STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | MANITOWOC COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

DAVID P. MUSIAL
1317 South 22nd Street
Manitowoc, Wisconsin 54220
DOB: 8/15/1953,

Defendant.

ORIGINAL FILED

FEB 28 2012

LYNN ZIGMUNT
CLERK OF CIRCUIT COURT
MANITOWOC COUNTY, WISCONSIN

Case No. 12-CF-85

CRIMINAL SUMMONS

THE STATE OF WISCONSIN TO:

DAVID P. MUSIAL
1317 South 22nd Street
Manitowoc, Wisconsin 54220

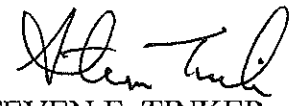
A complaint, a copy of which is attached, having been made before me accusing you of criminal violations contrary to Wis. Stat. § 291.97(2)(b)2., you are therefore summoned to appear before Manitowoc County Circuit Court Judge Gary L. Bendix, Branch 2, at the Manitowoc County Courthouse, 1010 South Eighth Street, Manitowoc, Wisconsin, to answer said complaint on Monday, April 2, 2012, at 2:30 p.m. In the case

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (920) 683-4030 (TTY -- (920) 683-4495) AND ASK FOR THE MANITOWOC COUNTY CIRCUIT COURT ADA COORDINATOR.

of your failure to appear, a warrant for your arrest may be issued.

Dated this 27th day of February, 2012.

J.B. VAN HOLLEN
Attorney General



STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0764
(608) 266-2250 (fax)
tinkerse@doj.state.wi.us

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DOB: 8/15/1953,

Defendant.

CRIMINAL COMPLAINT

Stefan Fabian, being duly sworn on oath, complains to the Court as follows:

COUNT ONE

That between at least October 2009 and on or about October 1, 2010, defendant David P. Musial, in the Town of Kossuth, Manitowoc County, State of Wisconsin, did willfully store a hazardous waste without a license as required under Wis. Stat. § 291.25(2)(b), to-wit: the storage of liquid waste with a flash point less than 60 degrees Celsius (140 degrees Fahrenheit), a hazardous waste due to the characteristic of ignitability pursuant to Wis. Admin. Code § NR 661.21(1)(a), in violation of Wis. Stat. § 291.97(2)(b)2., an offense punishable by a fine of not more than $100,000 or imprisonment for not more than six years, or both, per day of violation.

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (920) 683-4030 (TTY -- (920) 683-4495) AND ASK FOR THE MANITOWOC COUNTY CIRCUIT COURT ADA COORDINATOR.

COUNT TWO

That on or about June 11, 2010, defendant David P. Musial, in the Town of Kossuth, Manitowoc County, State of Wisconsin, did willfully treat hazardous waste without a license as required under Wis. Stat. § 291.25(2)(b), to-wit: incinerated liquid waste which was a hazardous waste due to its characteristic of ignitability pursuant to Wis. Admin. Code § NR 661.21(1)(a), in violation of Wis. Stat. § 291.97(2)(b)2., an offense punishable by a fine of not more than $100,000 or imprisonment for not more than six years, or both, per day of violation.

COUNT THREE

That on March 1, 2009, and March 1, 2010, defendant David P. Musial, in the Town of Kossuth, Manitowoc County, State of Wisconsin, did willfully fail to submit a record of hazardous waste treatment, storage, and disposal as required under Wis. Admin. Code § NR 662.041(4) and Wis. Admin. Code § NR 664.0075, to-wit: the failure to submit an annual hazardous waste report to the Wisconsin Department of Natural Resources for the years 2008 and 2009 in violation of Wis. Stat. § 291.97(2)(a)2., an offense punishable by a fine of not less than $100 nor more than $25,000 or imprisonment for not more than one year in the county jail, or both, per day of violation.

THE BASES FOR YOUR COMPLAINANT'S CHARGES OF SUCH OFFENSES ARE AS FOLLOWS:

The foregoing is based upon your complainant's personal knowledge and upon your complainant's information and belief as set forth below. Your complainant, Stefan Fabian, believes and states as follows:

Your complainant is an Environmental Warden employed by the State of Wisconsin, Department of Natural Resources (DNR). Your complainant was employed in such capacity at all times material hereto, and still is, assigned to an investigation involving the above-named defendant and the unlawful storage and treatment of hazardous wastes in Manitowoc County, Wisconsin.

