



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

**BY HAND**

June 7, 2019

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (ORC 04-6)  
5 Post Office Square  
Boston, Massachusetts 02140

RECEIVED  
JUN 07 2019  
EPA ORC WS  
Office of Regional Hearing Clerk

Re: In the Matter of: ISP Freetown Fine Chemicals, Inc.  
Docket No. RCRA-01-2018-0062

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Amended Complaint, along with a Certificate of Service. Please note that the Respondent has not yet filed an Answer to the Complaint filed by EPA on September 26, 2018, and that this Amended Complaint is therefore filed as of right pursuant to 40 C.F.R. § 22.14(c).

This Amended Complaint includes the following changes in comparison to the Complaint:

1. Each reference to 40 C.F.R. § 262.34 includes a clarification indicating that 40 C.F.R. § 262.34 has been renumbered as 40 C.F.R. § 262.17, as explained in footnote 1 to Paragraph 22 of the Amended Complaint.
2. In Count 8 (Training), the Amended Complaint adds citations to 40 C.F.R. §§ 262.17 and 265.16.
3. Changes to mail codes that reflect Region 1's recent reorganization/realignment.
4. Correction of two typographical errors.

Thank you for your assistance in this matter.

Very truly yours,

  
Audrey Zucker, Esq.

Enclosures

cc: Aaron H. Goldberg, Esq.

Docket No. RCRA-01-2018-0062

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2019, the original and one copy of the Amended Complaint in the Matter of ISP Freetown Fine Chemicals, Inc., Docket No. RCRA-01-2018-0062, were hand-delivered to the Regional Hearing Clerk and a copy was sent to Respondent, as set forth below:


Original and one copy  
by hand delivery to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (ORC 04-6)  
5 Post Office Square, Suite 100  
Boston, MA 02109

Copy by overnight and electronic mail to:

Aaron H. Goldberg  
Beveridge & Diamond  
1350 I Street, N.W., Suite 700  
Washington, DC 20005  
AGoldberg@bdlaw.com

Dated: 6/7/2019

  
Audrey Zucker, Esq.  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

_____	)	
In the Matter of:	)	
	)	
ISP Freetown Fine Chemicals, Inc.	)	Docket No. RCRA-01-2018-0062
238 South Main Street	)	
Assonet, MA 02702-1699	)	
	)	
MAR000009605	)	
	)	
Proceeding under Section 3008(a)	)	AMENDED COMPLAINT, COMPLIANCE
of the Resource Conservation and	)	ORDER, AND NOTICE OF
Recovery Act, 42 U.S.C. § 6928(a)	)	OPPORTUNITY FOR HEARING
_____	)	

**AMENDED COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**I. STATEMENT OF AUTHORITY**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed by the United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”) pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. This Complaint alleges that ISP Freetown Fine Chemicals, Inc. (“Respondent”) has violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and federal and state hazardous waste regulations promulgated pursuant to RCRA.
3. The Notice of Opportunity for Hearing section of this Complaint describes Respondent’s

option to file an Answer to this Complaint and to request a formal hearing.

4. Notice of commencement of this action has been given to the Commonwealth of Massachusetts (the "Commonwealth") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. NATURE OF ACTION**

5. This is a federal enforcement action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain compliance with RCRA and the hazardous waste regulations promulgated or authorized pursuant to RCRA, and to seek civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for violations of RCRA and of regulations promulgated.

## **III. STATUTORY AND REGULATORY FRAMEWORK**

6. In 1976, Congress enacted RCRA (which amended the Solid Waste Disposal Act) in order to regulate the management of hazardous waste. Since then, Congress has enacted various amendments to RCRA, including the Hazardous and Solid Waste ("HSWA") Amendments of 1984.
7. Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. See 42 U.S.C. §§ 6921-6939e. Pursuant to Subtitle C of RCRA, EPA has promulgated regulations that set forth standards and requirements applicable to generators of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260 - 271.
8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA



deems the state program to be equivalent to the federal program.

9. EPA has authorized the Commonwealth to administer its own hazardous waste program. The federally-authorized Massachusetts regulations are codified in Title 310, Chapter 30 of the Code of Massachusetts Regulations (“C.M.R.”), 310 C.M.R. §§ 30.001, *et seq.*
10. The HSWA Amendments of 1984 enacted various new provisions in Section 3004 of RCRA, including Section 3004(n) of RCRA, 42 U.S.C. § 6921(n), that required EPA to promulgate air emission control regulations. EPA has promulgated these regulations at 40 C.F.R. Part 265, Subparts AA, BB and CC (“Subpart AA, BB and CC regulations”). EPA has not authorized the Commonwealth to administer the Subpart AA, BB and CC regulations.
11. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Thus, a violation of a requirement of an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including requirements of the federally-authorized Massachusetts hazardous waste program and of Subparts AA, BB and CC, by issuing administrative orders to assess a civil penalty and to require compliance.
12. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter C of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Debt

Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to \$32,500 per day per violation for violations that occurred after March 15, 2004 and before January 13, 2009. Violations that occurred after January 13, 2009, and on or before November 2, 2015, are subject to penalties up to \$37,500 per day per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. 114-74, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA increased to \$97,229 per day for each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after January 15, 2018.

#### **IV. GENERAL ALLEGATIONS**

13. Respondent is a Delaware corporation doing business in the Commonwealth, and is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 310 C.M.R. § 30.010.
14. Since 1998, Respondent has owned and operated a facility located at 238 South Main Street in Assonet, Massachusetts (“Facility”). At all times relevant to this Complaint, Respondent was an “owner” and/or “operator,” as defined in 40 C.F.R. § 260.10 and 310 C.M.R. § 30.010, of its Facility in Assonet, MA.
15. Respondent manufactures various polymers used in health and beauty products such as toothpaste, hair gels, hair sprays, skin creams and sunscreens, at the Facility, producing approximately 14 million pounds of products annually.

