazardous Waste". Representatives of the Respondent stated that these drums consisted of spent charcoal that was removed from the two p-dichlorobenzene air strippers located at the Facility. A representative of Respondent indicated that the spent charcoal that was removed from the two- p-dichlorobenzene air strippers was generated in May, 1997.

COUNT I

FAILURE TO CONDUCT AN ADEQUATE HAZARDOUS WASTE DETERMINATION,

8. Complainant hereby incorporates the allegations contained in paragraphs 1 through 7 as if fully set forth herein.

9. In May 1997, a gas chromatograph test was conducted on the spent charcoal, a solid waste as defined by 40 C.F.R. 261.2, which was removed from the two p-dichlorobenzene air strippers. The analysis, dated May 30, 1997, showed the waste contained 35.7% p-dichlorobenzene. During the October, 1997 inspection, a representative of the Respondent indicated that a hazardous waste determination had not been conducted on the waste charcoal in accordance with the analytical procedures prescribed at 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1). A Notice Of Violation was

issued to the Respondent at the conclusion of the October 28 and 29, 1997 inspection. The Notice Of Violation cited the Respondent for not conducting an adequate hazardous waste determination on the spent charcoal which was removed from the two p-dichlorobenzene air strippers.

10. Respondent failed to make an adequate hazardous waste determination in violation of the regulatory requirements found at 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1).

11. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928, and based upon the allegations contained above, Complainant proposes that a civil penalty of $20,466.00 (RCRA Civil Penalty Policy matrix value of $ 550.00 for the gravity of the violation, $16,500.00 for the multi-day portion of the violation, 20% increase in penalty for negligence, and an economic benefit of $6.00) be assessed against Respondent for violating 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1).

COUNT II

Failure to Comply with Requirements of
RCRA Permit or RCRA Interim Status

12. Complainant hereby incorporates the allegations contained in paragraphs 1 through 7 as if fully set forth herein.

13. After the EPA inspection, Respondent conducted an adequate hazardous waste determination on the spent charcoal removed from the two p-dichlorobenzene air strippers and contained in the 50 55-gallon drums. The spent charcoal which was removed from the two p-dichlorobenzene air strippers and contained in the 50 55-gallon

drums was determined by Respondent to be a D027 (1,4-Dichlorobenzene) classified hazardous waste due to its p-dichlorobenzene content.

14. The regulations found at 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1) require generators to label all containers of hazardous waste with the words "Hazardous Waste" and to date each container with the date of accumulation.

15. The Respondent failed to label the 50 55-gallon containers with the words, "Hazardous Waste" and failed to date the containers with the date of accumulation in violation of the requirements of 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1).

16. The 50 55-gallon drums referred to in paragraph 7, containing the D027 spent charcoal hazardous waste removed from the two p-dichlorobenzene air strippers, were shipped from the Facility for proper disposal on May 28, 1998. Respondent indicated that a drum of the D027 spent charcoal hazardous waste which was removed from the two p-dichlorobenzene air strippers weighed approximately 250 pounds (113 kilograms). Thus in May, 1997, the Respondent generated approximately 12,500 pounds (approximately 5,682 kilograms) of D027 hazardous waste and subsequently shipped this waste off-site for disposal, on May 28, 1998.

17. The regulations found at 40 C.F.R. 262.34(a)/10 C.S.R. 25-5.262, state that generators of greater than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for up to 90 days without a permit provided certain conditions are met. Additionally, the regulations found at 40 C.F.R. 262.34(b)/10 C.S.R. 25-5.262(2)(C)(2) state, inter alia, that if a generator of greater

than 1000 kilograms of hazardous waste in a calendar month stores hazardous waste for more than 90 days, that generator is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, and 265, and the permit requirements of 40 C.F.R. 270 and 260.395.7 RSMo.

18. Subsequent to November 18, 1980, the treatment, storage, or disposal of hazardous waste was prohibited unless an owner or operator of a hazardous waste storage facility possessed a permit, or had RCRA interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations promulgated thereunder.

19. To obtain a RCRA permit, an owner or operator of a hazardous waste storage facility, must file, with EPA, a timely Notification of Hazardous Waste Activity, pursuant to Section 3010 (a) of RCRA, 42 U.S.C. § 6930(a) and a timely Part A and a Part B hazardous waste permit application pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. 264/10 C.S.R. 25-7.264 and 40 C.F.R. 270 and 260.395.7 RSMo.

