



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 APR -1 PM 3:21
REGIONAL HEARING
CLERK

MAR 28 2008

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Ron Harding, Vice President
Mallinckrodt Baker, Incorporated
222 Red School Ln
Phillipsburg, NJ 08865

Re: **In the Matter of Mallinckrodt Baker, Inc.**
Docket Number RCRA-02-2008-7104

Dear Mr. Harding,

Enclosed is 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.

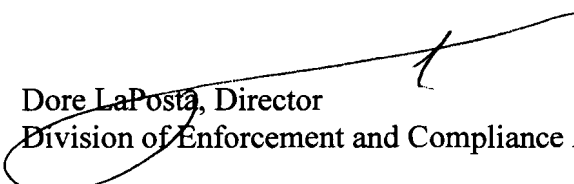
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
2008 MAR -1 PM 3:21
REGIONAL HEARING
CLERK

In The Matter of:

Mallinckrodt Baker Inc.

Respondent

Proceeding Under Section 3008 of the
Resource Conservation and Recovery Act
as amended.

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2008-7104

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 Mallinckrodt Baker, Incorporated (“MBI” or “Respondent”) has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its Phillipsburg, New Jersey Facility.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), “[a]ny State which seeks to administer and enforce a hazardous waste program pursuant to [Subchapter III, Hazardous Waste Management; 42 U.S.C. §§ 6921-6939e] may develop and...submit to the Administrator [of EPA] an application...for authorization of such program.” If EPA then grants a State’s request to operate such a hazardous waste program, Section 3006 further provides that “[s]uch State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State....”

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA in 1999 to conduct a hazardous waste program (the “authorized State program”). 64 *Fed. Reg.* 41823 (August 2, 1999). This authorization included the Air emission Standards for Equipment set forth at 40 C.F.R. Part 265 Subpart BB. There were subsequent

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 which included amendments to the Subpart BB regulations became effective February 14, 2003. Prior to such date, the authorized State program incorporated by reference, with some minor modifications, the federal program at 40 C.F.R. Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition of the Code of Federal Regulations. As of February 14, 2003, the authorized State program, with some minor modifications, essentially incorporated by reference the regulations in the 1998 edition of the same parts of Title 40 of the Code of Federal Regulations. See the New Jersey Register for New Jersey's authorized regulations constituting the original authorized State program. 28 N.J.R. 4606 (October 21, 1996). See 31 N.J.R. 166 (January 19, 1999) for the New Jersey regulations authorized in 2003. 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, on behalf of the Administrator of the EPA, by and through her attorneys, hereby alleges as and for her complaint against Respondent:

Jurisdictional and Background Legal Allegations

1. This is an administrative proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess a civil penalty against Respondent for past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements.
2. 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).
3. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever any person has violated or is in violation of a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, the Administrator of EPA, *inter alia*, "may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both."
4. 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.
5. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated

regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to \$32,500 for any violation occurring after March 15, 2004. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to \$32,500 for any violation occurring after March 15, 2004.

6. Pursuant to each of the following provisions, an “owner” or “operator” (as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) of a “hazardous waste management unit” (as defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) must obtain a permit or qualify for “interim status” (as defined in Section 3005(e) of RCRA, 42 U.S.C. § 6925(e)) in order to treat, store or dispose of such waste:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925; and
 - b. 40 C.F.R. § 270.1(c) (1993) (N.J.A.C. 7:26G-12.1(a)).
7. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii) and 40 C.F.R. § 265.202, to be exempt from the RCRA permitting requirements, a “generator” (as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) of at least 1,000 kilograms (“kgs”) of “hazardous waste” [as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a))] per calendar month must, *inter alia*, manage all hazardous waste placed in tanks in accordance with the applicable requirements of 40 C.F.R. Part 265, Subpart J (1993)(N.J.A.C. 7:26G-9.1(a)), and 40 C.F.R. §§ 265.1030 - .1090 (1993 and 1998) (N.J.A.C. 7:26G-9.1(a)).

Respondent’s Background

8. The Respondent is Mallinckrodt Baker, Inc (hereinafter “MBI” or “Respondent”).
9. Respondent is a corporation organized pursuant to, and since 1995 existing under the laws of New Jersey.
10. 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)).
11. Respondent operates a manufacturing facility (“Facility”) situated at 600 N. Broad Street, Phillipsburg, New Jersey 08865.
12. The Phillipsburg Facility is a “facility” as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).

