

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

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 In the Matter of :  
 : **COMPLAINT, COMPLIANCE ORDER,**  
 Veolia ES Technical : **AND NOTICE OF OPPORTUNITY**  
 Solutions, L.L.C. : **FOR HEARING**  
 :  
 Respondent. :  
 : Docket Number RCRA-02-2016-7101  
 Proceeding under Section 3008 of the :  
 Solid Waste Disposal Act, as amended. :  
 -----X

U.S. Environmental  
 Protection Agency-Reg 2  
 2016 APR 23 PM 3:15  
 REGIONAL HEARINGS  
 CLERK

**COMPLAINT**

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the “Act” or “RCRA”). The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) serves notice of EPA's preliminary determination that Veolia ES Technical Solutions, L.L.C. has violated provisions of RCRA and/or the federally authorized New Jersey regulations concerning the management of hazardous waste at its facility located at 125 Factory Lane, Middlesex, New Jersey 08846.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the “authorized State Program”). 64 Fed. Reg. 41823 (Aug. 2, 1999). Prior to February 14, 2003, the authorized State Program incorporated by reference, with some minor modifications, the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. As of February 14, 2003, however, the scope of the State's authorized program was expanded by EPA’s authorization of New Jersey’s regulations incorporating by reference regulations promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). Presently, therefore, the authorized State Program, with some minor modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey’s authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan.19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the provisions of the authorized State program and retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA- Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

### **Jurisdiction**

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

### **Respondent's Background**

2. The Respondent is Veolia ES Technical Solutions, L.L.C. (hereafter "Veolia.")
3. Respondent is a corporation and a subsidiary of VEOLIA NORTH AMERICA.
4. Respondent has been and continues to be the owner and operator of a hazardous waste storage and treatment facility located at 125 Factory Lane, Middlesex, New Jersey 08846 (hereinafter the "Facility" or "VEOLIA.")
5. VEOLIA has been and continues to be a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
6. Respondent stores organic hazardous waste in hazardous waste storage tanks.
7. Respondent is a "person" as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
8. The Middlesex facility is a "facility" as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
9. Respondent is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).
10. Respondent is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).

### **Notifications of Hazardous Waste Generation**

11. On or about July 17, 1980, Marisol Incorporated provided the EPA a Notification of Hazardous Waste Activity (the "July 1, 1980 Notification") requesting an EPA Identification Number for hazardous waste activities it would be conducting at the facility.
12. In response to the July 17, 1980 Notification, EPA provided Marisol Incorporated with EPA Identification Number NJD002454544.
13. On or about October 22, 2007, VEOLIA ES Technical Solutions, L.L.C., provided the EPA a 2008, and continuing operations as a hazardous waste storage, treatment and transfer facility.

In accordance with EPA policy which considers EPA Identification Numbers site-specific, the Middlesex site, now under the legal ownership of Veolia ES Technical Solutions, L.L.C., retained EPA Identification Number NJD002454544. On December 13, 2007, Veolia submitted a request for a permit modification to transfer the permit from Marisol to Veolia. On December 21, 2007, NJDEP approved such transfer.

### **Permitting Matters**

14. Veolia holds a hazardous waste permit (HWP070002) which became effective on July 27, 1997, and was modified by permit HWP120005, effective November 27, 2008, and was scheduled to expire November 27, 2013. On May 21, 2013 Veolia submitted to NJDEP a permit renewal application on May 21, 2013 which prolonged the effectiveness of its existing permit until a new permit was issued.
15. On or about September 30, 2014, the State of New Jersey, pursuant to N.J.S.A. 13:1E-1 et seq. issued a RCRA permit (HWP130001) to Veolia for the continued operation of a hazardous waste storage, treatment and transfer facility at its Middlesex facility (the "2014 permit").
16. The 2014 permit became effective on October 30, 2014 and is set to expire on October 30, 2019. The 2014 permit was modified by permit HWP150001 effective on October 30, 2014.
17. On or about June 4, 2002, EPA issued a Hazardous and Solid Waste Amendments of 1984 permit to Marisol for the continued operation of a hazardous waste storage, treatment and transfer facility at its Middlesex facility (the "2002 HSWA permit") for the HSWA requirements for which the State of New Jersey was not authorized. The 2002 HSWA permit remains in effect.
18. By letter dated December 21, 2007, EPA approved the modification of the 2002 HSWA permit to transfer ownership and operation of the facility from Marisol to Veolia.