16. On or about January 29, 1998, pursuant to Section 3010 of RCRA, Respondent submitted a Notice of Hazardous Waste Activity to the Commonwealth, identifying itself as a large quantity generator (“LQG”) of hazardous waste.
17. Respondent’s Facility includes storage areas for hazards wastes, including solvents, acids and reactants with waste codes such as D001, D022, F002, F003 and F005, that are used in the its batch chemical production operations.
18. Respondent generates wastes at the Facility that are “hazardous wastes,” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); 40 C.F.R. § 261.3; and 310 C.M.R. § 30.010, and is a “generator” of hazardous waste, as defined in 40 C.F.R. § 260.10 and 310 C.M.R. § 30.010.
19. On August 1, 2017, EPA Region 1 conducted a RCRA compliance inspection (“Inspection”) at the Facility.
20. At the time of the Inspection, Respondent maintained eight hazardous waste storage tanks at its Facility, as described below:
  - a. Tank S-716A is a 600-gallon tank used for collecting hazardous waste generated from Respondent’s steam stripper.
  - b. Tanks S-505, S-507, S-526, S-503A, S-545, and S-502A (the “Receiver Tanks”) are used for collecting hazardous waste generated from Respondent’s condensate receiver.
  - c. Tank S-535 is a 16,000-gallon tank used for collecting hazardous waste generated from a variety of Respondent’s operations, including from the transfer of



hazardous wastes collected in the Receiver Tanks, from the cleaning of Respondent's reaction vessels and from other processes at the Facility.

21. At the time of the Inspection, in addition to the eight hazardous waste tanks described in Paragraph 20 above, Respondent maintained the following equipment (hereafter, the "Equipment") at its Facility:
  - a. Transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds used to transfer hazardous waste to and from Tank S-716A, to and from the Receiver Tanks, and to and from Tank S-535.
  - b. Transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.
22. As set forth in 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)],<sup>1</sup> a generator may accumulate hazardous waste on-site for 90 days or less, without a permit, provided the waste is placed in tanks and the generator complies with, among other things, Subparts BB and CC of 40 C.F.R. Part 265 ("Subparts BB and CC").
23. Respondent accumulates hazardous waste on-site for 90 days or less, without a permit, places the waste in tanks, and is required to comply with Subparts BB and CC.
24. As set forth in 40 C.F.R. § 265.1064(g)(6), a generator that must comply with Subparts BB and CC must identify equipment that contains or contacts hazardous waste with an

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<sup>1</sup> The conditions for exemption from permit requirements for a large quantity generator that accumulates hazardous waste are set forth in 40 C.F.R. § 262.17. 81 Fed. Reg. 85808 (November 28, 2016). These conditions, with respect to compliance with Subparts BB and CC, are identical to the longstanding prior requirements set forth in 40 C.F.R. 262.34(a)(1)(ii). Given the relatively recent renumbering of this provision, we cite to both regulations in this Amended Complaint for purposes of completeness.

organic concentration of at least 10 percent by weight.

25. All of the Equipment described in Paragraph 21 above, contained or contacted hazardous wastes with an organic concentration of at least 10 percent by weight.
26. On January 24, 2018, EPA Region 1 issued an Early Warning Notice to Respondent regarding potential RCRA violations identified at the Facility during EPA's RCRA Inspection. Since January 24, 2018, Respondent has provided other documents and information to EPA concerning hazardous waste management at the Facility.

#### **V. RCRA VIOLATIONS**

27. Based on EPA's Inspection, and other documents and information, Complainant has determined that Respondent has violated the requirements of RCRA and of regulations promulgated pursuant to RCRA, as alleged below in this Section.

#### **Count 1: Failure to Comply with Standard for the Storage of Hazardous Waste in Tanks**

28. Complainant realleges and incorporates by reference Paragraphs 1 - 27.
29. As required by 310 C.M.R. §§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R. § 30.343(1), hazardous waste stored in tanks must be managed in accordance with a variety of requirements, including: requirements for labeling, inspections, record keeping and secondary containment.
30. At the time of the Inspection, EPA inspectors observed eight tanks at the Facility that were operating as hazardous waste storage tanks, including the six Receiver Tanks described in Paragraph 20 above.
31. With respect to the Receiver Tanks described in Paragraph 20, above:

- a. Respondent's employee, Eric Moran, told EPA inspectors that solvent waste generated from Respondent's condensers consists of hazardous waste which is then transferred to the Receiver Tanks.
  - b. Respondent's employee, Jay Daley, told EPA inspectors that solvent waste in the Receiver Tanks is not mixed with any other substances as part of Respondent's processes; and that
  - c. Respondent transfers all solvent waste held in the Receiver Tanks to its Tank S-535, which is the largest hazardous waste tank at the Facility.
32. At the time of the Inspection, Respondent failed to manage the Receiver Tanks described in Paragraph 20, above, as hazardous waste tanks. Respondent did not maintain secondary containment for the Receiver Tanks. Respondent did not label the Receiver Tanks with the words "Hazardous Waste," identify the type of hazardous waste being stored and the hazards associated with the hazardous waste, and the date upon which each period of accumulation began. Respondent did not perform inspections of the Receiver Tanks, and had no documentation of the performance of such inspections.
33. By failing to manage its Receiver Tanks as hazardous waste tanks, Respondent violated 310 C.M.R. §§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R. § 30.343(1).

