UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

June 16, 2011

VIA U.S. EPA POUCH MAIL

Hon. Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Mercury Vapor Processing Technologies, Inc. a/k/a River Shannon Recycling and Laurence Kelly
Docket No. RCRA-05-2010-015

Dear Judge Gunning:

Enclosed please find a copy of the "Response Of The United States Environmental Protection Agency In Opposition To Respondents' Motion To Dismiss With Prejudice For Lack of Fair Notice And Convoluted Regulations" that was filed today in the above-referenced matter.

Sincerely,

Jeffrey A. Cahn
Associate Regional Counsel

Enclosure

cc: Mr. Laurence Kelly (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
Mercury Vapor Processing	)	DOCKET NO. RCRA-05-2010-0015
Technologies Inc., a/k/a/ River Shannon	)	
Recycling	)	
13605 S. Halsted	)	
Riverdale, Illinois 60827	)	
U.S. EPA ID No.: ILD005234141 and	)	
	)	
Laurence Kelly	)	
	)	
Respondents.	)	
	)	

CERTIFICATE OF FILING AND SERVICE

I, Jeffrey A. Cahn, hereby certify that I caused a copy of the Response Of The United States Environmental Protection Agency In Opposition To Respondents' Motion To Dismiss With Prejudice For Lack of Fair Notice And Convoluted Regulations to be served by United States Mail, Certified and Return Receipt Requested, on this 16 day of June, 2011, upon the following:

Laurence Kelly
7144 North Harlem Avenue
Suite 303
Chicago, Illinois 60631

I further certify that I caused a copy of the Response Of The United States Environmental Protection Agency In Opposition To Respondents' Motion To Dismiss With Prejudice For Lack of Fair Notice And Convoluted Regulations to be served by U.S. EPA Pouch Mail, on this 16 day of June, 2011, upon the following:

Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-2001

I further certify that I caused the original and one copy of the Response Of The United States Environmental Protection Agency In Opposition To Respondents' Motion To Dismiss With Prejudice For Lack of Fair Notice And Convoluted Regulations to be filed with the Regional Hearing Clerk, U.S. EPA, Region V, 19th Floor, 77 West Jackson Blvd., Chicago, Illinois 60604 on this 16 day of June, 2011.

Jeffrey A. Cahn
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Mail Code C-14J
77 West Jackson Blvd.
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
Mercury Vapor Processing Technologies Inc., a/k/a/ River Shannon Recycling 13605 S. Halsted Riverdale, Illinois 60827 U.S. EPA ID No.: ILD005234141 and	)	DOCKET NO. RCRA-05-2010-0015
	)	
Laurence Kelly	)	
	)	
Respondents.	)	
	)	

RESPONSE OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS WITH PREJUDICE FOR
LACK OF FAIR NOTICE AND CONVOLUTED REGULTATIONS

Complainant, the United States Environmental Protection Agency ("U.S. EPA"), pursuant to 40 C.F.R. § 22.16(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), hereby responds to the Respondents' "Motion to Dismiss With Prejudice For Lack of Fair Notice and Convoluted Regulations" ("Motion to Dismiss"). The Motion to Dismiss should be denied, because it fails to set forth any reasons why the Complaint in this matter fails to state a cause of action. If the Motion To Dismiss is instead considered a motion for accelerated decision, then the motion should be denied because it is based on a mis-perception of the facts and/or the law in the case.

I. Respondents' Motion to Dismiss

The Motion to Dismiss, which Respondents indicate was mailed on May 27, 2011, asserts that they are confused about whether the Illinois Universal Waste Rules or the U.S. EPA-

authorized Illinois general hazardous waste regulations applied to their crushing[1] of waste mercury vapor lamps at the Riverdale, Illinois facility. Respondents argue that they were led to believe that the Illinois Universal Waste Rules (which have not been authorized by U.S. EPA) governed their hazardous waste crushing activities, and that U.S. EPA set a "regulatory trap" by asserting in this matter that the authorized state RCRA Subtitle C regulations are applicable and enforceable by U.S. EPA. In addition, Respondents argue that they "relied upon guidance from the state agency" and "made significant efforts to clarify and comply with all applicable regulations to which they were directed."[2] Respondents request that, as the result, Complainant's "Claims for Liability be dismissed." Neither argument presents a valid "fair notice" defense. Accordingly, Respondents' Motion To Dismiss must be denied.

II. Legal Standards

A. Motion to Dismiss under 40 C.F.R. § 22.20

A motion to dismiss is reviewed under 40 C.F.R. § 22.20(a) of the Consolidated Rules, which provides that "The Presiding Officer, upon motion of the respondent, may at anytime

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[1] Under 35 IAC § 702.110, of the authorized regulations, "treatment" means "any method, technique, process, including neutralization, designed to change the physical, chemical, or biological character or composition of any "hazardous waste" so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such wastes non-hazardous or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Respondents clearly used processes designed to change the physical and chemical character of the hazardous waste lamps. Respondents admit that they "crushed, "processed," and "volume reduced" waste lamps at the facility, all of which are clearly "treatment" under 35 IAC § 702.

[2] This argument is akin to an estoppel argument, and should be rejected as a defense to liability here. It is well established that the doctrine of estoppel virtually never applies as a defense to government enforcement actions, where the defense is grounded on a claim of reliance on statements by government employees. *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 422-24 (1990); *Nagle v. Acton-Boxborough Reg'l Sch. Dist.*, 576 F.3d 1, 4-5 (1st Cir. 2009).

dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of *failure to establish a prima facie case or other grounds, which show no right to relief on the part of the complainant."* 40 C.F.R. § 22.20(a) (2011) (emphasis added).