On June 11, 2010, your complainant responded to a referral from the Manitowoc County Sheriff's Office. Sergeant Tom Bielke of the Manitowoc County Sheriff's Office advised that on June 11, 2010, he observed heavy dark black smoke from miles away. The source of the smoke was determined to be a fire at Musial Paint Finishes, LLC, on CTH Q, Town of Kossuth, Manitowoc County, Wisconsin. Defendant David P. Musial was present at the site, and after initially providing misinformation about the source of the fire to Sergeant Bielke, admitted that he had been burning waste paint solvents in a dumpster on the Musial Paint Finishes property. Mr. Musial advised that the barrels contained D001 petroleum distillates, F005 MEK, toluene, F003 MIBK, xylene, methanol, ethyl acetate, ethyl benzene, and acetone.

On June 12, 2010, your complainant returned to the Musial Paint Finishes Property, on CTH Q, Town of Kossuth, Manitowoc County, Wisconsin, and observed nineteen 55-gallon barrels of waste solvents and paints, in addition to hundreds of cans and barrels of waste paint, paint solvents, corrosives, antifreeze, oil and other wastes in an adjoining building. The contents of the various containers found at the scene were sampled on or about June 12, 2010, and on or about June 23, 2010. Your complainant submitted the samples from the Musial sites to the Wisconsin State Laboratory of Hygiene (SLOH) for analysis. The SLOH analyzed the samples and provided a report of

their findings. Barti Oumarou, a Waste Management Specialist with the DNR, reviewed the analyses and advised your complainant of the following. Oumarou determined that field sample #1, from barrel A, the source of the fire, is a hazardous waste, exhibiting the ignitability characteristic. This sample has a flash point of <50 degrees Fahrenheit, and is thus hazardous as defined in Wis. Admin. Code § NR 661.21(1)(a). Defendant Musial had identified this barrel as containing the solvents that were burned in the June 11, 2010, dumpster fire.

Eight other samples taken from the site on CTH Q on June 12, 2010, were determined to be hazardous wastes, exhibiting the ignitability characteristic as defined in Wis. Admin. Code § NR 661.21(1)(a). Of samples taken from the site on CTH Q on June 23, 2010, seven were determined to be hazardous wastes exhibiting the ignitability characteristic as defined in Wis. Admin. Code § NR 661.21(1)(a).

Your complainant interviewed Mr. Musial on numerous occasions. Musial advised that he operated two painting companies. One of these was Musial Paint Finishes, LLC. Mr. Musial admitted to burning waste solvents on June 11, 2010, in the dumpster. Mr. Musial also acknowledged that he stored waste solvents at his businesses' facilities, stating that Musial Paint Finishes, LLC, generated about one 55-gallon barrel of paint wastes at the CTH Q shop each month until he closed the shop in October 2009. Mr. Musial stated that the waste paint solvents located in the shop bay were generated at the CTH Q shop. Mr. Musial stated that he stored the waste solvents on site because his business was experiencing financial difficulties. Mr. Musial stated that he had located an interested buyer for his business, so he had to get rid of the waste solvents. Mr. Musial stated that he did not call the DNR with questions regarding disposal of the waste

solvents because he did not want the DNR to know how he was handling the waste solvents. Your complainant has learned that the above-described hazardous waste was properly removed from the property between October 1, 2010, and October 8, 2010.

Your complainant is aware that generators and storers of hazardous waste are required to file an annual report with the DNR before March 1 for the preceding year's hazardous waste activities, including storage. Your complainant interviewed James Rickun, the environmental consultant for Musial Paint Finishes, LLC. Mr. Rickun stated that Mr. Musial was aware of his hazardous waste generator status and also knew that he is supposed to submit an annual hazardous waste report to the DNR. Mr. Rickun stated that each year, Mr. Musial would contact him to complete the annual hazardous waste report for submittal to the DNR. Mr. Rickun stated that there are some years that a report was not completed.

Your complainant was advised by DNR Environmental Program Assistant Diane Hammel that neither the defendant nor Musial Paint Finishes, LLC, had a license to store, treat, transport or dispose of any hazardous waste during the times in question. Ms. Hammel further told your complainant that neither the defendant nor Musial Paint Finishes, LLC, submitted an annual hazardous waste report for 2007, 2008 or 2009.

Your complainant believes the statements of Sergeant Bielke and James Rickun to be truthful and reliable because they personally observed the events they described. Your complainant believes the statements of Barti Oumarou and Diane Hammel and the records of the DNR to be truthful because they were made and maintained in the normal course of their duties and I have relied upon them in the past. Your complainant believes

the statements of defendant Musial to be truthful and reliable because they were against his penal interest.

Dated this 20th day of February, 2012.

Stefan Fabian

STEFAN FABIAN
Environmental Conservation Warden

Subscribed and sworn to before me
pursuant to Wis. Stat. § 968.01(3)
and approved for filing
this ____ day of February, 2012

STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319
Notary Public, State of Wisconsin
My commission is permanent.

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State Bar #1013319
Notary Public, State of Wisconsin
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