**Count 2: Failure to Comply with Hazardous Waste Tank  
Air Emission Standards (Subpart CC)**

34. Complainant realleges and incorporates by reference Paragraphs 1 -33.
35. A generator that accumulates hazardous waste in tanks on-site for 90 days or less,



without a permit, must comply with the requirements of Subpart CC of 40 C.F.R. Part 265 (“Subpart CC”). 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

36. As provided in 40 C.F.R. § 265.1083(b) of Subpart CC, a facility shall control air pollutant emissions from each hazardous waste management unit in accordance with the applicable standards specified in § 265.1085 through § 265.1088 of Subpart CC.
37. Section 265.1085(c)(4) of Subpart CC requires a visual inspection of air emission controls devices, including the fixed roof and its closure devices, to check for defects that could result in air pollution emissions.
38. Section 265.1089(a) of Subpart CC requires the inspection and monitoring of air emission control equipment used to comply with Subpart CC in accordance with the applicable requirements specified in § 265.1085 through § 265.1088 of Subpart CC.
39. Section 265.1089(b) of Subpart CC requires the development and implementation of a written plan and schedule for performance of the inspections and monitoring required by 40 C.F.R. § 265.1089(a).
40. Section 265.1090(a) of Subpart CC requires record keeping and record preservation for the information specified in that section, as applicable to the facility. Except for air emission control equipment design documentation and information, records required by that section shall be maintained for a minimum of three years. Air emission control equipment design documentation shall be maintained until the air emission control equipment is replaced or otherwise no longer in service.



41. Section 265.1090(b) of Subpart CC requires preparation and maintenance of records for each tank using air emission controls, including a record of each tank inspection performed.
42. At the time of the Inspection, EPA inspectors observed eight tanks at the Facility that were operating as hazardous waste storage tanks, as described in Paragraphs 20 above.
43. At the time of the Inspection, Respondent's employee, Eric Morin, told EPA inspectors that he was unaware of the Subpart CC regulations and requirements, and that Respondent did not have any documents, inspection plans or inspection records documenting compliance with Subpart CC for any of the eight hazardous waste tanks at the Facility.
44. By failing to inspect, monitor, and document inspections of its hazardous waste storage tanks and air emission control equipment, Respondent violated Subpart CC of 40 C.F.R. Part 265, including Sections 265.1083(b), 265.1085(c)(4), 265.1089(a) and (b) and 265.1090(a) and (b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 3: Failure to Comply with Hazardous Waste Air Emission Standards  
(Subpart BB) for Labeling Subpart BB Equipment**

45. Complainant realleges and incorporates by reference Paragraphs 1 - 44.
46. A generator that accumulates hazardous waste in tanks on-site for 90 days or less, without a permit, must comply with the requirements of Subpart BB of 40 C.F.R. Part 265 ("Subpart BB"). 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

47. Pursuant to 40 C.F.R. § 265.1050(c), each piece of equipment to which the Subpart BB regulations apply shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.
48. The Equipment described in Paragraph 21 above, contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight, and is subject to the requirements of Subpart BB.
49. At the time of the Inspection, EPA inspectors observed that the Equipment described in Paragraph 21 above, was not marked in such a manner that it could be distinguished readily from other pieces of equipment.
50. By failing to label the Equipment described in Paragraph 21 above, in such a manner that it could be distinguished readily from other pieces of equipment, Respondent violated 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 4: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service, Gas/Vapor Service, Pumps and Flanges.**

51. Complainant realleges and incorporates by reference Paragraphs 1 - 50.
52. Pursuant to 40 C.F.R. § 265.1052(a)(1), each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b).
53. Pursuant to 40 C.F.R. § 265.1052(a)(2), each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

54. Pursuant to 40 C.F.R. § 265.1057(a), each valve in light liquid and gas/vapor service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b), and shall comply with certain options for the continued monitoring of such valves.
55. Pursuant to 40 C.F.R. § 265.1058(a), flanges and other connectors shall be monitored within 5 days by the method specified in § 265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.
56. The Equipment described in Paragraph 21 above, was used in light liquid and gas/vapor service; contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight; and is subject to the requirements of Subpart BB.
57. At the time of the Inspection, Respondent had no records documenting performance of inspections or monitoring of that portion of the Equipment that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks, as well as those transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.
58. At the time of the Inspection, Respondent had no records documenting that the equipment described in Paragraph 57 above, was exempt from Subpart BB requirements because it was used for less than 300 hours per year as provided by the exemption set out in 40 C.F.R. § 1064(g)(6).
59. By failing to monitor the equipment described in Paragraph 57 above, Respondent violated Subpart BB of 40 C.F.R. Part 265, including Sections 265.1052(a)(1) and (2),



265.1057(a) and 265.1058(a), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 5: Failure to Comply with Hazardous Waste Air Emission Standards  
(Subpart BB) for Open-Ended Valves and Lines**

60. Complainant realleges and incorporates by reference Paragraphs 1 - 59.
61. Pursuant to 40 C.F.R. § 265.1056, among other things:
  - (a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.
  - (2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.
62. At the time of the Inspection, there were three open-ended lines at the Facility: (a) the draw line for Tank S-716A; (b) the feed line for Tank S-716A; and (c) the manifold line for Receiver Tank S-545.
63. At the time of the Inspection, none of the open-ended lines in listed in Paragraph 62 above, was sealed, in use, or equipped with a second valve.
64. By having three open-ended lines, Respondent violated 40 C.F.R. § 265.1056(a) – (c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 6: Failure to Comply with Hazardous Waste Air Emission Standards  
(Subpart BB) for Maintaining Records**

65. Complainant realleges and incorporates by reference Paragraphs 1 - 65.
66. Pursuant to 40 C.F.R. § 265.1064(a):
  - (1) A facility shall comply with the recordkeeping requirements of this section.



- (2) A facility of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.
67. Pursuant to 40 C.F.R. § 265.1064(b), a facility must record the following information in its records:
- (1) For each piece of equipment to which Subpart BB applies:
- (i) Equipment identification number and hazardous waste management unit identification.
  - (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).
  - (iii) Type of equipment (e.g., a pump or pipeline valve).
  - (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.
  - (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
  - (vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).
68. Pursuant to 40 C.F.R. § 265.1064(g), the following information pertaining to all equipment subject to the requirements in §§265.1052 through 265.1060, among other things, shall be recorded in a log that is kept in the facility’s records:
- (1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.
  - (2) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
69. At the time of the Inspection, Respondent had no documentation concerning that portion

of the Equipment described in Paragraph 21 above that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks, as well as transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.