A motion to dismiss under Rule 22.20(a) may be analyzed under the standards for a motion to dismiss for failure to state a claim upon which relief may be granted, under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"). *Ghartey v. St John's Queens Hosp.*, 869 F.2d 160, 162 (2d Cir. 1989). The Environmental Appeals Board ("EAB") considers motions to dismiss under Section 22.20(a) as analogous to motions for dismissal under Rule 12(b)(6) of the FRCP. *Asbestos Specialists, Inc.*, 4 E.A.D. 819, 827 (EAB 1993). Accordingly, decisions rendered regarding Rule 12(b)(6) provide guidance for actions under the Consolidated Rules. *B&L Plating, Inc.*, 11 E.A.D. 183, 188 n.10 (EAB 2003).

Rule 12(b)(6) of the FRCP provides for dismissal when the complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). It is well established that dismissal is warranted for failure to state a claim when the plaintiff fails to lay out direct or inferential allegations respecting all the material elements necessary to sustain recovery under a viable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007). This standard for dismissal further requires that all "well-pleaded factual allegations" in the complaint be taken as true and that all inferences be drawn in favor of the plaintiff so that a fact-finder can "then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). *See Twombly*, 550 U.S. at 555; *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Accordingly, to prevail on its Motion, Respondent must show that the U.S. EPA allegations, assumed to be true, do not prove a violation of the Illinois Administrative Code ("IAC") as charged.

B. Elements of a Fair Notice Defense

Courts apply the "ascertainable certainty" test to determine whether an agency provided fair notice of the regulations it is enforcing:

> [W]e ask first "whether the regulated party received, or should have received, notice of the agency's interpretation in the most obvious way of all: by reading the regulations. If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation."

Howmet Corp. v. EPA, 614 F.3d 544, 553-54 (D.C. Cir. 2010) (quoting *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995)).

The Environmental Appeals Board has described the "ascertainable certainty" standard in the following way: "[P]roviding fair notice does not mean that a regulation must be altogether free from ambiguity. . . . Thus, the question is not whether a regulation is susceptible to only one possible interpretation, but rather, whether the particular interpretation advanced by the regulator was ascertainable by the regulated community." *Coast Wood Preserving, Inc.*, EPCRA Appeal No. 02-01, slip. op. at 30 (EAB, May 6, 2003) (quoting *Tenn. Valley Auth.*, 9 E.A.D. 357, 412 (EAB 2000), appeal dismissed for lack of jurisdiction, 336 F. 3d 1236 (11th Cir. 2003), cert. denied, 541 U.S. 1030 (2004)).

Generally, the ascertainable certainty standard is met so long as there are 1) no contradictions and 2) no major ambiguities[3] in the agency's communications, *Star Wireless, LLC v. F.C.C.*, 522 F.3d 469, 474 (D.C. Cir. 2008) (holding that fair notice was provided when

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[3] The difference between ambiguities and contradictions is particularly important in this case, where the Agency can by no means be said to have contradicted itself. At no time did the agency say it had no authority to prosecute Respondents and thereby manufacture a contradiction. *See* Part III.C.1.

there were no agency materials that "contradicted" the agency's conclusion and the agency's materials contained only "minor potential ambiguities"), or when there is a more or less definitive guidance accompanying otherwise ambiguous rules and regulations, *Howmet Corp.*, 614 F.3d at 554 ("[E]ven assuming the EPA's 1985 Rule and its accompanying regulations lacked enough clarity, on their own, to provide Howmet fair notice of the EPA's interpretation of its spent material definition, the *Guidance Manual* . . . was sufficient to do so."). Courts even require regulated entities to make inquiry regarding their obligations, *Texas E. Products Pipeline Co. v. Occupational Safety & Health Review Comm'n*, 827 F.2d 46, 50 (7th Cir. 1987), and, "if still in doubt[,]...take[] the safer position..." if they wish to successfully raise a fair notice defense. *Id.; see also Fluor Constructors, Inc. v. Occupational Safety & Health Review Comm'n*, 861 F.2d 936, 942 (6th Cir. 1988); *U.S. v. Cinergy Corp.*, 495 F.Supp.2d 892 (S.D. Ind. 2007) (analyzing the "plain language of the regulation," the "other public statements by the agency," the "consistency of agency's public statements, "an agency's pre-enforcement efforts," and "whether a confused party makes an inquiry about the meaning of the regulation").

In short, if a fair notice defense is built on ambiguities in agency rules and communications alone, then such ambiguities must be more than *de minimis*. *Star Wireless, LLC v. F.C.C.*, 522 F.3d 469, 474 (D.C. Cir. 2008); *United States v. Lachman*, 387 F.3d 42, 57 (1st Cir. 2004).

III. Argument

A. The Motion to Dismiss Does Not Show That the Complaint Fails to Set Forth a Prima Facie Case Cause of Action or Set Forth Other Grounds Which Show No Right to Relief

In reviewing the Motion to Dismiss, the factual allegations in the Complaint in this case must be "taken as true and ... all inferences be drawn in favor of the plaintiff so that [the

Presiding Officer can] determine whether they plausibly give rise to an entitlement to relief." *See Ashcroft*, 129 S. Ct. at 1950. The Respondents have not shown that the Complainant has failed to establish a prima facie case under 35 IAC § 703.121(a)(1), or pointed out any other deficiency with the Complaint, nor have Respondents shown other grounds that would challenge the right to relief as set forth in the Complaint.[4] Respondents have failed to dispute that the factual allegations in the Complaint make out a prima facie claim under Illinois's Hazardous Waste Program, as codified at 35 Illinois Administrative Code (IAC) Part 702 *et seq.* The Motion to Dismiss does not actually concern the allegations of the Complaint at all. In their Motion, Respondents have made no claims whatsoever regarding the allegations of the Complaint, and have set forth no reason for its dismissal. Accordingly, the Motion to Dismiss should be denied.

