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UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY

SEP 27 2013

DIVISION OF AIR QUALITY

Attorneys for Stericycle, Incorporated

BEFORE THE UTAH DIVISION OF AIR QUALITY

In the matter of:

Stericycle, Incorporated

REQUEST FOR AGENCY ACTION

September 27, 2013

No. 2013051501

Pursuant to UAC R305-7-303, Stericycle Incorporated hereby files its Request for Agency Action in response to the Amended Notice of Violation and Order to Comply dated August 28, 2013.¹

GENERAL DENIAL

Stericycle denies all allegations not specifically admitted herein.

¹ Pursuant to stipulations of the parties under UAC R305-7-303, Stericycle had until August 30, 2013 to file a Request for Agency Action in response to the original NOV and Order to Comply dated May 28, 2013. However, before Stericycle filed a response to the original NOV and Order to Comply, DAQ filed the Amended NOV and Order to Comply on August 28, 2013, with a new deadline for filing a response within 30 days of the amended pleading.

RESPONSE TO ALLEGED FINDINGS

1. Paragraph 1 states: "Stericycle, Incorporated (Stericycle) operates a hospital/medical/infectious waste incinerator (HMIWI) at 90 North 110 West, North Salt Lake, Davis County, Utah." To the extent this finding requires an admission or denial, Stericycle admits the finding.

2. Paragraph 2 states: "Stericycle is required to comply with Utah Administrative Code (UAC) R307-415 and the conditions of Title V Operating Permit 1100055002 issued February 19, 2009 (Operating Permit)." To the extent this finding requires an admission or denial, Stericycle admits that it is required to comply with the conditions of the applicable provisions of the Operating Permit at any given time, admits that it is required to comply with applicable provisions of UAC R307-415, and denies that it is required to comply with all provisions of UAC R307-415.

3. Paragraphs 3 through 12 contain statements reciting specific language contained in the Operating Permit conditions. To the extent these findings require admission or denial, Stericycle admits that the Operating Permit contains the language specified in the provisions of NOV as well as other language omitted from the NOV.

4. Paragraph 13 states: "Operating Permit Condition II.B.3.c.3(a)(6) states that a semi-annual report shall be submitted by September 4, 2002, and subsequent reports shall be submitted no more than 6 months following the previous report. All reports shall be signed by the facility's manager and the reports shall include, if a performance test was conducted during the reporting period, the results of that test." To the extent this finding requires admission or denial, Stericycle admits that Condition II.B.3.c.3(a)(6) is in the Operating Permit, that it requires semi-annual reports that are signed by the facility's manager, as defined in the permit, that it states such semi-annual reports include, if a performance test was conducted during the

reporting period, the results of that test, but denies the date that Paragraph 13 states is required for submittal .

5. Stericycle lacks sufficient information to admit or deny the allegations in the first sentence of paragraph 14, and therefore denies the same. Stericycle admits that on or about January 31, 2012, it submitted two deviation reports to DAQ, the terms of which speak for themselves. Stericycle admits the deviation report for failing to give 30 days notice of stack testing was not submitted within 7 days. Stericycle denies the deviation report for the stack test results was not submitted within 7 days. While the deviation report did not expressly mention PCDD/PCDF, the deviation report satisfied the applicable reporting requirement.

6. With respect to Paragraph 15, Stericycle admits that on or about February 21, 2012, it submitted the Data Validation Report to DAQ. Stericycle denies DAQ's characterization of the report, the terms of which speaks for itself.

7. Stericycle lacks sufficient information to admit or deny the allegations in the first sentence of paragraph 16, and therefore denies the same. Stericycle lacks sufficient information to admit or deny the allegations in the second sentence of paragraph 16 regarding DAQ's review of the report, and therefore denies the same. Stericycle admits the allegation in the second sentence of paragraph 16 that the report showed PCDD/PCDF emissions at 616.4 ng/dscm @ 7% O₂, but Stericycle denies this was a valid sample and/or lab analysis. Stericycle denies the allegation in the second sentence of paragraph 16 that Stericycle exceeded the NO_x limit, because the stack testing rules do not preclude relying upon the three runs that were under the limit to establish compliance. Stericycle admits the remaining allegations in sentences three through five in paragraph 16.

8. Stericycle admits the allegations in the first two sentences of paragraph 17, but avers that DAQ had already received the testing results by this point in time, so DAQ was aware of those results. Stericycle denies there was a deviation for the PCDD/PCDF emissions and thus denies any deviation reporting was required for those emissions and denies any requirement to report them in the semi-annual report. Stericycle's position is that the PCDD/PCDF results were due to sample and/or lab error. Stericycle admits the report did not include a deviation for the first three NOx runs during the December 2011 stack test and that Stericycle did not submit a deviation report for not including the first three NOx runs in the semi-annual report, but Stericycle avers it was not required to submit a deviation report for the three NOx runs that were over the limit because the stack testing rules do not preclude relying upon the three runs that were under the limit to establish compliance.

