



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 25 2012

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Article number:

Veronique Hakim  
Executive Director  
New Jersey Turnpike Authority  
PO Box 5042  
Woodbridge, NJ 07095-5042

Re: **In the Matter of New Jersey Turnpike Authority**  
**Docket Number RCRA-02-2012-7109**

Dear Ms. Hakim:

Enclosed are the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 OCT 10 A 11:40  
REGIONAL HEARING  
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

In the Matter of:

New Jersey Turnpike Authority,

Respondent

Proceeding under Section 3008 of the  
Solid Waste Disposal Act, as amended.

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

Docket Number RCRA-02-2012-7109

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 OCT 10 A 11:40  
REGIONAL HEARING  
CLERK

**I. COMPLAINT**

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

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that the New Jersey Turnpike Authority ("NJTA" or "Respondent") has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (August 2, 1999). There were later changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (December 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some minor modifications, the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some minor modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (October 21, 1996). The regulations authorized

in the New Jersey Register. See 28 N.J.R. 4606 (October 21, 1996). The regulations authorized in 2003 can be found at 31 N.J.R. 166 (January 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the provisions of the authorized State program and retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

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

### **Jurisdiction**

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New Jersey prior notice of this action.

### **Respondent's Background**

3. Respondent is the New Jersey Turnpike Authority.
4. Respondent is a governmental entity created by an Act of the New Jersey State Legislature in 1948 for the purpose of constructing, maintaining, repairing, and operating the New Jersey Turnpike. In May 2003, the New Jersey Turnpike Authority Act was amended to consolidate the management and operation of both the New Jersey Turnpike and the Garden State Parkway under the control of the NJTA.
5. Respondent operates the New Jersey Turnpike, a 148 mile public highway, and the Garden State Parkway, a 173 mile public highway. Both the New Jersey Turnpike and Garden State Parkway are toll roads, with combined toll revenues of approximately \$650 million per year.
6. Respondent is a "person," as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).

### **Notification of Hazardous Waste Generation**

7. On or about December 11, 1980, Respondent notified the EPA that it conducted activities involving the generation of hazardous waste.

8. In response to the Notification described immediately above, EPA provided Respondent, pursuant to 40 C.F.R. § 262.11, with EPA identification number NJD991290925.
9. Respondent subsequently notified EPA of hazardous waste activities at multiple locations along the New Jersey Turnpike and Garden State Parkway, and was provided by EPA with at least forty-four additional EPA identification numbers.

#### **Respondent's Generation of Hazardous Waste**

10. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a “generator” of “hazardous waste” as those terms are defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)) at multiple locations along the New Jersey Turnpike and Garden State Parkway.
11. The hazardous wastes generated by Respondent have included, without limitation, spent fluorescent, mercury vapor, and sodium vapor lamps, which can be characteristic hazardous wastes as defined within 40 C.F.R. § 261 Subpart C (1993)(N.J.A.C. 7:26G-5.1(a)).

#### **EPA Inspection**

12. On or about January 4, 2011, an authorized representative of EPA conducted a compliance evaluation inspection at Respondent’s Woodbridge, New Jersey office building, Respondent’s Milltown, New Jersey “District 4” maintenance yard, and Respondent’s Woodbridge, New Jersey “District 5A” maintenance yard.

#### **Information Requests and Responses**

13. By letter dated February 7, 2011, Respondent provided EPA information and documentation regarding Respondent’s handling of hazardous waste lamps (the “February 2011 Letter”).
14. On or about December 2, 2011, EPA issued to Respondent a Request for Information (the “2011 Information Request”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, which sought, in part, information and documentation relating to Respondent’s handling of hazardous waste lamps.
15. On or about March 22, 2012, Respondent submitted its response to the 2011 Information Request (the “March 2012 Response”).

16. On or about June 8, 2012, EPA issued to Respondent a Notice of Incomplete Response and Second RCRA § 3007 Information Request (the “2012 Information Request”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, which notified Respondent that it had not fully answered the 2011 Information Request and sought further information and documentation relating to Respondent’s handling of hazardous waste lamps.
17. On or about July 13, 2012, Respondent submitted its response to the 2012 Information Request (the “July 2012 Response”).
18. In its February 2011 Letter, Respondent stated that it was “... hereby transmitting documentation relative to the Turnpike Authority’s disposal of luminaires for the three (3) year period of 2008 thru 2010...providing a list of the luminaire purchases made by the Authority during the subject three (3) year period on the basis that these purchases represent the quantity and type of fixtures disposed of by the Authority during this same three (3) year period...” and that “...The Authority was not aware of any specific disposal requirements relative to roadway luminaires prior to our January 4, 2011, meeting...” (emphasis added). The lists provided by Respondent revealed that “...Lamp usage for 2008 thorough 2010 for Turnpike...” totaled “21261” lamps and “Parkway...Purchased in 2008 2009 2010...” totaled “6753” lamps (emphasis added).
19. In its July 2012 Response, Respondent stated, with respect to spent lamps managed during the period 2008 through 2010, that “...the Authority did not determine whether the spent lamps were hazardous waste...” and stated, with respect to spent lamp disposal, that “...the spent lamps were placed in solid waste containers as solid waste...”

**Count 1 - Failure to make a hazardous waste determination**

20. Complainant re-alleges each allegation contained in paragraphs”1“ through “19” inclusive, as if fully set forth herein.
21. Pursuant to 40 C.F.R.§ 262.11(1993)(N.J.A.C. 7:26G-6.1(a)), a person who generates a solid waste must determine whether that solid waste is a hazardous waste, using the procedures specified in that provision (hereinafter a “hazardous waste determination”).
22. During the period 2008 through 2010, Respondent had taken out of service with the intent of disposal spent fluorescent, mercury vapor, and sodium vapor lamps, which had previously been used to illuminate the New Jersey Turnpike and Garden State Parkway.