B. Because the Violations Alleged in the Complaint are Violations of Both the Authorized Hazardous Waste Regulations and the Illinois Universal Waste Rule, and Because Respondent Was On Notice of a Potential Violation, Respondents' Fair Notice Argument Is Disingenuous

The Motion to Dismiss implies that the actions of the Respondents that constituted violations of the U.S. EPA-authorized Illinois hazardous waste regulations as alleged in the Complaint would not be actions constituting violations under the Universal Waste Rules that have been adopted by Illinois (but not authorized by U.S. EPA). This is simply not true. The Complaint alleges Operation of a Hazardous Waste Storage and Treatment Facility Without a

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[4] In the Motion to Dismiss, Respondents actually appear to attempt to set forth an equitable defense of lack of fair notice. The raising of a fair notice defense is not grounds for dismissal of a Complaint. Fed. R. Civ. P. 12(b)(6). The dispute as to whether Respondents were denied fair notice of the applicable regulations is a factual question for resolution in the instant proceeding. As set forth below, the facts support a finding that no legitimate fair notice issue applies in this case.

RCRA Permit under 35 IAC § 703.121(a)(1). Compl. ¶¶ 91, 109. With reference to the Illinois Universal Waste Rules ("IUWR"), the Complaint does not allege (as the Motion to Dismiss appears to mis-perceive) that Respondents crushed waste mercury vapor lamps at customers' facilities (which the IUWR allows). Instead, the Complaint concerns hazardous waste crushing at Respondents' destination facility, for which a permit is clearly required under *both* federal and state regulations. Any differences between the authorized and unauthorized state regulations are a "red herring" for purposes of the violations at issue in this case, because the treatment of hazardous waste mercury vapor lamps at the Riverdale facility required a permit under both sets of regulations. *See* 35 IAC § 733.160(a); 40 C.F.R. §§ 273.60(a).

The materials that Respondents provided with their Motion to Dismiss support the conclusion that treatment at the Riverdale destination facility without a permit was not allowed under the IUWR. The U.S. EPA website view set forth as Attachment 1 to the Motion to Dismiss, in the second paragraph shown, indicates that "...the regulations ensure that the wastes subject to this system will go to appropriate treatment or recycling facilities *subject to the full hazardous waste regulatory controls*" (emphasis added).

Respondent Kelly had actual notice from IEPA that "destination facilities" (like the Riverdale facility) needed to comply with RCRA permit requirements. In its October 16, 2000 letter to Respondent Kelly (RPX 9)[5], IEPA stated that the Illinois universal waste rule exemption from permit requirements requires that lamps be crushed at the site of generation only, and

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[5] On June 8, 2011, U.S. EPA filed and served *Complainant's Motion for Leave to File First Supplemental Prehearing Exchange Instanter* and *Complainant's First Supplemental Prehearing Exchange.* This Court has not yet ruled on the motion. U.S. EPA is, however, citing to the documentary evidence that accompanied its *First Supplemental Prehearing Exchange* and is using the citation convention of "CPX" herein (the documentary evidence accompanying the *First Supplemental Prehearing Exchange were identified as* EX-30 through EX-49).

expressly states that "the destination facility, where component separation occurs, is also fully regulated." Thus it is clear that the State actually informed Respondent Kelly that the Riverdale facility was not subject to any IUWR exemptions, and therefore required a permit to treat hazardous wastes. Again, there is no different requirement under the state-only regulations for the federally approved requirement being enforced through the Complaint in this matter. As a matter of law, there is no fair notice defense when the regulated party has actual notice of a potential violation. *United States v. Pitt-Des Moines, Inc.*, 168 F.3d 976, 987 (7th Cir. 1999).

Respondents' failure to follow even the IUWR makes it disingenuous to now claim that they lacked fair notice that where a defendant *is* in compliance with the IUWR, but where the IUWR has not been authorized by U.S. EPA, such compliance *theoretically* might not serve as a defense against federal enforcement of the authorized Illinois hazardous waste program.[6] Thus,

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[6] The IUWR at 35 IAC 733.113(d)(3) and 733.133(d)(3) provides that "handlers of universal waste lamps may treat those lamps for volume reduction at the site where they were generated" under enumerated circumstances. A similar provision is provided for transporters of universal waste lamps at 35 IAC 733.151(b), but again limits the volume reduction to occurring at the site of generation only. These exemptions apply only to generators and transporters of universal waste lamps at the site of generation only, and nowhere else. The federal Universal Waste Rule has no corollary provisions. The question of whether the IUWR would be authorized with these provisions is open, because Illinois has not applied for authorization of these specific provisions, and because U.S. EPA has not yet determined whether to authorize Illinois' UWR. The April 10, 1996, Universal Waste Rule – Implementation memo issued by Assistant Administrator Steve Herman, at page 2 states that "where states are implementing the Part 273 standards but have not yet received authorization, Regions should take enforcement actions involving universal wastes only where handlers of such wastes are not in full compliance with the Part 273 standards." [CPX-46] Thus, there is a question of whether U.S. EPA would exercise its enforcement discretion, as described in the Herman memo, and bring an action against a handler of Universal Waste that was performing volume reduction at the point of generation, because arguably that activity would not be in compliance with Part 273. Language in the preamble to the final federal Universal Waste Rule modification adding hazardous waste lamps to the Rule adds gloss to the way that U.S. EPA may use its enforcement discretion in such a situation:

at best, Respondents' argument boils down to being ignorant of the fact that the U.S. EPA can enforce an authorized state RCRA program where a party violates provisions of that program. But ignorance of the law does not obviate Respondents' obligation to comply with the law. *Barber Trucking*, Docket No. CWA-05-2005-0004, 2007 WL 1933122 (E.P.A.), 24.

Whether or not Respondents were actually confused over the applicable set of Illinois

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> The Agency is aware that a number of states have already added spent lamps to their universal waste programs. Available information indicates that some of these state programs prohibit crushing of spent lamps, but that at least some state programs may allow crushing under regulatory requirements designed to control emissions of hazardous constituents, particularly mercury. The Agency believes that many state programs may include standards for controlling mercury-containing lamps during crushing that could be equivalent, per RCRA Section 3006, to the federal prohibition.