### **EPA Investigative Activities**

19. On or about July 15 and July 29, 2015, duly designated representatives of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted Compliance Evaluation Inspections ("July Inspections") of the facility.
20. At the time of the July inspections, the representatives of EPA noted that the facility had not performed monthly air emissions monitoring between April 2012 and April 2015 on approximately 20 pumps in light liquid hazardous waste service.
21. At the time of the July 29, 2015 inspection, the representatives of EPA observed that the facility had not closed all hazardous waste containers subsequent to sampling performed pursuant to the facility's Waste Analysis Plan ("WAP.")

## **Information Request and Response**

22. On or about October 23, 2015, EPA issued to Respondent a Notice of Violation/RCRA § 3007 Information Request, 42 U.S.C. § 6927 (the “October NOV/Information Request”) letter.
23. The October NOV/Information Request stated, *inter alia*, that Veolia: (a) failed to perform monthly air emissions monitoring on approximately 20 pumps in light liquid hazardous waste service; and (b) failed to close hazardous waste containers in a timely manner subsequent to routine sampling pursuant to the facility’s WAP.
24. The October NOV/Information Request also required the submittal of information pertaining to any operational changes that the facility implemented, or was planning, to assure that the violations noted in paragraph 23, above, would not recur.
25. The Respondent in its November 10, 2015 response to the October NOV/Information Request (the “November Response”) stated: (a) it “started a monthly monitoring program” on the approximate 20 pumps in light liquid hazardous waste service; and (b) “completed additional training on laboratory sampling personnel” to assure containers were closed.

### **Count 1 – Failure to Perform Monthly Emissions Monitoring on Pumps Subject to Subpart BB**

26. Complainant re-alleges each allegation contained in paragraphs “1” through “25”, as if fully set forth herein.
27. Pursuant to 40 C.F.R. § 264.1052(a)(1), as referenced by Subject Item: HWSG807524 – 120 of the facility’s RCRA Permit HWP120005, each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b).
28. Pursuant to 40 C.F.R. § 264.1052(a)(1), as referenced by Subject Item: HWSG807524 – 120 of the facility’s RCRA Permit HWP150001, each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b).
29. Based on the July 15, 2015 inspection, EPA has determined that Respondent did not perform monthly air emissions monitoring pursuant to 40 C.F.R. § 264.1052(a)(1) on 20 pumps in light liquid hazardous waste service on 30 occasions from April 2012 to April 2015.
30. The Respondent’s failure, between April 2012 and October 29, 2014, to perform monthly air emissions monitoring pursuant to 40 C.F.R. § 264.1052(a)(1), as alleged above, constitutes a violation of Subject Item: HWSG807524 - 120 of the facility’s RCRA Permit HWP120005.
31. The Respondent’s failure, between October 30, 2014 and April 2015, to perform monthly air emissions monitoring pursuant to 40 C.F.R. § 264.1052(a)(1), as alleged above, constitutes a violation of Subject Item: HWSG807524 - 120 of the facility’s RCRA Permit HWP150001.

## Count 2 - Failure to Close Hazardous Waste Containers

32. Complainant re-alleges each allegation contained in paragraphs "1" through "25", as if fully set forth herein.
33. Pursuant to 40 CFR 264.173(a), as referenced by Subject Item: HWSG807523 – 89 of the facility's RCRA Permit HWP150001, containers storing hazardous waste must be closed except when adding or removing waste.
34. During the July 29, 2015 inspection, EPA inspectors observed hazardous waste drums at the staging area outside the facility's analytical laboratory, which had open bung caps while waste was not being removed or added.
35. The Respondent's failure to close hazardous waste drums pursuant to 40 CFR 264.173(a), as alleged above, constitutes a violation of Subject Item: HWSG807523 – 89 of the facility's RCRA Permit HWP150001.