70. By failing to maintain records for the equipment described in Paragraph 69 above, Respondent violated 40 C.F.R. §§ 265.1064(a), (b), and (g), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 7: Failure to Comply with Subpart BB and CC**  
**Air Monitoring Methods**

71. Complainant realleges and incorporates by reference Paragraphs 1 - 70.
72. Pursuant to 40 C.F.R. §§ 265.1063(a) and 265.1084(d), leak detection monitoring for the purpose of compliance with the RCRA air emissions standards of Subparts BB and CC must be conducted in accordance with the procedures specified in Method 21, 40 C.F.R. Part 60, Appendix A.
73. Method 21 requires documentation, among other things, of the type of gas in use, the concentration, the lot number, expiration date and response time for the instrument in use.
74. Under Method 21, the relevant calibration standard for facilities that must comply with Subparts BB and CC is set forth in Sections 265.1063(b)(4) and 265.1084(d) of 40 C.F.R. Part 265.
75. Pursuant to 40 C.F.R. §§ 265.1063(b)(4) and 265.1084(d), calibration gases for tanks and monitoring equipment shall be: (i) zero air (less than 10 parts per million of hydrocarbon

in air) and (ii) a mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 parts per million methane or n-hexane.

76. At the time of the Inspection, Respondent's Standard Operating Procedure ("SOP") for monitoring tanks and equipment failed to list the type of calibration gas, the response time of each instrument used, and the lot number and the expiration date of the calibration gas in use at the Facility. Respondent's SOP and calibration records listed the calibration gas concentration in use at the Facility as 500 parts per million, and failed to use the proper concentration of approximately, but less than, 10,000 parts per million, as required by Sections 265.1063(b)(4) and 265.1084(d) of 40 C.F.R. Part 265.
77. By performing inadequate leak detection monitoring for its tanks and equipment, Respondent violated 40 C.F.R. §§ 265.1063(a) and (b), and 265.1084(d), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 8: Failure to Have an Adequate Training Program**

78. Complainant realleges and incorporates by reference Paragraphs 1 – 77.
79. As set forth in 40 C.F.R. § 262.17(a)(7) and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 341(1)(a), a generator may accumulate hazardous waste on-site for 90 days or less, without a permit, provided the generator complies with, among other things, a requirement that all facility management personnel assigned to manage hazardous waste complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA. The program must be directed by a person trained in hazardous waste management procedures and must include



instruction in hazardous waste management procedures relevant to the position in which the employee is employed. Personnel may not work in unsupervised positions until they have such training, and they must receive it within six months of starting their position. They must receive annual training refresher courses. See also 40 C.F.R. § 265.16 (training requirements for treatment, storage and disposal facilities).

80. At the time of the Inspection, Respondent's employee, Eric Morin, told EPA inspectors that Respondent's employee, William Cobb, conducts all Subpart BB leak detection monitoring for Respondent. Mr. Morin also reported that Mr. Cobb had not had any RCRA air emission training; and no training on the flame ionization detector ("FID") equipment that Respondent uses for monitoring. Mr. Morin was completely unaware of Subpart CC regulations and requirements.
81. By failing to ensure that Respondent's employee assigned to perform all Subpart BB leak detection monitoring, and Subpart CC monitoring, was trained to ensure the Facility's compliance with RCRA, Respondent failed to comply with all the conditions for exemption and therefore was subject to the operating requirements in 40 C.F.R. Part 265. The failure to adequately train all facility personnel is a violation of 40 C.F.R. § 265.16; and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 30.341(1)(a).

**Count 9: Failure to Conduct and Document Daily Inspections of Hazardous Waste Tanks**

82. Complainant realleges and incorporates by reference Paragraphs 1 - 81.
83. Pursuant to 310 C.M.R. § 30.696, as required by 310 C.M.R. § 30.343(1)(f), daily inspections of hazardous waste tanks must be conducted and documented.



84. At the time of the Inspection, EPA inspectors reviewed Respondent's inspection logs for the hazardous waste tanks along with associated records. Specifically, EPA inspectors reviewed daily inspection logs for the years 2015, 2016 and 2017.
85. EPA inspectors found no logs documenting inspections for Tank S-716A on the following dates in the year 2017:
- March 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 30;
- April 13, 15, 16, 22, and 23; and
- May 13, 14, 16, 17, 18, 19, 20, 21, and 22.
86. By failing to perform daily inspections of Tank S-716A on the dates indicated in Paragraph 85 above, Respondent violated 310 C.M.R. § 30.696, as required by 310 C.M.R. § 30.343(1)(f).

**VI. PROPOSED PENALTIES  
AND PAYMENT INSTRUCTIONS**

87. In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular

case.

88. By this Complaint, Complainant seeks to assess Respondent a total civil penalty of \$ 203,792. The calculation of the proposed penalty is explained in detail in Attachment 1 to this Complaint, and is summarized as follows:

1. Failure to Comply with Standards for the Storage of Hazardous Wastes in Tanks: \$ 24,364
2. Failure to Comply with Hazardous Waste Tank Air Emission Standards (Subpart CC): \$ 66,229
3. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment: \$ 9,869
4. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service and Gas/Vapor Service, Pumps and Flanges: \$ 26,689
5. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) For Open-Ended Valves and Lines: \$ 6,766
6. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records: \$ 26,689
7. Failure to Comply with Subpart BB and CC Air Monitoring Methods: \$ 29,654
8. Failure to Have an Adequate Training Program: \$ 6,766
9. Failure to Conduct and/or Document Daily Inspections of Hazardous Waste Tanks: \$ 6,766

TOTAL PROPOSED PENALTY: \$ 203,792

89. To pay a penalty under the **Quick Resolution** provisions of the Consolidated Rules at 40 C.F.R. 22.18(a), or to otherwise make a penalty payment to resolve this action, Respondent shall submit a cashier's or certified check, payable to the order of the