64 Fed. Reg. at 36478.

Questions about how U.S. EPA might exercise its enforcement discretion regarding handlers of hazardous waste lamps in Illinois need not be answered or addressed here. Here, U.S. EPA is not alleging that Respondents were acting as handlers of hazardous waste lamps and "volume reducing" the lamps at the point of generation. Instead, the focus in this matter is on the definition under the IUWR of a "destination facility" and the activities of Respondents that rendered the Riverdale facility an unpermitted destination facility for hazardous waste lamps.

35 IAC 733.109 defines a "destination facility" as "a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Sections 733.133(a) and (c) and 733.133(a) and (c). A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste." Here, Respondents were picking up lamps from their customers, bringing the lamps to the Riverdale facility, and crushing the lamps at the Riverdale facility and, thus, were operating the Riverdale facility as a destination facility (under both federal and state law) that needed a RCRA permit. [CPX-1; CPX-2; CPX-4; CPX-6; CPX-8; Respondent's Prehearing Exchange "Statement Regarding Compliance and Penalty Statement.] 35 IAC 733.160 expressly states that the "owner or operator of a destination facility (as defined in Section 733.109) is subject to all applicable requirements of 35 Ill. Adm. Code 702 through 705, 724 through 726, and 728, and the notification requirement under section 3010 of RCRA (42 USC 6930). The fact that Respondents were operating a destination facility without a permit gives rise to the alleged violation of the Illinois hazardous waste law that U.S. EPA is enforcing here.

regulations,[7] the issue of fair notice does not come into play in this case because: 1) Respondents have pointed to no material confusion which is relevant to the actual allegations of the Complaint (treatment requires a permit under both sets of regulations); 2) IEPA informed Respondent Kelly in writing that destination facilities require a permit even under the IUWR, and 3) rewarding violators' ignorance of applicable requirements would create a "slippery slope" under which it would benefit hazardous waste handlers and treatment facility operators to keep "confused" about applicable requirements.

C. The Evidence Offered By Respondent Is Insufficient To Establish a Fair Notice Defense

As laid out above in section II.B, the ascertainable certainty standard is usually met so long as there are 1) no contradictions and 2) no major ambiguities in the agency's communications, *Star Wireless, LLC v. F.C.C.*, 522 F.3d 469, 474 (D.C. Cir. 2008) (holding that fair notice was provided when there were no agency materials that "contradicted" the agency's conclusion and only "minor potential ambiguities" in the agency materials). Respondents' evidence establishes neither of these deficiencies.

1. U.S. EPA Has Not Issued Contradictory Regulatory Interpretations

Respondents claim that several public communications offered by either the U.S. EPA or the IEPA are contradictory to U.S. EPA's current assertion of authority to enforce the Illinois authorized program against Respondents. However, the Respondents offer no evidence of any regulatory pronouncement in contradiction with U.S. EPA's current enforcement action.

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[7] See part III.C.2.c for evidence that Respondents actually held themselves out as knowledgeable and informed about applicable requirements.

a. Respondents' claims regarding U.S. EPA's website do not demonstrate a contradiction in U.S. EPA's legal position

First, Respondents' argument that U.S. EPA directs constituents of Illinois "to manage spent lamps under Illinois's adopted but unauthorized Universal Waste Regulations," [Motion to Dismiss at 1-2], does not establish a contradiction. Statements by the Agency to the effect that constituents should "check with their state"[8] would only be contradictory if they actually said that managing spent lamps under the IUWR is sufficient standing alone to comply with all relevant law or if it actually said that the IUWR had been authorized by the U.S. EPA.[9] The statement notifies the regulated community in Illinois that it is subject to potential enforcement by the state of Illinois under its duly promulgated (but not federally authorized) IUWR. In addition, although Respondents point to a U.S. EPA website's link to the IUWR in support of their assertion, Motion to Dismiss at 2, the mere fact that one can find a link to the IUWR from U.S. EPA's website is a far cry from the agency claiming that parties can comply with all of the relevant law simply by managing spent lamps under the IUWR. In fact, U.S. EPA has not only avoided contradiction on this point, it has also avoided any measurable ambiguity on these websites by providing clear statements of its positions there. U.S. EPA's website prominently indicates that disposal by businesses of lamps that are considered hazardous may be managed under the RCRA Subtitle C regulations or the "less stringent Universal Waste Rule (UWR)." [http://www.epa.gov/osw/hazard/wastetypes/universal/lamps/faqs.htm#27] The webpage then provides a link to the preamble to the Federal UWR, which provides a clear statement that, for

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[8] http://www.epa.gov/osw/hazard/wastetypes/universal/index.htm

[9] Checking the state UWRs is also good advice because state UWR regulations could be *more* stringent than the federal requirements.

purposes of federal enforcement, the universal waste rules do not take effect until Illinois's UWR is authorized by U.S. EPA. 60 Fed. Reg. at 25,536 (May 11, 1995). While U.S. EPA's "State-Specific Universal Waste Regulations" webpage provides a link to the IUWR, that page also makes it clear in both graphic and table form that unlike most states around the country, Illinois's UWR has not been authorized by U.S. EPA. [http://www.epa.gov/osw/hazard/wastetypes/universal/statespf.htm] Thus, U.S. EPA's websites clearly provide requisite notice that Illinois's UWR is not authorized. Even if one could argue that U.S. EPA's websites were somehow unclear on whether Illinois's UWR is authorized, such minor potential ambiguity is insufficient to bring into question that the applicable federal regulations definitively demonstrate that Illinois's UWR is not authorized and that U.S. EPA retains authority to enforce Illinois' authorized program against parties that would otherwise fit under the unauthorized IUWR. *See* Part III.C.2. In sum, U.S. EPA has in fact never contradicted its positions that the IUWR was never authorized and that U.S. EPA consequently retains authority to enforce the rest of Illinois's authorized program.

If Respondents objections are framed, perhaps more accurately, as claims of equitable estoppel against the government based on the statements on the U.S. EPA websites, Respondents' objections are even less well-founded. "[W]hether equitable estoppel may be applied against the government at all has been a source of considerable disagreement." *Griffin v. Reich*, 956 F. Supp. 98, 106 (D.R.I. 1997). Recent cases in the circuits note that the "Supreme Court has been very cautious in language, and even more cautious in practice, about extending estoppel to the government." *Nagle v. Acton-Boxborough Reg'l Sch. Dist.*, 576 F.3d 1, 4 (1st Cir.