9. Stericycle admits the allegation in paragraph 18 that DAQ issued a compliance advisory which speaks for itself. The recitation from the compliance advisory repeats allegations contained in other paragraphs of the NOV, including paragraph 16 of the NOV, and thus Stericycle incorporates by reference herein its response to those other paragraphs of the NOV, including its response to paragraph 16 of the NOV.

10. With respect to paragraph 19, Stericycle admits it submitted a compliance certification on or about May 11, 2012 and that the certification indicated continuous compliance. Stericycle lacks sufficient information to admit or deny when DAQ received the document and thus denies that allegation. Stericycle avers that it referenced the PCDD/PCDF results from the December 2011 test which it believed to be in error and that it referenced the subsequent testing in February 2012 which showed compliance. Stericycle admits it did not submit a deviation report in connection with the compliance certification but is not able to admit

or deny the remaining allegations because they do not specify what alleged deviations are being referred to, and thus Stericycle denies those allegations.

11. Stericycle lacks sufficient information to admit or deny when DAQ received the referenced production data and thus denies the allegations in the first sentence of paragraph 20. Stericycle denies the allegations in sentences 2, 3 and 4 of paragraph 20. Stericycle is not sure which specific charge logs are being referenced in these sentences but, in any event, Stericycle denies the charge logs support the evidentiary assertions being made in these sentences. Further, the incinerator operation is subject to variability and the Operator Training Manual does not prescribe a specific operational method and recognizes there is variability and that operators need flexibility to respond to variable conditions. With respect to the last sentence of paragraph 20, Stericycle admits it did not submit a deviation report for how it operated during runs 4-6, but Stericycle denies a deviation report was required for the manner of operation during Runs 4-6.

12. With respect to Paragraph 21, Stericycle is unable to admit or deny what email DAQ received from the stack test contractor or when DAQ received it, and thus denies this allegation. Stericycle admits the December 2011 PCDD/PCDF samples were re-analyzed, which sampling analysis document speaks for itself, but Stericycle denies that the PCDD/PCDF results were valid and continues to maintain those results are defective due to sample and/or lab error.

13. With respect to Paragraph 22, Stericycle admits that on or about August 22, 2012, a DAQ inspector conducted an inspection of Stericycle and that the inspector issued a memo dated October 31, 2012. Stericycle denies any characterization of the findings of that inspection which are inconsistent with the actual text of the inspection memo.

a. The allegations in subparagraphs A through E repeat the allegations in alleged violations 1 through 5 found later in the NOV. Accordingly, Stericycle incorporates by reference its response to alleged violations 1 through 5 below herein.

b. Stericycle denies the allegations in the first four sentences of subparagraph F, including because, regardless of the charge weight ranges asserted by DAQ in these sentences, the incinerator operation is subject to variability and the Operator Training Manual does not prescribe a specific operational method and recognizes there is variability and that operators need flexibility to respond to variable conditions. Stericycle admits that it submitted letters dated September 14, 2012 and September 21, 2012, but denies DAQ's characterization of those letters, the contents of which speak for themselves. Stericycle denies the phrase "once again" as used in this paragraph. Stericycle denies the allegations in the last sentence in subparagraph F.

c. With respect to subparagraph G, Stericycle admits that it submitted an NOI to install SNCR, and that the NOI speaks for itself, and Stericycle denies DAQ's characterization of the NOI. Stericycle avers that it has installed SNCR.

d. Stericycle admits the allegations in the first three sentences of subparagraph H provide a generally accurate summary, but Stericycle denies the stack test report did not include data on runs 1-3, which were clearly identified in the data included in the report, along with data on runs 4-6. Stericycle admits the allegations in the fourth sentence in subparagraph H. Stericycle admits that it submitted a letter dated September 21, 2012, the terms of which speak for itself, and Stericycle denies DAQ's characterization of the letter. Stericycle admits the December 2011 PCDD/PCDF samples were re-analyzed, which sampling analysis document speaks for itself, but Stericycle denies that the PCDD/PCDF results were valid and

continues to maintain those results are defective due to sample and/or lab error, and Stericycle denies the re-analysis validated the results.

14. Stericycle admits the allegations in paragraph 23, but Stericycle avers that it had previously reported the February 2012 stack test results to DAQ, so DAQ was aware of those results.

15. Stericycle admits the allegations in paragraph 24.

16. Stericycle admits the allegations in paragraph 25, but Stericycle avers that it had previously reported the November 2012 stack test results to the DAQ, so DAQ was aware of those results.

17. Stericycle admits it performed stack testing on January 22-25, 2013, after installation of the SNCR and that it tested for the following pollutants: NO_x, CO, SO₂, PM, Hg, Cd, Pb, HCl and PCDD/PCDF. Stericycle denies all other allegations in paragraph 26.

18. Stericycle admits the allegations in paragraph 27.

19. Stericycle admits the allegations in paragraph 28.

20. Stericycle admits the allegations in paragraph 29, except Stericycle denies the allegation that the results of the April 10, 2013 test showed Stericycle had “returned” to compliance with all emission limits. Stericycle had been in compliance with emission limits before these test results were submitted.