23. When intended for disposal, spent fluorescent, mercury vapor, and sodium vapor lamps are solid wastes.
24. At various times during the period 2008 through 2010, Respondent had not determined, and did not have a third-party determine on its behalf, whether its spent fluorescent, mercury vapor, and sodium vapor lamps were hazardous wastes.
25. Respondent's failure to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent fluorescent, mercury vapor, and sodium vapor lamps constitutes a violation of 40 C.F.R. § 262.11(1993)(N.J.A.C. 7:26G-6.1(a)).

## **II. PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements."

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case and has used EPA's 2003 RCRA Civil Penalty Policy. A copy of this penalty policy is available upon request or can be found on the Internet at [www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf](http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf). The penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the September 21, 2004 document entitled Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004); the January 11, 2005 document entitled Revised Penalty Matrices for the RCRA Civil Penalty Policy; the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule. The RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty per violation per day under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) is \$32,500 for any violation occurring from March 16, 2004 through January 12, 2009, and \$37,500 for any violation occurring after January 12, 2009. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out below for the violation alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for the violation cited in this Complaint are included in Attachment I, below. The Matrix employed in the penalty determination is included as Attachment II, below.

In view of the above-cited violation, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), taking into account the seriousness of the violation, and any good faith efforts by the Respondent to comply with applicable requirements, and using the RCRA Civil Penalty Policy, the Complainant herewith proposes the assessment of a civil penalty in the amount of twenty-four thousand seven hundred ninety dollars (\$24,790) against the Respondent.

### **III. COMPLIANCE ORDER**

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order come into compliance and shall thereafter maintain such compliance with 40 C.F.R. Section 262.11(1993)(N.J.A.C. 7:26G-6.1(a)) or in later versions of those regulations.

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

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

Leonard Grossman  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

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

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

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance which occurs after January 12, 2009. 40 C.F.R. Part 19. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New Jersey.

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

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

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

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

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

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

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



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

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

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

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

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

### **C. Failure to Answer**

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

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

without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

#### **D. Exhaustion of Administrative Remedies**

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

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

#### **VI. INFORMAL SETTLEMENT CONFERENCE**

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

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

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

**Carl R. Howard Esq.**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**

**290 Broadway  
New York, New York 10007-1866  
212-637-3216**

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

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

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

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

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

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

Complainant:

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

Date SEPTEMBER 25, 2012

To: Veronique Hakim  
Executive Director  
New Jersey Turnpike Authority  
PO Box 5042  
Woodbridge, NJ 07095-5042

cc: Michael Hastry, Chief  
Bureau of Hazardous Waste Compliance and Enforcement  
Central Field Office  
New Jersey Department of Environmental Protection  
300 Horizon Center  
Trenton, NJ 08625-0407

**CERTIFICATE OF SERVICE**

This is to certify that on the day of OCT - 9, 2012, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2012-7109, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested to: Veronique Hakim, Executive Director, New Jersey Turnpike Authority, PO Box 5042, Woodbridge, NJ 07095-5042. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: OCT - 9 2012  
New York, New York

Signed: Michael X. Boeg

**ATTACHMENT I**

**Penalty Calculation Worksheet  
Count 1**

Respondent: New Jersey Turnpike Authority

Violation: Failure to make a hazardous waste determination  
40 C.F.R. § 262.11(1993)(N.J.A.C. 7:26G-6.1(a))

1. Gravity based penalty from matrix .....	\$24,790
(a) Potential for harm.....	MAJOR
(b) Extent of Deviation.....	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.....	N/A
3. Multiply line 2 by number of days minus 1 .....	N/A
4. Percent increase/decrease for good faith.....	N/A
5. Percent increase for willfulness/negligence.....	N/A
6. Percent increase for history of noncompliance .....	N/A
7. Total lines 5 through 7.....	N/A
8. Multiply line 4 by line 8 .....	N/A
9. Calculated economic benefit.....	N/A
10. Total Penalty (rounded off) .....	\$24,790

## **Narrative Explanation of Penalty Calculation**

### Gravity Based Penalty:

a) **Potential for Harm:** The potential for harm for failure to make hazardous waste determinations was determined to be Major. Such failure poses a substantial adverse effect on the statutory purposes and regulatory procedures for implementing the RCRA program by limiting Respondent's ability to properly identify and manage its hazardous waste and EPA's ability to assess such management.

b) **Extent of Deviation:** The Extent of Deviation was determined to be Moderate. While Respondent failed to determine whether its spent lamps were hazardous wastes, it did make determinations regarding the remainder of the solid wastes it generated.

The applicable cell ranges from \$28,330 to \$37,500. The mid-point of the cell matrix was selected.

Multi-Day Penalties: Major potential for harm and Moderate extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were not assessed, however, as failure to make a hazardous waste determination is being considered to be a one-time occurrence.

### Adjustment Factors:

**Good faith:** Based upon available information that Respondent did not identify and take action to correct the violation prior to EPA's inspection, no adjustment for good faith has been made.

**Willfulness/Negligence:** N/A

**History of Compliance:** N/A

**Ability to Pay:** N/A

**Environmental Project:** N/A

**Other Unique Factors:** N/A

Economic Benefit of Non-Compliance: Respondent is not believed to have realized any gain by its failure to make hazardous waste determinations, as its staff could have made such determinations at no additional cost to Respondent beyond salaries already paid.

Recalculation of Penalty Based on New Information: N/A

**ATTACHMENT II**

**Gravity-Based Penalty Matrix**

	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<b>Major</b>	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
<b>Moderate</b>	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
<b>Minor</b>	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150