2009).[10] Moreover, the Supreme Court has noted that "reliance on oral advice is less appropriate, particularly where the issue involves complex statutory programs." *Pub. Interest Research Group of New Jersey v. Yates Indus., Inc.*, 757 F. Supp. 438, 446 (D.N.J. 1991) (citing *Heckler v. Community Health Services,* 467 U.S. 51, 65 (1984)). Thus, it is particularly unlikely that courts would entertain an equitable estoppel claim based entirely on informal websites under the complex RCRA statutory and regulatory regime.

b. Respondents' claims regarding IEPA's statements do not demonstrate a contradiction with U.S. EPA's legal position

Second, Respondents point to IEPA's "*How to Manage Used Fluorescent and High-Intensity-Discharge Lamps as Universal Waste*" document, which says, "*In Illinois, you may follow the Universal Waste Rule described in this fact sheet (and in state regulations) or you may follow RCRA requirements for hazardous-waste handling, storage, treatment and disposal.* ***You must choose one of these options.***" (emphasis in original). Based on this statement, Respondents argue that IEPA has implied that, for purposes of federal compliance, Respondents

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[10] Although the U.S. Supreme Court in dicta left open the possibility of equitable estoppel against the government in cases of "affirmative misconduct" on the part of the government, *Heckler v. Community Health Services*, 467 U.S. 51, 60 (1984), the Supreme Court's most recent examination of estoppel against the government seemingly narrowed even this dicta, lamenting that it has taken on a "life of its own." *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 421(1990). The Supreme Court in *Richmond* did again explicitly leave open the possibility of estoppel against the government, but simultaneously made it very clear that a successful estoppel claim will be extraordinarily rare. *Id.* at 422-24 (noting that the Supreme Court has "reversed every finding of estoppel that we have reviewed" and frequently does so by summary reversal). The few cases interpreting the meaning of "affirmative conduct" have accordingly required "something more than careless misstatements." *Nagle*, 576 F.3d at 5 (citing *Clason v. Johanns,* 438 F.3d 868, 872 (8th Cir.2006)); *see also United States v. Marine Shale Processors*, 81 F.3d 1329, 1350 (5th Cir. 1996) (official or government body must intentionally or recklessly mislead the estoppel claimant); *Kennedy v. United States*, 965 F.2d 413, 421 (7th Cir. 1992) (affirmative misconduct "is something more than mere negligence"); *FDIC v. Hulsey*, 22 F.3d 1472, 1490 (10th Cir. 1994) ("The erroneous advice of a government agent does not reach the level of affirmative misconduct.").

could choose between following the IUWR or RCRA requirements for hazardous-waste handling, storage, treatment and disposal. Motion to Dismiss at 4 (citing RX 29). Presumably, Respondents mean to argue that IEPA portrayed the IUWR as authorized and thus as a universal shield against all possible enforcement actions since states enforce authorized programs "in lieu" of the Federal program, 42 U.S.C. § 6926(b). As discussed in Part III.B, Respondents have admitted to acts that were not in compliance with the IUWR. However, even assuming that Respondents had actually followed the IUWR, the quoted portion of this document does nothing more than state an unambiguous legal truth. The qualifier "[i]n Illinois" is important here because, especially when written by IEPA, the qualifier limits the statement cited by Respondents to addressing only potential legal enforcement undertaken by the IEPA pursuant to its own promulgated (but not authorized) UWR. There is thus nothing contradictory or misleading about this statement—it merely confirms that IEPA has set its own UWR as a baseline for its own enforcement purposes. The statement is simply silent as to whether the IUWR was authorized by the federal government or whether U.S. EPA might retain enforcement authority over Illinois' authorized program. Because RCRA requirements for hazardous waste handling, storage, treatment, and disposal are more stringent than the IUWR, it is an accurate statement of Illinois law to say that compliance with RCRA requirements will immunize parties from enforcement actions brought by the State of Illinois against managers of universal waste lamps. As a statement of Illinois law, which has nothing to say about federal law or U.S. EPA enforcement priorities, the document cited is irrelevant to the fair notice analysis in this case, which concerns U.S. EPA's enforcement priorities.

Moreover, even if truly in conflict with U.S. EPA's position that it has authority to enforce Illinois's authorized program against Respondents, conflict or ambiguity created by state

interpretations of federal law generally cannot serve as the basis of a federal fair notice claim. *Cf. Nat'l Parks Conservation Ass'n, Inc. v. Tennessee Valley Auth.*, 618 F. Supp. 2d 815, 831-32 (E.D. Tenn. 2009) (rejecting a motion for summary judgment on the fair notice issue in the context of the Clean Air Act's NSR program despite the fact that a state official had offered an interpretation at odds with the Supreme Court's interpretation of the relevant regulations). Instead, where courts have examined conflicting interpretations offered by a state agency and the U.S. EPA, they have not hesitated to favor the federal interpretation. *Alaska Dep't of Environmental Conservation v. EPA,* 540 U.S. 461 (2004) (upholding U.S. EPA's decision as to what constituted BACT when the U.S. EPA disagreed with the state permitting authority); *United States v. Alabama Power Co.*, 372 F. Supp. 2d 1283, 1291 (N.D. Ala. 2005) ("[I]f the decision at hand comes down solely to whose interpretation controls, EPA's or ADEM's, EPA prevails."). Allowing a fair notice claim to prevail because of a wrong interpretation offered by a state government agency would allow state regulatory staff to unilaterally over-ride legislative choices made by Congress. Allowing fair notice claims whenever a state or federal government offered an interpretation in conflict with the other government would unnecessarily over-ride Congress's continuing use of the state-federal regulatory partnerships that are central to many environmental laws.

