UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
http://www.epa.gov/region08

June 10, 2004

Ref: 8ENF-L

DELIVERED VIA PERSONAL SERVICE

James Bond, Owner
Bond's Body Shop
P.O. Box 749
Highway 2
Browning, MT 59417

Re: Complaint, Compliance Order and Notice of Opportunity for Hearing issued pursuant to RCRA § 3008(a) and CWA § 311

Dear Mr. Bond:

The United States Environmental Protection Agency ("EPA") is issuing the enclosed Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to you under section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, and section 311(b)(6)(B)(i) of the Clean Water Act (the "CWA"), 33 U.S.C. § 1321(b)(6)(B)(i) 311, for alleged violations at the Bond's Body Shop (aka "Bond's Diesel Repair Shop") facility located near Browning, Montana, within the exterior boundaries of the Blackfeet Indian Reservation.

Specifically, the Complaint, alleges that the facility is in noncompliance with RCRA and its implementing regulations, including the used oil requirements set forth at 40 C.F.R. part 279. EPA further alleges that the facility is in violation of section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and the oil pollution prevention requirements set forth at 40 C.F.R. part 112 including no secondary containment and failure to implement a Spill Prevention, Control and Countermeasure ("SPCC") plan for its facility in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. The Complaint proposes a total penalty of $52,019 for the alleged violations.

You have the right to a hearing to contest the factual allegations and/or penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. <u>If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written</u>

Printed on Recycled Paper

Answer and one copy within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you do not file an Answer by the deadline, you may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing an Answer and/or requesting a hearing.

If you have any questions regarding this Complaint, the most knowledgeable EPA representatives regarding this matter are, for RCRA issues, Susan Zazzali in our Montana Office at (406) 457-5019, for SPCC issues, Jane Nakad at (303) 312-6202, or Amy Swanson, Enforcement Attorney, in Denver at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,

SIGNED
John F. Wardell, Director
Montana Office

Enclosures: Complaint
40 C.F.R. part 22
RCRA inspection
SPCC Inspection

cc w/ enclosures:
Jay St. Goddard, Blackfeet Tribal Business Council Chairman
Gerald Wagner, Blackfeet Tribal Environmental Program Director

bcc: S. Zazzali, 8MO
B. Burkland, 8M0
A. Swanson, 8ENF-L
J. Nakad, 8ENF-UFO
B. Cazier, 8ENF-PT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	)	**Docket No. CWA-08-2004-0047**
	)	**RCRA-08-2004-0004**
	)	
James Bond, Owner	)	**COMPLAINT, COMPLIANCE ORDER,**
Bond's Body Shop	)	**AND NOTICE OF OPPORTUNITY**
P. O. Box 749	)	**FOR HEARING**
Highway 2	)	
Browning, MT 59417	)	
	)	**Proceeding under RCRA § 3008(a)**
Respondent.	)	**and CWA § 311(b)(6)(B)(i)**

COMPLAINT

This is a civil administrative action instituted pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act and subsequent amendments ("RCRA"), 42 U.S.C. § 6928(a), and section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is subject to EPA's "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), a copy of which is enclosed.

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated in each of the counts in this Complaint:

1. Respondent, James Bond, is an individual doing business within the exterior boundaries of the Blackfeet Indian Reservation, State of Montana.

2. Respondent is a "person" as defined in section 1004(15) of RCRA, 42 U.S.C.

§ 6903(15), and sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

3. Respondent owns and operates a maintenance garage and shop and/or diesel repair facility ("facility") referred to as "Bond's Body Shop", "Jim's Diesel Repair," or Bond's Diesel Repair," located approximately one-half mile west of the Town of Browning, Montana.

4. Respondent is an "owner" and an "operator" of an "onshore facility" within the meaning of 40 C.F.R. § 260.10 and sections 311(a)(6) and (10) of the CWA, 33 U.S.C. §§ 1321(a)(6) and (10).

5. The facility is a "non-transportation related" "onshore facility" within the meaning of 40 C.F.R. § 112.2.

6. The facility consists of a large L-shaped building with two garage bays. The facility is unfenced and the surrounding property is unpaved.

7. Respondent performs diesel and heavy equipment repairs at the facility which include, but are not limited to, the following processes or operations: oil changes, battery replacements, body and engine repairs, fluid changes (coolant and hydraulic fluids).

8. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

9. Diesel fuel, gasoline and hydraulic oils are oils within the meaning of "oil" as defined at section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

10. Respondent's operations and processes at the facility generate "solid waste" within the meaning of section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2.

11. Solid waste generated at the facility includes, but is not limited to, lead-acid batteries, scrap metal, non-drained oil filters, unknown liquids and spent aerosol cans.