20. To achieve RCRA interim status, an owner or operator of a hazardous waste storage facility must file, with EPA, a timely Notification of Hazardous Waste Activity, pursuant to Section 3010 (a) of RCRA, 42 U.S.C. § 6930(a), and a timely Part A hazardous waste permit application, pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e) and 40 C.F.R. Part 270 and 260.395.7 RSMo.

21. The Respondent generated D027 hazardous waste in excess of 1000 kilograms within a calendar month and subsequently stored the hazardous waste for longer than 90 days in violation of 40 C.F.R. 262.34/10 C.S.R. 25-5.262(2)(C)(1) and

(2), 40 C.F.R. 264 and 265/10 C.S.R. 25-7.264 and 7.265 and the permit requirements of 40 C.F.R. 270 and 260.395.7 RSMo.

22. Additionally, Respondent neither filed, with EPA, a timely Notification of Hazardous Waste Activity nor a Part A or Part B hazardous waste permit application for a hazardous waste storage facility. Therefore, Respondent neither obtained a RCRA permit nor achieved RCRA interim status to operate a hazardous waste storage facility.

23. Respondent's operation of a hazardous waste storage facility without obtaining RCRA interim status and/or without a RCRA permit is a violation of Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), 40 C.F. R. 264 and 265/10 C.S.R. 25-7.264 and 7.265, and 40 C.F.R. Part 270 and 260.395.7 RSMo.

24. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928, and based upon the allegations contained above, Complainant proposes that a civil penalty of $66,045.00 (RCRA Civil Penalty Policy matrix value of $ 5,500.00 for the gravity of the violation, $ 49,225.00 for the multi-day portion of the violation, 20% increase in penalty for negligence, and an economic benefit of $ 375.00) be assessed against Respondent for violating 40 C.F.R. 262.34(a) and (b)/10 C.S.R. 25-5.262 and Section 3005 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. 270 and 260.395.7 RSMo, as discussed above.

C. COMPLIANCE ORDER

25. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of $ 86,511.00. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region

VII, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to Mr. Brian Mitchell, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. The check must reference the EPA Docket Number of this Complaint and Compliance Order and Respondent by name.

26. IT IS FURTHER ORDERED that Respondent take the following actions within the periods specified:

(a) Within 10 days of receipt of this Order, Respondent shall notify the Missouri Department of Natural Resources of RCRA activities at the Facility as required by Section 3010 of RCRA, 42 U.S.C. § 6930. EPA shall be copied on the notification.

(b) Within forty-five (45) calendar days of the effective date of this Order, submit to EPA and the Missouri Department of Natural Resources a sampling plan for the hazardous waste storage area (D027 hazardous waste storage area). The sampling plan shall be designed to determine the extent, if any, of hazardous waste releases from the illegal hazard waste storage area. The sampling plan, inclusive of any Missouri Department of Natural Resources modifications and upon final approval by the Missouri Department of Natural Resources, shall be fully incorporated herein as an enforceable part of this Compliance Order. Respondent shall fully implement the sampling plan in accordance with the schedule

contained therein.

(c) Respondent shall submit all documents required to be submitted pursuant to this Order, unless otherwise specified herein, to: Mr. Brian Mitchell, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101and to Ms. Kathy Flippin, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

28. A written answer to the Complaint and Compliance Order and the request for hearing must satisfy the requirements of 40 C.F.R. Section 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Phillip S. Page, Office of Regional Counsel, at the same address.

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

30. The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, Compliance Order and Notice for Opportunity for Hearing, and may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

E. SETTLEMENT CONFERENCE

31. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Phillip S. Page, Office of Regional Counsel, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7580.

32. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

33. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of 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 Consent Order which may be issued by the Regional Judicial Officer, EPA Region VII.

34. If Respondent has neither filed an Answer nor requested a hearing within the thirty (30) day time period allowed by the Complaint, Compliance Order, and Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and Respondent will be notified that the penalties have become due and payable.

F. EFFECTIVE DATE

35. This Complaint, Compliance Order, and Notice of Opportunity for Hearing, EPA Docket No. VII-97-H-0017, shall become effective on the date signed by the Director, Air, RCRA and Toxics Division, EPA Region VII.

IT IS SO ISSUED AND ORDERED:

_____
Date

_____
William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

In the Matter of

Willert Home Products
RCRA Docket No. VII-98-0017

_____
Date

_____
Phillip S. Page
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits and a copy of the RCRA Civil Penalty Policy, dated October 1990, were sent by certified mail, return receipt requested, to Susan M. Hantack, Registered Agent For Service For Willert Home Products, 4044 Park Avenue, St. Louis, Missouri 63110 on this _____ day of _____ 1998.

_____