As with the fair notice claims regarding the U.S. EPA's websites, Respondents' arguments about the IEPA's guidance might be more accurately formulated as claims of equitable estoppel against the federal government based on the alleged misstatements of the IEPA. However, an estoppel argument in this context is even more unavailing than it is in the case of a federal agent giving misleading advice about federal law. Since the Supreme Court's extreme reticence about entertaining an equitable estoppel claim against the government is

primarily based on the policy that government agents should not be able to waive or revise the laws as enacted by Congress, *Dixon v. United States*, 381 U.S. 68, 73 (1965), allowing an estoppel claim where it is a state government or official who makes the allegedly misleading statement would be particularly inappropriate and would raise federalism concerns.

Further, the Presiding Officer in this case has examined a somewhat analogous fact pattern to the one presented here in *Jehovah-Jireh Corp.*, Docket No. CWA 5-99-016, 2001 WL 884546 (E.P.A.) (ALJ, July 25, 2001). There the EPA pursued an enforcement action under the CWA pretreatment program even when the Respondents produced evidence that the City viewed Respondents as in compliance with its permitting scheme and engaged in the practice of granting deviations from the approved pretreatment standards. *Id.* at *3. The Presiding Officer refused to accept an estoppel argument, noting that "the fact that the City chose not to enforce those limits is not affirmative conduct by the EPA" even when the EPA knew of the City's practices. *Id.* at *8. Accordingly, if this T]tribunal chooses to read the Motion To Dismiss to be making an equitable estoppel claim, then it should reject that argument and deny the Motion to Dismiss.

Ultimately, Respondents argument asks that this tribunal rule that persons of average intelligence cannot understand basic principles of federalism. Respondents' arguments should be rejected, for a reasonable regulated entity in the hazardous waste business should be presumed to understand that a state has its authority and the federal government has its authority, and it is up to the regulated community to ensure its compliance with the law of both jurisdictions.[11]

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[11] See Section III.C.2.c., below, for a discussion of Respondents' degree of sophistication.

c. Respondents' claims regarding their communications with U.S. EPA do not reflect a contradiction in U.S. EPA's legal position

Third, Respondents' argument that they contacted U.S. EPA and received differing opinions about whether the IUWR was authorized from two U.S. EPA employees is problematic and irrelevant to the fair notice inquiry. As the U.S. Supreme Court has noted, "[A]n isolated opinion of an agency official does not authorize a court to read a regulation inconsistently with its language. *Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 580-81, (2007). Moreover, Respondents severely mischaracterize the nature of this "conflict." In fact, the first opinion was a tentative one, and the second opinion came about as a result of a referral. To say the least, it would be jarring to the agency if fair notice problems were to emerge whenever a referral reverses an earlier, tentative opinion. The administrative process relies on such intra-agency deliberation.

Further, for all the reasons discussed above, construing Respondents' arguments in this regard as raising equitable estoppel claims is of no avail.

2. Respondents had fair notice because the applicable rules and U.S. EPA's guidance on the regulations at issue are unambiguous.

As discussed above in Section II.B, if Respondents cannot establish a contradiction in agency guidance, Respondents' fair notice claim amounts, at best, to a claim that the agency's regulation and guidance were somehow ambiguous. Such claim must fail, because courts applying the ascertainable certainty standard will generally tolerate occasional ambiguities in both the regulation and the agency's public communications. *See, e.g., Star Wireless, LLC v. F.C.C.*, 522 F.3d 469, 474 (D.C. Cir. 2008); *United States v. Lachman*, 387 F.3d 42, 57 (1st Cir. 2004) (noting that the D.C. Circuit's ascertainable certainty cases find a lack of fair notice only when "the agency had given conflicting public interpretations of the regulations" or when "the

regulation is so vague that the ambiguity can *only* be resolved by deferring to the agency's own interpretation of the regulation" under the familiar two-step *Chevron* inquiry) (emphasis added). Further, courts tolerate or disregard ambiguities in rules and communications if there is a relatively definitive guidance offered by the agency. *Howmet Corp.*, 614 F.3d at 554; *Star Wireless, LLC v. F.C.C.*, 522 F.3d 469, 474 (D.C. Cir. 2008). Finally, because agencies are granted strong deference in their interpretation of their own regulations, *Auer v. Robbins*, 519 U.S. 452, 461 (1997), ambiguity alone is a weak foundation upon which to build a fair notice argument.

Respondents had fair notice here because they could reasonably ascertain through clear rules and clear guidance that Illinois's UWR was not authorized and that they could be subject to U.S. EPA enforcement of Illinois's federally-authorized RCRA Subtitle C program for the storage and treatment of spent waste bulbs at the Riverdale facility. Courts rarely find a lack of fair notice unless the agency issues contradictory interpretations of the rule, and Respondents have not flagged any ambiguity sufficient to justify finding a fair notice issue here.

a. The applicable statute and regulations unambiguously convey what is required of regulated entities

Respondents cannot point to any substantial ambiguities in RCRA and the applicable regulations, and, in fact, these regulatory provisions are supported by clear and consistent guidance. Therefore, as a matter of law, Respondents cannot substantiate a fair notice defense.

The statute and regulations provided requisite notice to Respondents in two ways. First, by reading the statute and regulations, Respondents could determine with ascertainable certainty that by crushing and storing spent waste bulbs at their Riverdale facility, Respondents would be in violation of RCRA and could be subject to an enforcement action by U.S. EPA. RCRA

provides, in pertinent part,

> Except [where U.S. EPA has failed to notify state authorities in a state with a federally-authorized RCRA program], whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation . . . .

42 U.S.C. § 6928(a)(1). The federal regulations that authorize Illinois's RCRA program also make it clear that "EPA retains the authority to exercise its enforcement authorities under . . . RCRA . . . as well as under other Federal laws and regulations." 40 C.F.R. § 272.700(c). Further, U.S. EPA's retained enforcement authority includes the particular provisions of the Illinois Administrative Code that are included as part of Illinois's authorized program, which U.S. EPA incorporated by reference "as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*" *Id.* at § 272.701(a)(1). One of the incorporated provisions is that no person may conduct any hazardous waste storage, treatment or disposal operation without a RCRA permit for the hazardous waste management facility. 35 IAC § 703.121(a)(1). Therefore, because the statute and regulations are clear on the point, Respondents had the requisite fair notice that the storage and treatment of hazardous waste at its Riverdale facility could be subject to a RCRA enforcement action by U.S. EPA.