### PROPOSED CIVIL PENALTY

The Complainant proposes that, subject to the receipt and evaluation of further relevant information, Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1: \$47,583  
Count 2: \$ 9,657

Total Proposed Penalty:        \$57,240

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: ***rted into the complaints/production/files/documents/rcpp2003-fnl.pdf***. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 ("Inflation Adjustment Act"), required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to: the December 29, 2008 document entitled "Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule

(effective January 12, 2009)”; the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule” (with a further revision not relevant to this action on April 6, 2010) and the memorandum entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalties Policies to Account for Inflation” (Effective December 6, 2013.)

Pursuant to the Inflation Adjustment Act, the maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation.

Subject to receipt and evaluation of further relevant information from the Respondent, the Complainant proposes that the Respondent be assessed the civil penalty referenced above for the violations alleged in this Complaint. This penalty calculation incorporates inflationary adjustments. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included in Attachment II, below.

### **III. COMPLIANCE ORDER**

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct the violations alleged in the previous section and come into compliance and shall thereafter maintain such compliance at its Middlesex, New Jersey facility with all the applicable organic air emission requirements set forth at 40 C.F.R. Section 264 Subparts BB regulations. The facility shall also comply with all the relevant RCRA regulations pertaining to the storage of hazardous wastes in containers.

Respondent shall submit a certification of compliance within 30 days after the effective date of this Compliance Order.

Any responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

John Wilk, Compliance Officer  
Hazardous Waste Compliance Section  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866

This Compliance Order shall take effect with respect to the Respondent within 30 days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. § 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all other applicable RCRA statutory or

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, storage, treatment, handling and/or management of hazardous waste at its facility.

#### **IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (40 C.F.R. § 19.4). Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or New Jersey.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

The rules of procedure governing civil administrative litigation were originally set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing."

##### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

## **B. Opportunity to Request a Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

## **C. Failure to Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of



default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

#### **D. Filing of Documents Filed After the Answer**

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Ronald Reagan Building, Room M1200  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

#### **E. Exhaustion of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board (EAB; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so within thirty (30) days after the initial decision is served. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Note that the 45-day period provided for in 40 C.F.R. § 22.27(c), discussing when an initial decision becomes a final order, does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

## **VI. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

**Carl R. Howard, Esq.**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway**  
**New York, New York 10007-1866**  
**212-637- 3216**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

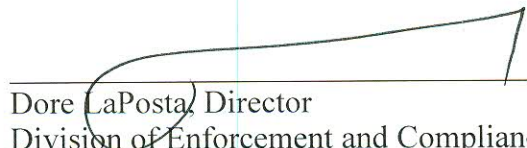
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

COMPLAINANT:

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

Date April 26, 2016

To:

John Schantz III  
Branch Environmental Health and Safety Manager  
Veolia ES Technical Solutions, L.L.C  
1 Eden Lane  
Flanders, NJ 07836

cc:

Michael Hastry, Chief  
Bureau of Hazardous Waste & UST Compliance and Enforcement  
New Jersey Department of Environmental Protection

ATTACHMENT I

PENALTY COMPUTATION WORKSHEET-COUNT ONE

**Company Name:** Veolia ES Technical Solutions, L.L.C.  
**Address:** 125 Factory Lane, Middlesex, New Jersey 08846  
**Violation:** 40 C.F.R. § 264.1052(a)(1):  
Failure to Conduct Monthly Monitoring of Pumps