12. Respondent's operations and processes at the facility generate "used oil" within the meaning of section 1004(36) of RCRA, 42 U.S.C. § 6903(36).

13. Respondent's operations and processes at the facility generate "hazardous waste" within the meaning of section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3.

14. Hazardous waste generated at the facility includes, but is not limited to, lead-acid batteries.

15. Respondent is a generator of hazardous waste within the meaning of section 1004(6) of RCRA, 42 U.S.C. § 6903(6).

16. The facility includes, but is not limited to, one diesel storage tank with a capacity of 10,000 gallons.

17. The facility has a total above-ground oil storage capacity greater than 1,320 gallons.

18. The facility drains into Willow Creek, a perennial stream, located approximately one half mile to the north.

19. Willow Creek is a "navigable water" and "water of the United States" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

RCRA Inspection

20. On July 1, 2003, as part of a reservation waste generation inventory, authorized EPA representative Susan Zazzali and Bill Old Chief on behalf of the Blackfeet Environmental Office, conducted an unannounced visit at the facility consisting of a walk around the facility's exterior and a look inside the building.

21. The July 1, 2003, visit was conducted with Respondent's consent and participation.

22. At the time of the visit on July 1, 2003, the facility was littered with defunct vehicles, heavy equipment, barrels, plastic jugs, containers, lead-acid batteries and miscellaneous debris.

23. At the time of the visit on July 1, 2003, containers of used oil and unknown liquids were found in several outdoor locations in and around the facility.

24. There were approximately 20 unlabeled containers of used oil at the facility.

25. All used oil containers were stored at the facility in a manner permitting a release to the environment.

26. Approximately 10 spills of used oil were on the ground at various locations in and around the facility.

27. Approximately 5 locations of spent lead acid batteries were at the facility.

28. Approximately 30 lead acid batteries were stored outside of the facility in a manner that could release to the environment.

29. EPA authorized representative Susan Zazzali and Bill Old Chief on behalf of the Blackfeet Environmental Office conducted a follow-up RCRA Compliance Evaluation Inspection (the "inspection") at the facility on July 23, 2003, which included a physical inspection of the facility.

30. Respondent was informed of but not present at the inspection on July 23, 2003.

31. At the time of the inspection on July 23, 2003, the facility's exterior was in the same condition as observed on July 1, 2003, and referenced above.

32. At the time of the inspection on July 23, 2003, the area inside the facility's northern garage bay was filled to capacity with equipment, tools, and drums in a state of total disarray.

33. At the time of the inspection on July 23, 2003, several containers of used oil and batteries were found under a green tarp outside the northern garage bay.

34. Batteries, drums and spent aerosol cans were observed inside the facility's southern garage bay.

35. The facility's southern garage bay roof was partially collapsed.

36. The contents of the southern garage bay (drums, equipment, boxes) were covered in pigeon droppings.

37. The inspectors found a former underground storage tank ("UST") located above ground outside the southern garage bay. The UST appeared capable of holding product with a valve on the eastern end of the tank attached to a hose that may have historically dripped into a shallow excavation.

38. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), states in pertinent part that any person who violates any requirement of the subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $27,500 for each violation and that each day of violation shall constitute a separate violation.

SPCC Inspection

39. On or about September 15, 2003, an authorized EPA inspector entered the facility to inspect it for compliance with the CWA and the oil pollution prevention regulations set forth at 40 C.F.R. part 112 (otherwise known as the Spill Prevention Control and Countermeasure ("SPCC") regulations).

40. At the time of the inspection, the facility had a total oil storage capacity of approximately 10,000 gallons.

41. The following SPCC implementation measures were found to be deficient at the time of the inspection:

a. no secondary containment for the diesel storage tank;

b. bulk containers not engineered to prevent a discharge;

c. master flow and drain valves are not secured;

d. aboveground valves, piping and appurtenances not inspected regularly;

e. facility not fully fenced and/or locked;

f. no secondary containment for portable containers;

g. unremediated visible oil spills on the ground; and

h. undiked areas do not drain to pond, lagoon, or catchment basin.

42. Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

Count 1
(Failure to perform hazardous waste determination)

43. 40 C.F.R. § 262.11 requires a person who generates any solid waste to determine if that waste is a hazardous waste. First, the person must determine if the waste is listed in 40 C.F.R. part 261, subpart D. The person must then determine if that waste is a characteristic hazardous waste under 40 C.F.R. part 261, subpart C, using either knowledge of process or sampling in accord with sampling methodologies cited in the regulations.

44. Respondent failed to determine whether the solid waste generated at the facility and subsequently stored on-site in drums, jugs and other containers described in paragraphs 20 through 37, was a hazardous waste as required by and in accordance with 40 C.F.R. § 262.11.