Second, by reading the applicable regulations, Respondents could ascertain that U.S. EPA had not authorized the Illinois Universal Waste Rule. The federal regulations provide that "Illinois must seek final authorization for all program revisions . . ." and that, "[i]f Illinois obtains final authorization for the revised requirements . . . the newly authorized provisions will be listed in [40 C.F.R.] § 272.701 of this subpart." *Id.* Illinois' UWR has not been authorized by U.S. EPA. *See* 40 C.F.R. pt. 272, subpart O. By reading the applicable regulations, members of the regulated community could determine (with "ascertainable certainty") that Illinois's UWR is

not authorized because it is not found in 40 CFR § 272.701. Therefore, Respondents had fair notice that the IUWR is not authorized.[12]

b. The agency's public communications regarding the applicable rules and requirements unambiguously convey what was required of Respondents

In addition to the fair notice provided by RCRA and the applicable regulations, the preamble to the Federal Universal Waste Rule (Federal UWR) also provided fair notice to Respondents. In *Harpoon Partnership*, the Presiding Officer in the instant case noted that an agency's public statements could provide fair notice to the regulated community. Order Granting Complainant's Request for Partial Accelerated Decision and Denying Respondent's Request for Partial Accelerated Decision, Docket No. TSCA-05-2002-0004, 18 (August 4, 2003). There, Judge Gunning wrote:

> The EPA and HUD in a discussion involving a very basic provision of the Lead Disclosure Rule - the date that the rule is to take effect upon the regulated community - state that the owner is the lessor. This declaration, in such a public statement as the preamble to the final regulations, satisfies fair notice.

Id. The beginning of the "State Authority" section of the preamble to the Federal UWR reiterates that U.S. EPA retains authority to enforce RCRA, even in states with authorized RCRA

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[12] The underlying purpose of a statute can also inform the fair notice analysis. *See Harpoon Partnership*, 12 E.A.D. 182, 194 (EAB 2005) (quoting *Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("The Supreme Court has stated that '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'")). Here, Congress has indicated that one of the objectives of RCRA is to "assur[e] that hazardous waste management practices are conducted in a manner which protects human health and the environment; . . . " 42 U.S.C. § 6902(a)(4), in part by "establishing a viable Federal-State partnership to carry out the purposes of this chapter . . . ." *Id.* at § 6902(a)(7). One important aspect of that Federal-State partnership, as discussed above, is U.S. EPA's retained authority to enforce the provisions of federally-authorized state programs. Such authority was justifiably exercised in this case in order to protect human health and the environment from the dangers of hazardous waste.

programs. 60 Fed. Reg. at 25,536 (May 11, 1995). The "State Authority" section also unambiguously states,

> Today's amendments to the hazardous waste regulations are not effective in authorized States since the requirements are not being promulgated pursuant to HSWA. . . . In authorized States, the amendments will not be applicable until the State revises its program to adopt equivalent requirements under State law *and is authorized by EPA for the amendments*.

Id. (emphasis added).

Respondents' reliance on another public document, U.S. EPA's "RCRA Orientation Manual 2008" (Manual), for support of their position is equally unavailing. Respondents argue that the Manual's definitions of "Adoption" and "Authorized" are confusing and thus left them without fair notice that they could be subject to a federal enforcement action where they were allegedly following the unauthorized IUWR. However, the very language Respondents quote from the "Adoption" definition makes clear the implications that flow from a state program that has adopted federal rules but has not been authorized:

> As an initial step toward obtaining final authorization, a state typically adopts the federal rules in some manner . . . Even though a state may have adopted the federal program and its hazardous waste program is similar or identical to the federal program, it still does not have primacy for implementing and enforcing the hazardous waste regulations. To assume this role, the state must first be granted final authorization by EPA.

Manual, at III-140, *available at* http://www.epa.gov/wastes/inforesources/pubs/orientat/rom311.pdf (emphasis added). Respondents focus on the term "primacy" and mistakenly conclude that U.S. EPA's position is that the State of Illinois has no authority to implement and enforce the IUWR. In fact, as has been held by the Presiding Officer in the instant case, the State of Illinois is not precluded from implementing and enforcing the IUWR as a matter of state law. *See Mercury Vapor Processing*

Tech., Order on Complainant's Motion for Partial Accelerated Decision as to the Applicable Regulations and Liability Order on Motion to Supplement Respondent's Pre-Hearing Exchange, Docket No. RCRA-05-2010-0015, 17 (May 5, 2011) ("[W]hile Illinois's version of the universal waste rule is enforceable by the State, it is not necessarily enforceable by EPA.") (footnote omitted). More to the point, the unmistakable implication from the Manual's definition of "Adoption" is that there remains a role for the federal government in implementing and enforcing hazardous waste regulations where a state has adopted hazardous waste provisions as part of its own law that have not been finally authorized by U.S. EPA. Because unauthorized states "do not have primacy for implementing and enforcing the hazardous waste regulations," it is ascertainably certain that the federal government does.

c. Respondents' Own Statements Indicate that Respondents Understood the Applicable Regulations

In materials provided by Respondents to both potential clients and investors, Respondents demonstrate that they had notice of the regulatory requirements that the federal government expected them to comply with. For example, in a document signed by Respondent Kelly, which appears to be directed at potential clients, there are instructions for "FINDING STATE and FEDERAL 'UNIVERSAL WASTE RULE'." [CPX-47] The document lists citations to both the Federal UWR and IUWR, and concludes by stating that "any questions regarding the 'Universal Waste Rule' should be directed to [Respondent Kelly] . . . ." This document demonstrates that Respondents were familiar with the federal and state regulations relevant to their conduct.