“Treasurer, United States of America,” and referencing the title of this action and the RCRA case docket number (RCRA-01-2018-0062). The check shall be sent via regular mail to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

90. If Respondent sends the check via express mail, the following address shall be used:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
phone 314-418-4087

91. Respondent shall send a notice of the penalty payment and a copy of the check to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
Mail code ORC 04-6  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

and

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Mail code ORC 04-2  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

## **VII. COMPLIANCE ORDER**

92. Based on the foregoing findings, Respondent is hereby ORDERED to achieve and

maintain compliance with all applicable requirements of Subtitle C of RCRA and the hazardous regulations promulgated or authorized thereunder, including Subparts BB and CC. Respondent is hereby ordered to achieve and maintain compliance with all applicable requirements of RCRA, 40 C.F.R. Part 260 *et seq.* and 310 C.M.R. 30.100 *et seq.* Specifically, Respondent shall take all actions required by Paragraphs 93 - 102 below.

93. Within 30 days of receipt of this Complaint, Respondent shall comply with hazardous waste tank standards, in accordance with the requirements of 310 C.M.R.

§§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R. § 30.343(1).

94. Within 30 days of receipt of this Complaint, Respondent shall comply with Subpart CC requirements for the Receiver Tanks described in Paragraph 20 above.

Specifically, Respondent shall comply with the requirements of 40 C.F.R.

§ 265.1083(b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)], 40 C.F.R. § 265.1085 (c)(4), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)]; 40 C.F.R. § 265.1089(a) and (b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)]; and 40 C.F.R. § 265.1090(a) and (b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)], by: (a) inspecting air emission control equipment for defects; (b) developing and implementing a written plan for performing inspection and monitoring of air emission control equipment;



(c) recording information pertaining to air emission control equipment design; and (d) maintaining records for each inspection of air control emission equipment.

95. Immediately upon receipt of this Complaint, Respondent shall mark each piece of equipment subject to Subpart BB requirements in such a manner that it can be distinguished readily from other pieces of equipment in accordance with the requirements of 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].
96. Immediately upon receipt of this Complaint, Respondent shall comply with hazardous waste air emission standards (Subpart BB) for valves in light liquid service, gas/vapor service, pumps and flanges, in accordance with the requirements of 40 C.F.R. § 265.1052(a)(1) and (a)(2), 40 C.F.R. § 265.1057(a), 40 C.F.R. § 265.1058(a), and 40 C.F.R. § 265.1061, as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].
97. Immediately upon receipt of this Complaint, Respondent shall provide caps, flanges, or plugs for open valves, lines and hoses utilized in gas/vapor service or in light liquid service, in accordance with the requirements of 40 C.F.R. § 265.1056(a)-(c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].
98. Immediately upon receipt of this Complaint, Respondent shall begin complying with Subpart BB's recordkeeping requirements in accordance with 40 C.F.R. § 265.1064(a), (b), and (g), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered

as 40 C.F.R. § 262.17(a)(2)].

99. Immediately upon receipt of this Complaint, Respondent shall comply with Method 21 by using the proper calibration chemicals and maintaining adequate records in conducting its RCRA emission tests in accordance with the requirements of 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)], which references 40 C.F.R. § 265.1063(a) and (b), and 40 C.F.R. § 265.1084(d), which reference 40 C.F.R. Part 60, Appendix A.
100. Within 30 days of receipt of this Complaint, Respondent shall ensure that that all site personnel assigned to manage hazardous wastes have completed a training program that teaches them to perform their duties in a way that ensures the Facility's compliance with RCRA, in accordance with 40 C.F.R. § 265.16; and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 30.341(1)(a).
101. Immediately upon receipt of this Complaint, Respondent shall ensure that all inspections of hazardous waste tanks have been completed in a way that ensures the Facility's compliance with RCRA, in accordance with 310 C.M.R. § 30.696, as referenced by 310 C.M.R. § 30.343(1)(f).
102. In addition to achieving and maintaining compliance as ordered in paragraphs 93 through 101, Respondent is hereby ORDERED to achieve and maintain compliance with all applicable requirements of Subtitle C of RCRA and the hazardous regulations promulgated or authorized thereunder, including Subparts BB and CC for applicable

tanks and equipment associated with the Cryogenic Condensation Vapor Recovery Units (VRUs) at Respondent's Facility.

103. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraphs 93 - 102 above. Any notice of noncompliance required under this Paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance shall in no way excuse the noncompliance.

104. Respondent shall submit the above required information and notices to:

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square  
Suite 100, Mail Code ORC 04-2  
Boston, MA 02109-3912  
[Zucker.audrey@epa.gov](mailto:Zucker.audrey@epa.gov)

105. If Respondent fails to comply with the requirements of this Compliance Order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek civil penalties of up to \$ 58,562 for each day of continued noncompliance with the Order.

106. 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. 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.

**VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

107. As provided by Section 3008(b) of RCRA, Respondent has the right to request a hearing on the issues raised in this Complaint. To request a hearing, Respondent must file a Written Answer with the Regional Hearing Clerk in accordance with the requirements of 40 C.F.R. § 22.15 within thirty (30) days of Respondent's receipt of this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules set out at 40 C.F.R. Part 22 (attached).
108. Respondent's Answer shall be filed with the Regional Hearing Clerk at the following address:
109. Respondent shall serve copies of Answer and any subsequent pleadings that Respondent files in this action to EPA Region 1's enforcement counsel for this matter, who is authorized to receive service for Complainant at the following address:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, Mail Code ORC 04-6  
Boston, MA 02109-3912

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square

Suite 100, Mail Code ORC 04-2  
Boston, MA 02109-3912  
[Zucker.audrey@epa.gov](mailto:Zucker.audrey@epa.gov)

**X. OPPORTUNITY FOR ELECTRONIC FILING AND SERVICE**

110. Pursuant to 40 C.F.R. §§ 22.5(a)(1) and (b)(2), and subject to certain conditions and limitations, the EPA Region 1 Regional Judicial Officer has authorized the use of electronic mail for filing or service in addition to those methods already authorized in the Consolidated Rules. See Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer, dated October 9, 2014 (copy attached). According to the above-referenced Standing Order, the parties must confer and reach agreement regarding acceptable electronic addresses and other logistical issues prior to utilizing electronic service.