1. Gravity based penalty from matrix .....	\$9,209
(a) Potential for harm.....	<u>MODERATE</u>
(b) Extent of Deviation. . . . .	<u>MODERATE</u>
2. Select an amount from the appropriate multi-day matrix cell for period January 13, 2009 – December 6, 2013.....	\$1,295
3. Multiply line 2 by number of events (for the pumps/valves associated with the hazardous waste tank storage system).....	\$20,720
4. Select an amount from the appropriate multi-day matrix cell for period after December 6, 2013.....	\$1,358
5. Multiply line 4 by number of events (for the pumps/valves associated with the hazardous waste tank storage system).....	\$17,654
6. Add line 1, 3 and 5.....	\$47,583
7. *Percent increase/decrease for good faith.....	N/A
8. Percent increase for willfulness/negligence.....	N/A
9. Percent increase for history of noncompliance.....	N/A
10. Total lines 7 through 9.....	N/A
11. Multiply line 6 by line 10.....	N/A
12. Calculated economic benefit.....	N/A
13. Add lines 6, 11 and 12 for penalty amount to be inserted into the complaint.....	\$47,583

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

## NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

### **1. Gravity Based Penalty**

(a) **Potential for Harm:** The “Potential for Harm” was “Moderate.” Although the facility failed to monitor the pumps on a monthly basis pursuant to the requirement, the pumps were monitored on a semiannual basis instead. This reduced the risks of not detecting releases of organic hazardous waste to the environment.

(b) **Extent of Deviation:** The “Extent of Deviation” was determined to be “Moderate” because 30 emissions monitoring events were missed between April 2012 and April 2015. The facility conducted semiannual rather than monthly emissions monitoring of its hazardous waste pumps. Pump leaks therefore could have gone 5 months without detection.

The mid-point of the cell range in the penalty matrix was selected.

### **2. Multi-event penalty**

The facility failed to monitor its pumps on a monthly basis from April 2012 to April 2015. EPA, in the exercise of its discretion is using the mid level of the penalty matrix to calculate multi-event penalties. The mid level of the penalty matrix was used because the facility still conducted semiannual emissions monitoring of its pumps. The number of monitoring events that should have been done was 36 while 6 were actually performed. Therefore, the facility failed to perform 30 monitoring events [ $36 - 6 = 30$ ]. The penalty calculation therefore considered 29 multiple events [ $30 - 1 = 29$  as per the 2003 RCRA Civil Penalty Policy noted above] beyond the initial episode of non-compliance. Beyond the initial episode of non-compliance, sixteen of the failed monitoring events occurred on or before December 6, 2013 and therefore the multi-event penalty matrix for January 13, 2009 – December 6, 2013 was applied. Thirteen of the failed monitoring events occurred after December 6, 2013 and therefore the multi-event penalty matrix for after December 6, 2013 was applied. The multi-event penalty matrix for after December 6, 2013 violations incorporates the Inflation Adjustment Multiplier of 1.0487.

**3. Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

**Good faith:** EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

**Willfulness/Negligence:** Not applicable

**History of Compliance:** Not applicable

**Ability to Pay:** Not applicable

**Environmental Project:** Not applicable

**Other Unique Factors:** Not applicable

**3. Economic Benefit:** The economic benefit derived from all violations were determined to be

less than \$ 5,000. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

4. **Recalculation of Penalty Based on New Information:** N/A

**PENALTY COMPUTATION WORKSHEET - COUNT TWO**

**Company Name:** Veolia ES Technical Solutions, L.L.C.  
**Address:** 125 Factory Lane, Middlesex, New Jersey 08846  
**Violation:** 40 CFR 264.173(a):  
Failure to Close Drums