Similarly, a filing with the Securities and Exchange Commission from a company that Respondent Kelly served as President and Director of, represented that,

> Through the course of [Respondent Kelly's] experience in the environmental business he has compiled a working knowledge of regulatory guidelines. *Because he was in the business of waste hauling on or about the time the Resource Conservation Recovery Act became law, he has been in a position to track and maintain an ongoing understanding of all aspects of business operations under that and all other relevant regulations.*

(VX Tech. Inc., SB-2/A, SEC File 333-73088 (Feb. 12, 2002),) (emphasis added). [CPX 37] Because the fair notice analysis is conducted from the perspective of whether the regulated party could be expected to ascertain the standards that the agency expects it to adhere to, *see Howmet Corp,* 614 F.3d at 553-554, Respondent Kelly's statements about his knowledge of regulatory requirements are relevant to the inquiry. Respondent Kelly has clearly indicated to both potential clients and investors that he is both capable of understanding the applicable regulatory requirements, and indeed that he can be considered a resource for information on such requirements.

IV. Conclusion

In their Motion to Dismiss, Respondents fail to set forth any reason whatsoever that the Complaint in this matter is deficient in any way. Additionally, Respondents' arguments are based on the mis-perception that the violations of the applicable federally-authorized Illinois regulations would somehow not be violations of the IUWR. However, there is no genuine "fair notice" issue because under both sets of regulations a permit was required for treatment of the spent lamps at the Riverdale destination facility, and the requirements were readily ascertainable. The State even pointed out the relevant requirement to Respondent Kelly in writing. For the reasons set forth above, Complainant respectfully requests that the Presiding Officer deny Respondents' Motion to Dismiss.

Respectfully submitted,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
Mercury Vapor Processing Technologies Inc., a/k/a/ River Shannon Recycling	)	**DOCKET NO. RCRA-05-2010-0015**
13605 S. Halsted	)	
Riverdale, Illinois 60827	)	
U.S. EPA ID No.: ILD005234141 , and	)	
	)	
Laurence Kelly,	)	
	)	
Respondents.	)	
	)	

DECLARATION OF TODD BROWN IN SUPPORT OF
RESPONSE OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS WITH PREJUDICE FOR
LACK OF FAIR NOTICE AND CONVOLUTED REGULTATIONS

I, Todd Brown, under penalty of perjury, declare in accordance with 28 U.S.C. § 1746 as follows:

1. I am employed as an Environmental Scientist by the U.S. Environmental Protection Agency in its Region 5 Offices in Chicago, Illinois. My current position is in the Land & Chemicals Division, RCRA Branch, RCRA Compliance Section 1. I have held this position since August 10, 2003.

2. In the course of my duties, I conduct compliance evaluation inspections under the Resource Conservation and Recovery Act (RCRA) at facilities that generate, store, treat or dispose of hazardous waste. I also assist in preparing requests for information under Section 3007 of RCRA, and review the responses when they are received. I also participate in the development of enforcement actions against persons and entities who are found to have violated RCRA.

3. I was assigned to the Mercury Vapor Processing Technologies, Inc. (MVPT) matter in October 2007, following EPA's receipt of a notice of a proposed RCRA citizen's suit from the Village of Riverdale, Illinois.

4. On October 30, 2007, I traveled to the MVPT facility in Riverdale and conducted an inspection there. During the inspection, I noted the condition of the premises and its contents, and conducted an interview with Mr. Larry Kelly, who appeared to be in charge of

the facility when I was there. I also took photographs of the premises.

5. After completing the inspection, I prepared a Compliance Evaluation Inspection (CEI) Report summarizing my observations and my interview with Mr. Kelly. The CEI Report, along with the photographs I took, were included in Complainant's Prehearing Exchange as Complainant's Prehearing Exchange Exhibit (CPX) 1, with enlarged versions of the photographs as CPX P1 through P47.

6. I returned to the facility on November 14, 2007, and collected twelve samples of spent lamps that appeared to be typical of Respondent's spent lamp inventory. I delivered these samples to our Central Regional Laboratory for analysis. I later received a report containing the results. This report appears in Complainant's Prehearing Exchange as CPX 2, along with photographs A-P-1 through A-P-22.

7. I participated in the preparation and issuance of three requests for information under Section 3007 of RCRA. These were executed by delegated officials and mailed to Respondent MVPT on or about November 5, 2007, May 20, 2008 and October 3, 2008. They were included in Complainant's Prehearing Exchange as CPX 3, 5 and 7, respectively.

8. In the course of my duties, I received and reviewed documents purporting to be responses to these requests. The responses were dated November 26, 2007, June 3, 2008, and October 20, 2008. They were included in Complainant's Prehearing Exchange as CPX 4, 6 and 8, respectively.

9. In the course of my duties, I have also requested and received, pursuant to my authority as an Enforcement Officer with the United States Environmental Protection Agency conducting an official investigation, or otherwise obtained documents and records including, but not limited to, CPX-37 (Security Exchange Commission Registration Statement Under The Securities Act Of 1933, for VX Technologies, Inc., parent of Spent Lamp Recycling Technology, Inc., dated February 11, 2002) and CPX-47 (William K. Graham's consulting file for Laurence C. Kelly and Spent Lamp Recycling Technologies, Inc.).

10. All of the documents that accompanied U.S. EPA's Prehearing Exchange, Reply Prehearing Exchange, and First Supplemental Prehearing Exchange, including CPX-37 and CPX-47, are true and accurate copies of those documents as they are maintained as part of the enforcement case file in this matter.

I make this declaration in support of the Response Of The United States Environmental Protection Agency In Opposition To Respondents' Motion To Dismiss With Prejudice For Lack of Fair Notice And Convoluted Regulations on June 16, 2011.

Todd Brown
Environmental Scientist
RCRA Compliance Section 1
RCRA Branch
Land & Chemicals Division
U.S. EPA - Region 5
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