

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. RCRA-05-2009-0019</b>
	)	
<b>1810 W. Grace St. LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Chicago, Illinois,</b>	)	
	)	<b>Under Section 3008(a) of the Resource</b>
	)	<b>Conservation and Recovery Act,</b>
<b>Respondent.</b>	)	<b>42 U.S.C. § 6928(a)</b>
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**COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

The U. S. Environmental Protection Agency, Region 5 (EPA or Complainant), in accordance with the March 29, 2010, Prehearing Order (Prehearing Order) issued by the then Presiding Officer, William B. Moran, and subsequently amended to extend the date for filing by the Presiding Officer, Susan L. Biro, respectfully submits the following Complainant's Initial Prehearing Exchange pursuant to Rule 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.19.

This matter has been settled and a CAFO was signed by the Respondent on June 24, 2010, received by EPA on June 25, 2010, and was signed by the Acting Director of the Land and Chemical Division of EPA on June 28, 2010. However, as of the time of the filing of this Prehearing Exchange, the Regional Administrator has yet to sign the CAFO. As soon as she signs it, EPA will file the fully executed copy of the CAFO. In the interim, in order to comply with Judge Biro's Order dated May 26, 2010, EPA is now filing its Initial Prehearing Exchange. In the unlikely event that the Regional Administrator does not sign the CAFO, EPA will substantially supplement its response when it files its Reply Prehearing Exchange on or before July 9, 2010.

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## I. EXPECTED WITNESSES

This section includes the names of witnesses Complainant intends to call, together with a brief narrative summary of each witness' expected testimony as required by Paragraph 1 of the Prehearing Order.

### A. Fact Witnesses

Complainant may call the following individuals to testify as fact witnesses in the hearing in this matter:

1. Judith Kriz: Judith Kriz is with the Land and Chemical Division, EPA, Region 5. Ms. Kriz's testimony is expected to include, but not be limited to, her investigation of Respondent's compliances with the Resource Conservation and Recovery Act (RCRA). Ms Kriz may be called upon to testify about her observations during an April 30, 2007, inspection and subsequent follow-up activities including, but not limited to information submitted by Respondent and others.

Ms. Kriz may also testify as to how the penalty proposed in this matter was calculated applying the statutory penalty factors set forth within RCRA, as explained by EPA's 2003 RCRA Penalty Policy. She may also offer her assessment as to the appropriateness of the penalty proposed in the Complaint, considering the statutory penalty factors, if appropriate and the any additional penalty factors described in the relevant penalty policy.

2. Robert Smith. Robert Smith is with the Land and Chemical Division, EPA, Region 5. Mr. Smith may provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange, as well as other documents that may be

provided in the Reply Prehearing Exchange that will be filed on or before July 9, 2010.

**B. Expert Witnesses**

Complainant may call the following individual to testify as an expert witness or mixed fact and expert witness.

1. Joseph Boyle. Joseph Boyle is with Land and Chemicals Division, EPA, Region 5. Mr. Boyle will testify about EPA's RCRA Penalty Policy. Mr. Boyle may also testify to additional opinions as necessary to respond to assertions or arguments raised by Respondents. Mr. Boyle's CV is attached, and may be supplemented in the Reply Prehearing Exchange due July 9, 2010.

Complainant respectfully reserves the right to not call any of the above-listed witnesses at hearing. Complainant further respectfully reserves its right to amend, supplement, and modify its witness list and to call additional witnesses on its behalf. In addition, Complainant respectfully reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange, provide the Presiding Officer and the Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**C. Documents and Exhibits**

Copies of documents and exhibits which Complainant intends to introduce into

evidence at the hearing are attached hereto as Complainant's Exhibits, and are numbered sequentially. Included with these documents are those that the Court ordered to be exchanged in Paragraph 1 of the Prehearing Order.

- CX 1: April 30, 2007, Inspection Report, with photographs
- CX 2: EPA's 2003 RCRA Penalty Policy and January 2005 Amending Memorandum
- CX 3: Joseph Boyle's CV, to be updated with the July 9 Prehearing Exchange, as needed
- CX 4: Waste Manifests.

Complainant reserves the right to add additional exhibits to rebut Respondent's testimony, or to supplement as necessary Complainant's case in the Reply Prehearing Exchange.