21. Stericycle admits it did not submit a deviation report as alleged in this paragraph, but Stericycle denies any such deviation report was required.

22. Stericycle admits the allegations in paragraph 31.

23. Stericycle admits the allegation in paragraph 32 that DAQ issued the original notice of violation on May 28, 2013.

RESPONSE TO ALLEGED VIOLATIONS

Stericycle denies the allegation that it was in violation of any conditions of its Title V permit as of the date the NOV was issued. Stericycle responds specifically to the alleged violations as follows:

1. Stericycle denies alleged violation number 1 including because it is too vague to place Stericycle on notice of the exact nature of the alleged violations and because this allegation violates the bar on duplicate violations for the same underlying facts.

2. Stericycle denies alleged violation number 2 including because it is too vague to place Stericycle on notice of the exact nature of the alleged violations and because this allegation violates the bar on duplicate violations for the same underlying facts.

3. Stericycle denies alleged violation number 3, including because it is Stericycle's position that there were no exceedances of the PCDD/PCDF limit in the December 2011 stack test and thus there were no required deviations or exceedances to be reported for PCDD/PCDF. Stericycle has consistently maintained there was an error in the sampling and/or lab analysis, and that the results are not valid because they are so far out of the typical range for PCDD/PCDF. Further, as a precautionary measure, Stericycle did file a timely deviation report for the PCDD/PCDF stack test results, while preserving its defense that those results were flawed and not accurate. Stericycle admits there were three runs, the arithmetic mean of which was under the limit for the NO_x test, and three runs, the arithmetic mean of which was over the limit for the NO_x test, and avers that the stack testing rules do not preclude relying upon the three runs under the limit to establish compliance. Accordingly, Stericycle was not required to submit a deviation report for the NO_x testing.

4. Stericycle denies alleged violation number 4 including because it is too vague to place Stericycle on notice of the alleged deviations included in this count, and for the reasons stated in response to alleged violation number 3 above.

5. Stericycle objects to and denies alleged violation number 5 because it is too vague and ambiguous to determine the exact nature of the violations being alleged and because it appears to be duplicative of other alleged violations. To the extent alleged violation number 5 duplicates other alleged violations, Stericycle incorporates by reference herein its responses to those alleged violations.

6. Stericycle denies alleged violation number 6, including because the Incinerator Operator Training Manual does not prescribe a specific operational method and recognizes that there is variability in the operations and that the operators need flexibility to respond to variable conditions. In addition, Stericycle denies the allegation to the extent it asserts that the Incinerator Operator Training Manual establishes permit requirements or what can satisfy operation consistent with good air pollution control practices for minimizing emissions.

7. Stericycle denies alleged violation number 7 including for the reasons stated in response to alleged violation number 3 above.

8. Stericycle denies alleged violation number 8.

9. Stericycle admits the allegation in paragraph 9 that in-house testing conducted on September 13, 2013, and reported to DAQ the next day, showed exceedance of the NOx limit, but avers that additional in-house testing conducted between September 13 and September 21, 2013, demonstrated compliance with the NOx limit.

10. Stericycle admits the allegation in paragraph 10 that there was an exceedance of the HCL limit during the January 22-25, 2013 stack test, but avers that Stericycle is protected from liability under the malfunction defense recognized in the Title V permit.

11. Stericycle denies alleged violation number 11, including because the process is variable.

12. Stericycle admits alleged violation number 12, but avers that it had previously submitted the test results to DAQ, so DAQ was aware of the results.

13. Stericycle admits alleged violation number 13, but avers that it had previously submitted the test results to DAQ, so DAQ was aware of the results.

14. Stericycle admits alleged violation number 14, but avers that it had previously submitted the test results to DAQ, so DAQ was aware of the results.

RESPONSE TO ORDER

1. Stericycle has taken all necessary steps to achieve compliance.
2. Stericycle submitted its intent to comply letter on June 14, 2013.

FIRST AFFIRMATIVE DEFENSE

Certain of the alleged violations fail to state a claim upon which relief can be requested.

SECOND AFFIRMATIVE DEFENSE

Certain of the alleged violations are too vague and ambiguous to state viable claims or place Stericycle on notice of the alleged violations.

THIRD AFFIRMATIVE DEFENSE

The alleged HCL exceedance is barred by a malfunction defense.

FOURTH AFFIRMATIVE DEFENSE

Certain of the alleged violations, including violations 1 and 2, should be dismissed because they are duplicative of other alleged violations.

FIFTH AFFIRMATIVE DEFENSE

Certain of the alleged reporting violations fail to recognize that Stericycle had previously submitted information or stack test results to DAQ.

SIXTH AFFIRMATIVE DEFENSE

Certain of the alleged violations may be barred by the applicable statute of limitations.

REQUEST FOR RELIEF

Stericycle requests that it be provided a hearing with full discovery and all due process rights under the law. Stericycle requests that the alleged violations not admitted above be dismissed.

DATED this 27th day of September, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2013, a true and correct copy of the forgoing **REQUEST FOR AGENCY ACTION** was hand-delivered and e-mailed with the following:

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