UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:	)	
	)	
USA Tire Management Systems, Inc. 1573 C Avenue Dakota City, Nebraska 68731	)	**COMPLAINT AND CONSENT AGREEMENT/ FINAL ORDER**
	)	
EPA ID Number: NER000007732	)	
	)	
Respondent.	)	
	)	Docket No. RCRA-07-2003-0003
Proceeding under Sections 3008(a) and (g) of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928(a) and (g).	)	

COMPLAINT

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations at 40 C.F.R. Part 262.

Parties

3. The Complainant is the Director of the Air, RCRA, and Toxics Division of the EPA, Region VII, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985 and EPA Delegation No. R7-8-9-A, dated January 1, 1995.

4. The Respondent is USA Tire Management Systems, Inc., a company incorporated under the laws of Iowa and authorized to conduct business in Nebraska.

Statutory and Regulatory Framework

5. Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), allows a state to implement its own hazardous waste program "in lieu" of the federal program. The State of Nebraska received interim authorization for its RCRA program on May 14, 1982, and final authorization effective February 7, 1985 (50 FR 3345, January 24, 1985). The State of Nebraska's authority governing hazardous waste is found at Title 128 of the Nebraska Administrative Code (NAC)(Title 128, Rules and Regulations Governing Hazardous Waste Management in Nebraska), promulgated pursuant to Neb. Rev. Stat. § 81-1505(13). For purposes of this Complaint and Consent Agreement/Final Order, RCRA violations are cited using the requirements of the Code of Federal Regulations contained in the authorized state statutory and regulatory provisions.

6. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA shares enforcement authority with states with authorized programs and can initiate action for violations of authorized state programs. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA must provide notice to a state with an authorized program prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

7. Pursuant to 40 C.F.R. § 262.11 and Nebraska's authorized hazardous waste program at NAC Title 128, Chapter 19, 002, generators of a "solid waste" are required to determine if such a solid waste is a RCRA "hazardous waste."

8. At 40 C.F.R. Part 261 and NAC Title 128, Chapters 11-15, EPA and Nebraska have established regulatory standards for the identification of hazardous waste.

9. Pursuant to 40 C.F.R. § 262.12 and Nebraska's authorized hazardous waste program at NAC Title 128, Chapter 3, 001, a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

10. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 262.34 and Nebraska's authorized hazardous waste program at NAC Title 128, Chapter 19, 004, a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is required to have a permit for such storage.

Factual Background

11. Respondent's facility is located at 1573 C Avenue, Dakota City, Nebraska, 68731. The facility is in the business of scrapping and recycling used tires. Respondent generated and stored on-site approximately 54 55-gallon drums of hazardous waste, as defined by 40 C.F.R. Part 261 and NAC Title 128, Chapters 11-15.

12. The hazardous waste described in paragraph 11 above, consisted of spent solvents and spent mineral spirits (D001, F003, and F005). D001 waste is a hazardous waste because it exhibits the characteristic of ignitability, pursuant to 40 C.F.R. § 261.21 and NAC Title 128, Chapter 11. F003 and F005 wastes are listed hazardous wastes pursuant to 40 C.F.R. § 261.31 and NAC Title 128, Chapter 15, 004.

13. Respondent had accumulated more than one thousand kilograms of hazardous waste per month and is therefore a "large quantity generator" within the meaning of 40 C.F.R. Part 232 and NAC Title 128, Chapter 19.

14. Respondent has not obtained a permit to operate any portion of the facility as a hazardous waste treatment, storage or disposal facility.

15. On October 13, 2000, the Nebraska Department of Environmental Quality (NDEQ) conducted a RCRA inspection at Respondent's facility. Follow-up inspections were conducted by NDEQ on February 13, 2001 and May 21, 2001. A Notice of Violation was issued by NDEQ to Respondent for storing hazardous waste without having a permit as required by NAC Title 128.

16. 54 55-gallon drums of hazardous waste were initially observed at the October 13, 2000 NDEQ inspection. These same drums were observed by NDEQ on February 13, 2001 and May 21, 2001 inspections. Based on these observations, Respondent stored hazardous waste on-site for greater than 90 days.

Findings of Violation

17. The allegations stated in paragraphs 5 through 16 above are herein incorporated.

Count 1 - Failure to Conduct a Hazardous Waste Determination

18. Pursuant to 40 C.F.R. § 262.11 and NAC Title 128, Chapter 19, 002, a generator of "solid waste," as that term is defined in 40 C.F.R. § 260.2 and NAC Title 128, Chapter 4, 002 using the methods prescribed in NAC Title 128, Chapters 5, 6, 8 and 11 through 15, must determine if the solid waste is a hazardous waste.

19. At the time of the October 13, 2000 inspection, Respondent was storing approximately 54 drums of D001, F003, and F005 hazardous waste at its facility. Respondent indicated that hazardous waste determinations had not been made on these materials.

20. Respondent's failure to make a hazardous waste determination is a violation of 40 C.F.R. § 262.11 and NAC Title 128, Chapter 19, 002.