45. Respondent's failure to perform hazardous waste characterizations or determinations for the solid waste materials generated at the facility constitutes a violation of 40 C.F.R. § 262.11 and section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Count 2
Failure to inventory properly

46. EPA regulations at 40 C.F.R. § 261.5(c) require a person to determine the quantity of hazardous waste generated in a calendar month to determine whether the generator is a conditionally exempt small quantity generator or a large quantity generator subject to regulation under 40 C.F.R. parts 262 through 266, 268, and parts 270 and 124, and the notification requirements of section

3010 of the Act, 42 U.S.C. § 6930.

47. Respondent failed to determine the quantity of hazardous waste generated at the facility per calendar month in accordance with 40 C.F.R. § 261.5(c), so he was unable to properly determine its generator status and related timeframe for storing hazardous waste on-site.

48. Respondent's failure to determine the quantity of hazardous waste generated at its facility by calendar month constitutes a violation of 40 C.F.R. § 261.5 and section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Count 3
Failure to comply with used oil requirements

49. 40 C.F.R. § 279.22(a), pertaining to storage units, specifies that used oil generators shall not store used oil in units other than tanks, containers or units subject to regulation under 40 C.F.R. parts 264 or 265.

50. 40 C.F.R. § 279.22(b), pertaining to condition of units, specifies that containers and above ground tanks used to store used oil at generator facilities must: (1) be in good condition (no severe rusting, apparent structural defects or deterioration) and (2) be not leaking (no visible leaks).

51. 40 C.F.R. § 279.22(c), labels, specifies that (1) containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil" and (2) (f)ill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

52. 40 C.F.R. § 279.22(d), response to releases, specifies that upon detection of a release of used oil to the environment that is not subject to the requirements of 40 C.F.R. part 280, subpart F, and which has occurred after the effective date of the recycled used oil management program in the State in which the release is located, a generator must perform the following cleanup steps: (1) stop the release; (2) contain the released used oil; (3) clean up and manage properly the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage

containers or tanks prior to returning them to service.

53. 40 C.F.R. § 279.22 generally states that used oil generators are subject to all applicable Spill Prevention, Control and Countermeasure regulations (40 C.F.R. part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 C.F.R. part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition the requirements of this subpart.

54. Respondent failed to store used oil in units other than tanks, containers or units subject to regulation under 40 C.F.R. parts 264 or 265, failed to label or clearly mark with the words "Used Oil" the container and aboveground tanks used for used oil storage, and failed to the requisite cleanup steps outlined in 40 C.F.R. § 279.22(d) for releases of used oil as required by and in accordance with 40 C.F.R. § 279.22.

55. Respondent's failure to comply with the used oil requirements constitutes a violation of 40 C.F.R. § 279.22 and section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Count 4
Failure to prepare and implement SPCC plan

56. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . . ."

57. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

> to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location,

> could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines..."

58. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

59. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the CWA, 33 U.S.C. § 1321(j), and its implementing regulations.

60. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan in accordance with applicable sections of part 112 including, but not limited to, sections 112.7 and 112.8.

61. Respondent failed to implement an SPCC plan in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3.

62. Respondent's failure to implement an SPCC plan for the facility in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 from September 15, 2003, through and including June 1, 2004 (a duration of approximately 260 days) constitutes a violation of 40 C.F.R. § 112.3 and section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C).

PROPOSED CIVIL PENALTY

Pursuant to section 3008(g) of RCRA, 42 U.S.C. § 6928(g), section 311(b)(6)(B)(i) of the

Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, any person who violates any requirement of RCRA and section 311(j) of the CWA is liable for civil penalties up to $27,5000 per day per violation for violations occurring on or after January 30, 1997, and before March 15, 2004, pursuant to Section 3008(g) of RCRA, Pub. L. 104-134 and 61 Fed. Reg. 69360. Based upon the facts alleged in this Complaint, applicable statutory factors, and in consideration of EPA penalty policies as appropriate, Complainant proposes to assess a total civil penalty of **$52,019** for the violations alleged in the Complaint, as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to perform hazardous waste determination, 40 C.F.R. § 262.11	$12,500
Count 2	Failure to inventory properly, 40 C.F.R. § 261.5(c)	(Incorporated above)
Count 3	Failure to comply with used oil requirements, 40 C.F.R. § 279.22(a)	$20,000
Count 4	Failure to implement SPCC Plan in accordance with 40 C.F.R. § 112.7 and 112.8	$19,519

TOTAL PROPOSED PENALTY: $52,019

The penalty proposed for Counts 1, 2, and 3 above takes into account the statutory factors, i.e., the seriousness of violations and any good faith efforts to comply with applicable statutory and regulatory requirements, and was calculated in accordance with EPA's RCRA Civil Penalty Policy (October 1990). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The reasoning behind this penalty is detailed in the penalty calculation for this case, incorporated herein by reference and enclosed as Attachment 1.