## II. DETERMINATION OF THE PROPOSED PENALTY AMOUNT

As required by Paragraph 2 of the Prehearing Order, Complainant has provided a statement explaining how the proposed penalty was determined.

In this matter, Judith Kriz made the penalty determinations for Complainant. A description of Judith Kriz's penalty calculation is given below, and may be set forth in greater detail a supplemental explanation of the penalty which may be filed if necessary in the Reply Prehearing Exchange on July 9, 2010.

Section 3008(a)(3) of RCRA requires that the Administrator take into consideration the following factors when determining the amount of a penalty to be assessed under Section 3308 of RCRA: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. The RCRA Civil Penalty Policy, dated June 2003 and revised by a memorandum dated January 11, 2005, reflects the factors enumerated in Section 3008(a)(3) of RCRA (see page 2 of the Policy). EPA used this penalty policy to calculate the proposed penalty in the case against 1810 W.

Grace St. LLC.

Due to the insignificant economic benefit of noncompliance for the avoided costs of disposing of the hazardous waste in a timely fashion, no amount was assessed for the economic benefit of noncompliance. The presence of a number of unlabeled containers of hazardous and solid wastes posed a moderate risk of exposure to the environment under the penalty policy. Respondent's failure to comply with the regulations regarding the management of hazardous waste presented a moderate harm to the RCRA regulatory program under the penalty policy. The extent of the Respondent's deviation from requirements of the statute and regulations was significant, as most of the requirements were not met, and Respondent stored hazardous waste in unlabeled containers at its site for five months, considerably more than the regulatory limit of 90 days. Complainant concluded this deviation was moderate under the Penalty Policy.

The Complainant assessed a gravity penalty of \$6,835 and a multi-day penalty of \$74,400 based on the respective cell matrices in the 2003 Penalty Policy and its amendments. The total penalty assessed under the penalty policy was \$81,235.

### III. APPLICATION OF THE PAPERWORK REDUCTION ACT

As stated in Paragraph 3 of the Prehearing Order, the Presiding Officer directed Complainant to provide its position regarding the applicability of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq., to this proceeding. The PRA may be applicable to this proceeding since certain federal regulations cited in the complaint may be considered a collection of information. Complainant believes that there was a valid display of an Office of Management and Budget (OMB) control number during the relevant time period, but will confirm that in its Reply Prehearing Exchange due on July

9, 2010.

V. LOCATION AND LENGTH OF HEARING

As required by Paragraph 4 of the Prehearing Order, Complainant requests that the hearing in this matter be held at a suitable location in or near Chicago, Illinois, where Respondent resides and conducts the business which the hearing concerns.

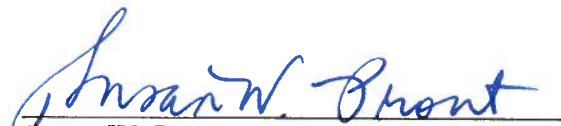
Complainant's counsel would be available after October 1, 2010, for a hearing.

Complainant anticipates needing approximately 1-2 days to present its direct case.

VI. RESERVATION OF RIGHTS

Complainant respectfully reserves the right to modify and/or supplement its list of witnesses, its list of exhibits, and/or its responses to the Prehearing Order Requests, upon reasonable notice to 1810 W. Grace LLC, and to this Honorable Court, consistent with the Prehearing Order dated March 29, 2010. Complaint also respectfully reserves the right to call all witnesses called by the Respondents and to recall any of their witnesses in rebuttal.

Respectfully submitted,



Susan W. Prout  
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Chicago, IL 60604  
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Date: June 28, 2010

In the Matter of 1810 W. Grace LLC  
Docket No. RCRA-05-2010-0019


CERTIFICATE OF SERVICE

I hereby certify that on the June 28, 2010, I filed the original and one copy of Complainant's Prehearing Exchange and its attachments with the Regional Hearing Clerk, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and placed for pickup to be mailed a copy of the Pre-hearing Exchange with attachments by Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-2001

and placed for pickup to be mailed a copy of the Pre-Hearing Exchange with attachments by certified mail, certified receipt number 7001 0320 0006 1458 to:

William J. Anaya  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606-3910

  
Elizabeth Rosado  
U.S. EPA, Region 5  
Mail Code C-14J  
77 West Jackson Blvd.  
Chicago, IL 60604  
(312) 886-1432

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