Count 2 - Failure to Obtain an EPA Identification Number

21. Pursuant to 40 C.F.R. § 262.12(a) and NAC Title 128, Chapter 19 003.01, a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having complied with NAC Title 128, Chapter 3, notification of hazardous waste activity.

22. At the time of the October 13, 2000 inspection, Respondent was storing approximately 54 drums of D001, F003, and F005 hazardous waste at its facility and had not received an EPA identification number.

23. Respondent's failure to obtain an EPA identification number is a violation of 40 C.F.R. § 262.12 and NAC Title 128, Chapter 3, 001.

Count 3 - Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

Illegal Storage of Hazardous Waste

24. The regulations at 40 C.F.R. 262.34(b) and NAC Title 128, Chapter 19, 004.02, state that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to 40 C.F.R Parts 264, 265 and 270 and NAC Title 128 Chapters 16 and 21 unless he has been granted an extension to the 90 days.

25. At the time of the October 13, 2000 inspection, Respondent had stored approximately 54 drums of D001, F003, and F005 hazardous waste at its facility for greater than 90 days.

26. Respondent does not have a permit to operate any portion of the facility as a hazardous waste treatment, storage or disposal facility.

27. By storing hazardous waste on site for greater than ninety days, Respondent was operating a hazardous waste treatment, storage or disposal facility without a permit.

28. Respondent's operation of a hazardous waste treatment, storage or disposal facility without a permit is a violation of Section 3005 of RCRA, 40 C.F.R. Part 262 and NAC Title 128,

Chapter 19.

Failure to Meet Generator Requirements

29. At the time of the October 13, 2000 inspection, Respondent was not complying with the following conditions pursuant to 40 C.F.R. § 262.34 and NAC Title 128, Chapter 19, 004:

Failure to properly label and date hazardous waste containers

30. The regulations at 40 C.F.R. § 262.34(a) and NAC Title 128, Chapter 19, 004.01C, 004.01D, require that while being accumulated on site, each hazardous waste container must have the date upon which each period of accumulation begins clearly marked and visible for inspection on each container, and that each container be labeled or marked clearly with the words "Hazardous Waste".

31. At the time of the October 13, 2000 inspection, Respondent had accumulated 54 hazardous waste drums that were not labeled with the words "Hazardous Waste" or dated with the accumulation start date.

Failure to provide secondary containment, spill and overflow controls for a hazardous waste storage tank

32. The regulations at 40 C.F.R. § 262.34(a)(1)(ii) state that hazardous waste may be placed in tanks if the applicable requirements of subparts J, AA, BB, and CC of 40 C.F.R. § 265, except 40 C.F.R. § 265.197(c) and 40 C.F.R. § 265.200, are met.

33. At the time of the May 21, 2001 follow-up inspection, Respondent was storing hazardous waste in a tank without providing secondary containment or spill and overflow controls, as required by 40 C.F.R. § 265.193 and 40 C.F.R. § 265.194.

CONSENT AGREEMENT

34. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

35. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

36. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty as set forth below. The mitigated civil penalty is a result of the Respondent's inability to pay the proposed penalty.

37. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

38. Respondent and Complainant each agree to bear their own costs and attorney's fees.

39. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

40. The undersigned representatives of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

41. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties up to $27,500 per day of non-compliance.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, IT IS ORDERED that:

Payment of the Penalty

1. Respondent shall pay a mitigated civil penalty of Seven Thousand Five Hundred Dollars ($7,500). This mitigated amount is based on Respondent's inability to pay the proposed penalty. The mitigated amount, including interest, shall be paid in four (4) payments. The first payment in the amount of $3,000 shall be due thirty days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. The remaining three payments, in the amount of $1,548.49 each, shall be due on November 1, 2002, February 1, 2003, May 1, 2003, and August 1, 2003. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," reference the EPA Docket No. and remitted to:

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

Leslie Humphrey
Chief, Regulatory Programs Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101

2. Respondent's failure to pay the civil penalty as provided above may result in commencement of a civil action in Federal District Court to recover the unpaid portion, together with interest thereon at the applicable statutory rate.

Compliance Actions

3. Respondent shall take the following compliance actions within the time periods specified:

a. Within forty-five (45) days of the effective date of this Order, Respondent shall submit to EPA and the NDEQ a closure plan for the area on which hazardous waste was released and/or stored illegally (a map identifying this area is included as attachment A). The closure plan must meet the requirements of 40 C.F.R. Part 264, Subparts G and H. In the event that NDEQ provides comments to Respondent or comments on the closure plan, Respondent shall discuss, revise and resubmit the closure plan to NDEQ in accordance with the comments. Respondent will also respond to any comments or resolve any issues received during the public comment period. After approval of the closure plan by NDEQ, Respondent shall implement the approved closure plan in accordance with the schedule contained therein. Respondent shall provide NDEQ thirty (30) days advance written notice prior to engaging in any field activity pursuant to the NDEQ approved closure plan.

b. Within forty-five (45) days of the effective date of this Order, Respondent shall submit to EPA and NDEQ documentation that financial assurance for closure of the hazardous waste storage area has been established in compliance with 40 C.F.R. Part 264 Subpart H.

c. Within sixty (60) days of completion of closure, Respondent shall certify to both EPA and NDEQ that it has closed the hazardous waste area pursuant to the approved closure plan.