The penalty proposed for Count 4 takes into account the applicable statutory penalty factors

set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

The reasoning behind the CWA penalty is as follows. The Respondent's noncompliance is deemed to be major as the violations have a significant impact on the ability of the Respondent to prevent discharges of oil from impacting waters of the United States. The facility had eight SPCC implementation deficiencies, including the lack of any secondary containment for the diesel tank and portable tanks and oil staining on the ground, on the date of the inspection. The potential environmental impact from a discharge would be moderate as drainage from the facility would flow into a perennial stream located approximately one half mile to the north. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

TERMS OF PAYMENT

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full. If such payment is made within 30 calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made as follows:

For counts 1, 2, and 3, by sending a certified or cashier's check payable to "Treasurer, United States of America," in the amount of **$32,500** to:

EPA Region 8 (Regional Hearing Clerk)
Mellon Bank

P.O. Box 360859M
Pittsburgh, PA 15251

For count 4, by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check in the amount of **$19,519** to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

A copy of the check must be mailed simultaneously to:

Amy Swanson, Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8 (8ENF-L)
999 - 18th Street, Suite 300
Denver, Colorado 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to perform the activities required by the compliance order or relieve Respondent of its obligation to comply with the requirements of RCRA and the CWA and all applicable regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

COMPLIANCE ORDER

Based upon the allegations above, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), it is hereby ORDERED as follows:

1. Respondent shall immediately comply with RCRA and its implementing regulations including, but not limited to, those requirements set forth in 40 C.F.R. parts 261, 262, 279 and those requirements specifically required in this Compliance Order ("Order") section of the Complaint.

2. Within fifteen (15) days of receipt of this Order, Respondent shall comply with the

regulations governing the management of used oil including, but not limited to:

a. Covering and storing all containers of used oil in a manner to prevent spills;

b. Properly labeling all all containers of used oil in accordance with 40 C.F.R. § 279.22(c)(1);

c. Excavating and disposing of all spills of used oil and soils stained with used oil at a licensed solid waste landfill;

3. Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA an inventory of all containers of used oil and spent batteries. The inventory shall include a photograph and description of each container, the volume and the location.

4. Within thirty (30) days of receipt of this Complaint, Respondent shall arrange for proper disposal as a hazardous waste or recycling all spent batteries and Respondent further shall submit to EPA all manifests and other records documenting such shipments were in compliance with all applicable RCRA regulations within fifteen (15) days of shipment.

5. Within forty-five (45) days of receipt of this Complaint, Respondent shall properly remove and recycle (or remove for recycling) all used oil. Respondent shall ensure that all used oil is transported by a licensed used oil transporter. Respondent shall ensure that all used oil is recycled by a licensed recycler.

6. The inventory, manifests and all other reports or documents required to be submitted under this Order shall be mailed to:

Susan Zazzali, Environmental Engineer
U.S. Environmental Protection Agency
Region 8 Montana Office
Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59626

Gerald Wagner, Director
Environmental Program
Blackfeet Tribe

P.O. Box 2029
Browning, MT 59417

POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES

Pursuant to RCRA § 3008(c), 42 U.S.C. § 6928(c), respondents who fail to achieve compliance within the time specified in a compliance order are liable for an additional civil penalty of up to $27,500 for each day of continued noncompliance.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA § 3008(b), 42 U.S.C. § 6928(b), and the CWA, a respondent has the right to a public hearing to contest this Complaint. If you (1) wish to contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty or compliance order; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with 40 C.F.R §§ 22.15, 22.37, and 22.38 within thirty (30) calendar days after this Complaint is received.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state circumstances and arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; and (4) state the basis for opposing the proposed relief; and 5) specifically request an administrative hearing, if desired. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 999 18th Street, Suite 300, Denver, Colorado 80202-2405, and a copy must be sent to the enforcement attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR

DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

RESERVATION OF RIGHTS

This Complaint does not constitute a waiver, suspension or modification of EPA's authority to issue a separate order under section 7003 of the Act, 42 U.S.C. § 6973, based on evidence of an imminent and substantial endangerment to human health or the environment posed by the handling, storage, treatment, transportation or disposal of any solid waste at the facility. Issuance of this Complaint does not forego any civil or criminal action otherwise authorized under the Act.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference, or any questions that you may have regarding this Complaint and compliance order, should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: **2 June 2004**

By: **David J. Janik**
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: **6/3/04** By: **SIGNED**
John F. Wardell, Director
Montana Office

Date: **6.2.2004** By: **SIGNED**
Amy Swanson, Enforcement Attorney
Colorado Atty. Reg. No. 26488
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Telephone: 303/312-6906
Facsimile: 303/312-6953

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 10, 2004.