**XI. DEFAULT ORDER**


111. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

**XII. SETTLEMENT CONFERENCE**

112. Respondent may confer informally with EPA Region 1 regarding a potential settlement of this action. Any such settlement would be made final by the issuance of a written Consent Agreement and Final Order by the EPA Region 1 Regional

Judicial Officer.

113. Please note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer. To request such a conference, Respondent's legal counsel may contact Audrey Zucker, Enforcement Counsel, at 617) 918-1788.



Karen McGuire  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 1

June 6, 2019  
Date



**Attachment 1**  
**Explanation of Penalty Calculation**  
**In the Matter of ISP Freetown Fine Chemicals, Inc.**  
**Assonet, MA**

**Administrative Complaint**  
**EPA Docket No. RCRA-01-2018-0062**

The following discussion provides a justification for the proposed penalty against ISP Freetown Fine Chemicals, Inc. (“Respondent”) for violations of certain requirements of the Resource Conservation and Recovery Act (RCRA) and the Commonwealth of Massachusetts Hazardous Waste Management Regulations. Respondent owns and operates a facility at 238 South Maine Street, Assonet, MA.

Gravity-based penalties and multiple or multi-day penalties were calculated in accordance with the RCRA Civil Penalty Policy, dated June 23, 2003, (“RCPP”), the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19.

The following RCRA violations were documented during an EPA Compliance Evaluation Inspection conducted at Respondent’s facility on August 1, 2017:

**Summary of Violations**

1. **Failure to comply with standards for the storage of hazardous wastes in tanks.**

At the time of the Inspection, Respondent was not managing its six Receiver Tanks as hazardous waste tanks. According to Respondent’s employees, solvent waste generated from Respondent’s condensers consists of hazardous waste which is then transferred to the Receiver Tanks; solvent waste in the Receiver Tanks is not mixed with any other substances as part of Respondent’s processes; and all solvent waste held in the Receiver Tanks is then transferred by Respondent to its Tank S-535, which is the largest hazardous waste tank at the Facility.

Respondent did not maintain any secondary containment for the Receiver Tanks. Respondent did not label the Receiver Tanks with the words “Hazardous Waste,” identify the type of hazardous waste being stored and the hazards associated with the hazardous waste, and the date upon which each period of accumulation began. Respondent did not perform inspections of the Receiver Tanks, and had no documentation of the performance of such inspections.

**Penalty Assessment**

(a) Potential for Harm – Moderate

Respondent failed to include the Receiver Tanks in its hazardous waste program. As a result, Respondent did not have secondary containment for the Receiver Tanks. These tanks were not marked or labeled. Respondent also failed to

**USEPA**

Penalty summary –ISP Freetown Fine Chemicals, Inc., Assonet, MA

perform daily inspections. These failures present a significant risk of harm to human health and the environment as well as to the regulatory program. However, Respondent did include Tanks S-716A and S-535 in its hazardous waste program. The potential for harm is moderate.

(b) Extent of Deviation - Major

Respondent did not include six of the eight hazardous waste tanks at its facility in its hazardous waste management program, and failed to comply with the applicable regulations for those units. The extent of deviation is major.

(c) Penalty Assessment:

EPA has determined that Respondent's violation of these requirements warrants a classification of Moderate/Major.

(1) Matrix Cell Range (gravity-based penalty): \$13,534 - \$18,608  
Penalty Amount Chosen - \$16,071 (mid-point)

(2) Multiple/Multi-day Assessment

There were multiple violations of this requirement. Each of the six hazardous waste tanks that was not managed as a hazardous waste tank constitutes a violation. Pursuant to the RCPP, at page 22, multi-day penalties are being applied for the second through sixth violation rather than assessing each violation as an independent and non-continuous act.

Penalties have been assessed as follows:

Matrix range: \$677 - \$3,722

Second through sixth violation assessed at midpoint of matrix: \$2,200

Penalty = (\$2,200 x 5) = \$11,000

(d) Adjustment to Penalty Amount for Good Faith Efforts on the Part of the Company

EPA has determined that a 10% reduction in appropriate: - \$2,707

**TOTAL PENALTY AMOUNT: \$24,364**

2. **Failure to comply with Hazardous Waste Tank Air Emission Standards (Subpart CC)**

Respondent failed to monitor, inspect and document inspections of air emission controls equipment associated with its eight hazardous waste tanks, including the Receiver Tanks. At the time of the inspection, Respondent's employee, Eric Morin, stated that he was unaware of the Subpart CC requirements. Respondent had no inspection plans, documents or inspection reports as required by Subpart CC.



**Penalty Assessment**

## (a) Potential for Harm – Major

Tanks containing hazardous wastes with high VOC concentrations have the potential to pollute if tank openings, where emissions can occur, are not properly maintained or monitored. Subpart CC regulations are intended to be self-implementing and to regulate emissions that may not otherwise be regulated. By failing to properly comply, Respondent circumvented the RCRA air emission program. These violations pose a major harm to the regulatory program and pose a major potential for harm to human health and the environment. The potential for harm is major.

## (b) Extent of Deviation - Major

Failure to comply with Subpart CC constitutes a substantial deviation from regulatory requirements. Respondent operates eight hazardous waste tanks, all of which are subject to Subpart CC. None of these tanks were in compliance with Subpart CC requirements. The extent of deviation is deemed to be major.

## (c) Penalty Assessment

EPA has determined that Respondent's violation of these requirements warrants a classification of Major/Major.