4. Reporting to EPA: All documents required to be submitted to EPA to fulfill the requirements of Paragraph 3 of this Final Order shall be sent to:

Stephen R. Pollard
U.S. Environmental Protection Agency
Air, RCRA, and Toxics Division
901 North Fifth Street
Kansas City, Kansas 66101

Documents to be submitted to NDEQ shall be sent to:

William C. Gidley
Waste Management Section
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68589-8922

Parties Bound

5. This Final Order shall apply to and be binding upon Respondent, its agents, successors, and/or assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

Reservation of Rights

6. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars ($27,500) per day per violation, for each day of non-compliance with the terms of this Final Order, or to seek any other remedy allowed by law.

7. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to RCRA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

8. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

Termination

9. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

10/7/02
Date

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

October 7, 2002
Date

Leslie Humphrey
Chief, Regulatory Programs Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
USA TIRE MANAGEMENT SYSTEMS, INC.

09/30/2002
Date

X Les Pederson
Name: LES H. PEDERSON,
Title: PRESIDENT, SECRETARY

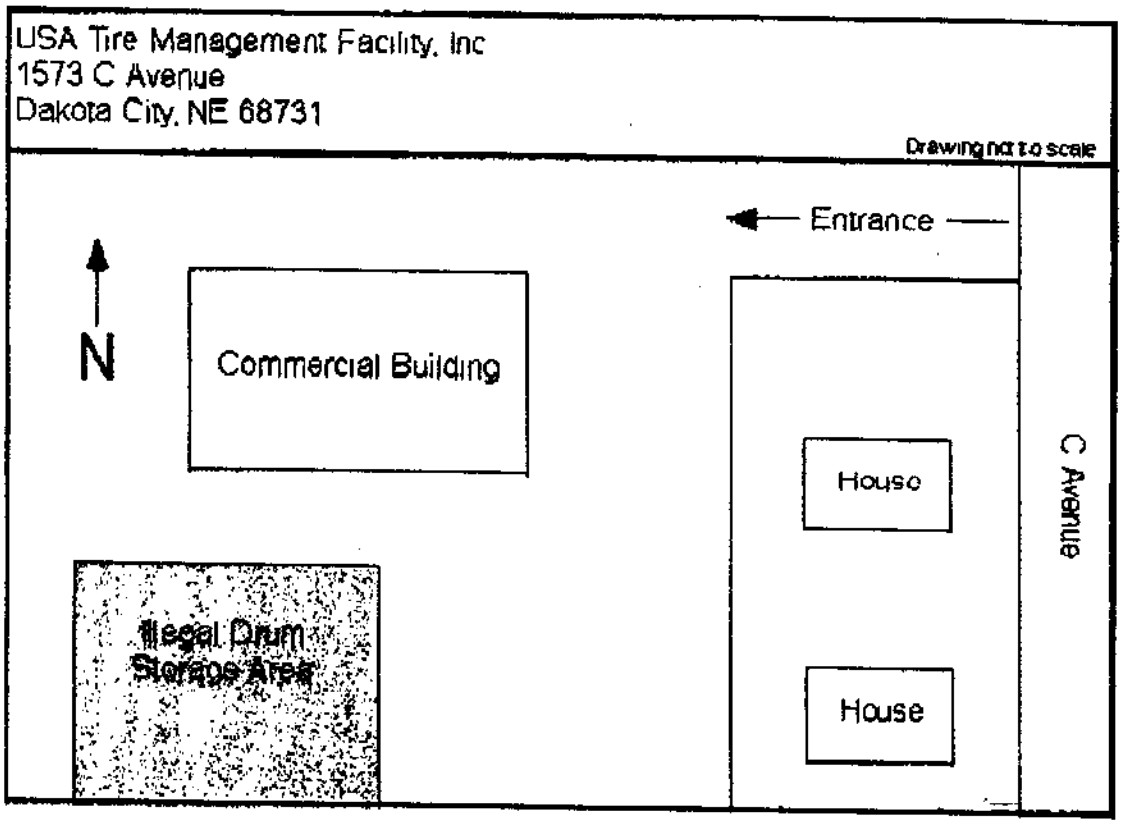
IN THE MATTER OF
USA Tire Management Systems, Inc.
Docket No. RCRA-07-2003-0003

IT IS SO ORDERED.

October 9, 2002
Date

Robert L. Patrick
Regional Judicial Officer

Attachment A



IN THE MATTER OF USA Tire Management Systems, Inc., Respondent
Docket No. RCRA-07-2003-0003

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Leslie Humphrey
Chief, Regulatory Programs Branch
Office of Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Les Pederson
444 S. York Street
Sioux City, Iowa 51106

and

Stephen D. Mossman
Mattson, Ricketts, Davies, Stewart & Calkins
134 South 13th Street, Suite 1200
Lincoln, Nebrfaska 68508-1901

Dated: 10/10/02

Kathy Robinson
Kathy Robinson
Regional Hearing Clerk