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1. Gravity based penalty from matrix ..... \$9,209
  - (a) Potential for arm.....MODERATE
  - (b) Extent of Deviation. .... MODERATE
2. Select an amount from the appropriate multi-day matrix cell for period January 13, 2009 – December 6, 2013..... N/A
3. Multiply line 2 by number of events (for the pumps/valves associated with the hazardous waste tank storage system).....N/A
4. Select an amount from the appropriate multi-day matrix cell for period after December 6, 2013..... N/A
5. Multiply line 4 by number of events of violation minus 1).....N/A
6. Add line 1, 3 and 5.....\$9,209
7. Percent increase/decrease for good faith..... N/A
8. Percent increase for willfulness/negligence..... N/A
9. Percent increase for history of noncompliance..... N/A
10. Total lines 7 through 9 ..... N/A
11. Multiply line 6 by line 10..... N/A
12. Calculated economic benefit..... N/A
13. Add lines 6, 11 and 12 for penalty amount to be inserted into the complaint..... \$9,209
14. Apply December 2013 Inflation Adjustment Multiplier (1.0487) to line 13.....\$9,657

## NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

### 1. Gravity Based Penalty

(a) **Potential for Harm:** The "Potential for Harm" resulting from this violation was determined to be "Moderate" because prior to EPA's inspections the facility's routine practice was to leave certain hazardous waste drums open after routine sampling. The drums which were not closed properly however were mainly closed head type thereby reducing emissions by limiting the surface area of the opening.

(b) **Extent of Deviation:** The "Extent of Deviation" was determined to be "Moderate." Although the Respondent failed to close all drums containing hazardous waste immediately after sampling, some were immediately closed.

The mid-point of the matrix was selected.

(c) **Multi-Day:** Multi-day penalties were not imposed because the violation was only documented on one occasion.

2. **Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

**Good Faith:** At this time, EPA has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will evaluate it and consider making an appropriate adjustment.

**Willfulness/Negligence:** Not applicable

**History of Compliance:** Not applicable

**Ability to Pay:** Not applicable

**Environmental Project:** Not applicable

**Other Unique Factors:** Not applicable

3. **Economic Benefit:** The economic benefit derived from all violations was determined to be less than \$ 5,000. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

4. **Recalculation of Penalty Based on New Information:** N/A



**ATTACHMENT II**

Gravity-Based Penalty Matrix  
to Supplement the RCRA Civil Penalty Policy  
for Violations that Occur after January 12, 2009

<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>				
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	<b>MAJOR</b>	\$37,500 to \$28,330	\$28,329 to \$21,250	\$21,249 to \$15,580
	<b>MODERATE</b>	\$15,580 to \$11,330	\$11,329 to \$7,090	\$7089 to \$4,250
	<b>MINOR</b>	\$4,250 to \$2,130	\$2,129 to \$710	\$709 to \$150

Multi-Day Matrix of Minimum Daily Penalties  
 To Supplement the RCRA Civil Penalty Policy  
 For Violations That Occur January 13, 2009 – December 6, 2013

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L  F O R  H A R M		Major	Moderate	Minor
	Major	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	Moderate	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	Minor	\$850 to \$150	\$430 to \$150	\$150

Multi-Day Matrix of Minimum Daily Penalties  
 To Supplement the RCRA Civil Penalty Policy  
 For Violations That Occur After December 6, 2013

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L  F O R  H A R M		Major	Moderate	Minor
	Major	\$7,435 to \$1,489	\$5,946 to \$1,122	\$4,457 to \$818
	Moderate	\$3,272 to \$598	\$2,339 to \$378	\$1,489 to \$231
	Minor	\$891 to \$157	\$451 to \$157	\$157

**In the Matter of Veolia ES Technical Solutions, LLC  
Docket Number RCRA-02-2016-7101**

**CERTIFICATE OF SERVICE**

This is to certify that on the 25<sup>th</sup> day of April, 2016, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2016-7101 (henceforth referred to as the "Complaint"), and with a copy of the "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, by certified mail, return receipt requested, to the following addressees listed below. I hand carried the original and a copy of the Complaint to the office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

**Respondent Veolia ES Technical Solutions, LLC**

**John Schantz III  
Branch Environmental Health and Safety Manager  
Veolia ES Technical Solutions, L.L.C  
1 Eden Lane  
Flanders, NJ 07836**



Dated: 4/28, 2016  
New York, New York