(1) Matrix Cell Range (gravity-based penalty): \$33,834 - \$42,292

Penalty Amount: \$38,063 (mid-point)

(2) Multiple/Multi-day Assessment

There were multiple violations of this requirement. Each of the eight hazardous waste tanks, including the six Receiver Tanks, was not in compliance for Subpart CC. Pursuant to the RCPP, at page 22, multi-day penalties are being applied for the second through eighth violation rather than assessing each violation as an independent and non-continuous act.

Penalties have been assessed as follows:

Matrix range: \$1,692 - \$8,458

Second through eighth violation assessed at midpoint of matrix: \$5,075

Penalty = (\$5,075 x 7) = \$35,525

## (d) Adjustment to Penalty Amount for Good Faith Efforts on the Part of the Company

EPA has determined that a 10% reduction in appropriate: - \$7,359



**TOTAL PENALTY AMOUNT: \$66,229**

3. **Failure to comply with hazardous waste air emission standards (Subpart BB) for Labeling Subpart BB Equipment**

Respondent failed to label or mark any of its Subpart BB equipment so that it could be easily distinguished from other pieces of equipment at the facility.

**Penalty Assessment**

(a) Potential for Harm – Moderate

The ability to identify and locate equipment subject to these regulations is essential. By failing to comply with this requirement, Respondent would have difficulty locating the equipment to conduct visual inspections and monitoring. Only an individual with detailed knowledge of the entire piping and control systems in the Facility would be able to identify and locate the Subpart BB equipment. Even for an individual with such detailed knowledge of the Facility, identifying and locating the Subpart BB equipment would take a significant amount of time. The violations pose significant harm to the regulatory program and a significant potential for harm to human health and the environment. The potential for harm is moderate.

(b) Extent of Deviation - Moderate

These violations represent a significant deviation from the regulatory requirements. There were P&ID drawings that documented some of the equipment subject to Subpart BB. The extent of deviation is moderate.

(c) Penalty Assessment

EPA has determined that Respondent's violation of these requirements warrants a classification of Moderate/Moderate.

Matrix Cell Range (gravity-based penalty): \$8,458 - \$13,533

Penalty Amount: \$10,996 (mid-point)

(d) Adjustment to Penalty Amount for Good Faith Efforts on the Part of the Company

EPA has determined that a 10% reduction in appropriate: - \$1,096

**TOTAL PENALTY AMOUNT: \$9,869**

4. **Failure to comply with hazardous waste air emission standards (Subpart BB) for monitoring valves in light liquid service and gas/vapor service, pumps and flanges.**

At the time of the Inspection, Respondent had no records documenting performance of inspections or monitoring of that portion of the Equipment that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks, as well as those transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.

**Penalty Assessment**

(a) Potential for Harm – Major

Valves, pumps and flanges in hazardous waste service with high VOC concentrations have the potential to release hazardous constituents effecting human health and the environment when these pieces of equipment are not properly maintained and monitored. The Subpart BB regulations are intended to be self-implementing and to regulate emissions that may not otherwise be regulated. By failing to properly comply with these BB regulations, Respondent circumvented the RCRA air emissions program. The violations pose substantial harm to the regulatory program and pose a substantial potential for harm to the environment. The potential for harm is major.

(b) Extent of Deviation – Moderate

These violations represent a significant deviation from the regulatory requirements. At the time of the Inspection, Respondent was monitoring a subset of their hazardous waste Subpart BB equipment. Many of the valves, pumps and flanges subject to this standard were not a part of the Subpart BB Compliance Program and were not monitored. However, Respondent did have a program in which some of the subject equipment was monitored. The violations pose a moderate extent of deviation from the regulations.

(c) Penalty Assessment

EPA has determined that Respondent's violation of these requirements warrants a classification of Major/Moderate.

Matrix Cell Range (gravity-based penalty): \$25,375 – 33,933  
Penalty Amount: \$ 29,654 (mid-point).

(d) Adjustment to Penalty Amount for Good Faith Efforts on the Part of the Company

EPA has determined that a 10% reduction in appropriate: - \$2,965

**TOTAL PENALTY AMOUNT: \$26,689**



5. **Failure to comply with hazardous waste air emission standards (Subpart BB) for open-ended valves and lines**

At the time of the Inspection, there were three open-ended lines at the facility: (a) the draw line for Tank S-716A, (b) the feed line for Tank S-716A; and (c) the manifold line for Receiver Tank S-545.

Tank S-716A is a 600-gallon tank labeled as containing isopropanol, ethanol, toluene, acetone, t-butanol and hexane. At the time of the Inspection, EPA detected up to 2,300 parts per million of volatile organic compounds (“VOCs”) at the open-ended draw line for Tank S-716A, and up to 2,400 parts per million of VOCs at the open-ended feed line.

**Penalty Assessment**

(a) Potential for Harm - Moderate

Open-ended valves and lines in hazardous waste service with high VOC concentrations pose a substantial risk of release of hazardous constituents effecting human health and the environment when these valves are not properly maintained and monitored. These conduits have the potential to allow a significant flow of VOC emissions due to the size of their openings. This violation poses a potential for harm to the regulatory program and poses a significant potential for harm to human health and the environment. The potential for harm is moderate.

(b) Extent of Deviation – Minor

These violations represent a deviation from the regulatory requirements. At the time of the Inspection, there were three open-ended lines without proper controls in place observed. These violations pose a minor extent of deviation from the regulations.

(c) Penalty Assessment:

EPA has determined that Respondent’s violation of these requirements warrants a classification of Moderate/Minor.

Matrix Cell Range (gravity-based penalty): 5,075 - \$8,457

Penalty Amount Chosen: \$6,766 (mid-point)

**TOTAL PENALTY AMOUNT: \$6,766**

6. **Failure to comply with hazardous waste air emission standards (Subpart BB) for maintaining records.**

At the time of the Inspection, Respondent failed to maintain records for that portion of the Equipment that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks,

as well as transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.

**Penalty Assessment**

(a) Potential for Harm – Major

Not maintaining adequate records concerning waste streams and equipment subject to air emission regulations, poses a substantial risk of release of hazardous constituents effecting human health and the environment. Equipment not identified and labeled are not properly maintained and monitored. This violation poses a substantial potential for harm to the regulatory program and poses a substantial potential for harm to human health and the environment. The potential for harm is major.

(b) Extent of Deviation – Moderate

These violations represent a significant deviation from the regulatory requirements. Most required records required by Subpart BB were not maintained by Respondent. These violations pose a moderate extent of deviation from the regulations.

(c) Penalty Assessment

EPA has determined that Respondent's violation of these requirements warrants a classification of Major/Moderate.

Matrix Cell Range (gravity-based penalty): \$25,375 – 33,933.

Penalty Amount: \$29,654 (mid-point).

(d) Adjustment to Penalty Amount for Good Faith Efforts on the Part of the Company

EPA has determined that a 10% reduction in appropriate: - \$2,965

**TOTAL PENALTY AMOUNT: \$26,689**

7. **Failure to comply with Subpart BB and CC air monitoring methods.**

At the time of the Inspection, Respondent's SOP for monitoring tanks and equipment failed to list the types of calibration gas, the response time of each instrument used, and the lot number and the expiration date of the calibration gas in use at the Facility. Respondent's SOP and calibration records listed the calibration gas concentration in use at the Facility as 500 parts per million, and failed to use the proper concentration of approximately, but less than, 10,000 parts per million, as required by the regulation.

**Penalty Assessment**

(a) Potential for Harm – Major



The purpose of the Subpart BB and CC regulations is to minimize emissions of VOCs from hazardous waste tanks and associated equipment. In order to determine when leaking conditions exist, appropriate procedures must be used for emission monitoring. Air emission standards for hazardous waste tanks require, as an essential component, effective air monitoring. Regulators rely on the regulated entity to conduct monitoring. The use of ineffective air monitoring equipment undermines the regulatory program. The potential for harm to the regulatory program is substantial. Respondent was not using appropriate calibration procedures equipment for its tanks and associated equipment. The potential for harm to the human health and the environment is substantial. EPA has determined that the potential for harm is major.

(b) Extent of Deviation – Moderate

This violation poses a moderate extent of deviation from the regulatory requirement because the monitoring performed by Respondent left significant doubt that actual levels of compliance were being determined. The violations pose a moderate extent of deviation from the regulations.

(c) Penalty Assessment

EPA has determined that Respondent's violation of these requirements warrants a classification of Major/Moderate.

Matrix Cell Range (gravity-based penalty): \$25,375 - \$33,933.

Penalty Amount: \$29,654 (mid-point).

**TOTAL PENALTY AMOUNT: \$29,654**

**8. Failure to have an adequate training program.**

Respondent's employee assigned to perform all Subpart BB leak determination monitoring had not had any specific RCRA air emission training or training on the equipment that Respondent uses for air monitoring. Respondent was completely unaware of Subpart CC regulations and requirements.

**Penalty Assessment**

(a) Potential for Harm – Moderate

Applicable regulations require employees who manage hazardous waste as part of their normal job duties to be properly trained. This training is an essential part of proper hazardous waste management. The failure to provide training is a significant violation. This violation included the missed training by the individual who conducted all of the monitoring of equipment under the Subpart BB program. The facility did provide adequate RCRA training to most employees. The potential for harm is therefore moderate.

(b) Extent of Deviation – Minor

Respondent only had one employee that did not complete all of the RCRA training needed. Therefore, the extent of deviation is minor.

(c) Penalty Assessment:

EPA has determined that Respondent’s violation of these requirements warrants a classification of Moderate/Minor.

Matrix Cell Range (gravity-based penalty): \$5,075 - \$8,457.

Penalty Amount Chosen - \$6,766 (mid-point).

**TOTAL PENALTY AMOUNT = \$6,766**

9. **Failure to conduct and/or document daily inspections of hazardous waste tanks.**

Respondent failed to conduct daily inspections of Tank S-716A, a hazardous waste tank, on a total of 25 different days in 2017.

**Penalty Assessment**

(a) Potential for Harm – Moderate

Inspection programs are intended to ensure that containers of hazardous waste and hazardous waste management units are properly managed. Lack of inspections could result in deleterious conditions remaining undetected and uncorrected. By missing inspections of these areas on their required schedules (daily), significant risks could have been overlooked. Most inspections were conducted. The potential for harm is therefore deemed to be moderate.

(b) Extent of Deviation - Minor

The facility was conducting daily inspections of Tank S-716A. However, they did miss 25 daily inspections. The extent of deviation is therefore deemed to be minor.

(c) Penalty Assessment

EPA has determined that Respondent’s violation of these requirements warrants a classification of Moderate/Minor.

Matrix Cell Range (gravity-based penalty): \$5,075 - \$8,457.

Penalty Amount: \$6,766 (mid-point).

**TOTAL PENALTY AMOUNT: \$6,766**

**PENALTY SUMMARY**

1. Failure to Comply with Standards for the Storage of Hazardous Wastes in Tanks	\$ 24,364
2. Failure to Comply with Hazardous Waste Tank Air Emission Standards (Subpart CC)	\$ 66,229
3. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment	\$ 9,869
4. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service and Gas/Vapor Service, Pumps and Flanges	\$ 26,689
5. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) For Open-Ended Valves and Lines	\$ 6,766
6. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records	\$ 26,689
7. Failure to Comply with Subpart BB and CC Air Monitoring Methods	\$ 29,654
8. Failure to Have an Adequate Training Program	\$ 6,766
9. Failure to Conduct and/or Document Daily Inspections of Hazardous Waste Tanks	\$ 6,766
<b>TOTAL PROPOSED PENALTY</b>	<b>\$ 203,792</b>