13. Respondent is the “operator” of the Facility as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).
14. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or around August 18, 1980, JT Baker Chemical Co. notified EPA that it conducted activities involving “hazardous waste” at its Phillipsburg Facility (the “Notification”).
15. In that Notification, Respondent informed EPA that it would be generating more than 1,000 kilograms (“kg”) of hazardous waste per month.
16. In response to the Notification, EPA provided Respondent with EPA identification number NJD001213487 for the Phillipsburg Facility.
17. In 1995, JT Baker was acquired by Mallinckrodt Inc. and became Mallinckrodt Baker Inc.

Generation of Hazardous Waste

18. Respondent manufactures agricultural chemicals, chemical preparations, and industrial organic and inorganic chemicals at its Facility.
19. 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)).
20. Respondent has generated, and continues to generate, at least 1000 kilograms (“kg”) of hazardous waste in a calendar month.
21. Respondent is a large quantity hazardous waste generator.
22. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii) and 40 C.F.R. § 265.202, to be exempt from the permitting requirements, a generator of at least 1,000 kilograms of hazardous waste in a calendar month must, inter alia, manage all hazardous waste placed in tanks in accordance with the applicable requirements of 40 C.F.R. § 265.1050 to 40 C.F.R. § 265.1065(1993) (N.J.A.C. 7:26G-9.1(a)).
23. The hazardous wastes generated by Respondent at its Facility have included, without limitation, characteristic wastes (“D wastes”) as defined within 40 C.F.R. § 261 Subpart C (1993)(N.J.A.C. 7:26G-5.1(a)), wastes from nonspecific sources (“F wastes”), and discarded commercial chemical products (“P and U wastes”) as defined within 40 C.F.R. § 261 Subpart D (1993)(N.J.A.C. 7:26G-5.1(a)).
24. Organic hazardous waste generated during the purification and packaging of organic solvents are transferred through pipes to an outdoor above-ground organic

hazardous waste storage tank. This hazardous waste tank is identified as tank #1126.

25. The organic hazardous waste stored in tank #1126 has an organic concentration of at least 10% by weight.
26. Respondent stored hazardous waste at the Facility between the May 2005 Inspection and the November 2007 Inspection before shipping the waste offsite for disposal and/or treatment.

EPA Investigative Activities

27. On or about May 13, 2005 and November 8, 2007, a duly designated representative of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted Compliance Evaluation Inspections (respectively the “May 2005 Inspection” and the “November 2007 Inspection”) of Respondent’s Phillipsburg Facility.
28. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Tank #1126 had been used for the storage of hazardous waste with an organic concentration of at least 10% by weight.
29. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, organic hazardous waste was conveyed to Tank # 1126 through pipes from various hazardous waste generation points within the Facility.
30. At the time of the May 2005 Inspection, there were at least three valves associated with Tank #1126 which were in contact with organic hazardous waste for more than 300 hours per calendar year.
31. At the time of the May 2005 Inspection, Respondent did not conduct monthly monitoring of at least 3 valves which were in contact with organic hazardous waste for more than 300 hours per calendar year.
32. At the time of the May 2005 Inspection, Respondent had conducted annual monitoring of the equipment described in paragraph 30, above.
33. At the time of the May 2005 Inspection, the valves, described in paragraph 30, above, had not been monitored pursuant to the requirements at 40 C.F.R. Part 265 Subpart BB.

34. At the time of the May 2005 Inspection, Respondent had equipment associated with tank 1126 that was in contact with organic hazardous waste for less than 300 hours per calendar year.
35. At the time of the May 2005 Inspection, Respondent had failed to identify each piece of equipment at its Facility that was in contact with organic hazardous waste for less than 300 hours per calendar year.
36. At the time of the May 2005 Inspection, because Respondent failed to identify in a log that was kept in the Facility operating record the equipment that was in contact with organic hazardous waste for less than 300 hours per calendar year, such equipment was not exempt from the monitoring requirements and therefore required monthly monitoring.
37. The EPA inspector, after the May 2005 Inspection, issued a warning to the Facility for the following failures:
 - a. Failure to monitor on a monthly basis consistent with the requirements at 40 C.F.R. Subpart BB; and
 - b. Failure to list all equipment that was in contact with organic hazardous waste for less than 300 hours per calendar year in its operating log, thereby requiring monthly monitoring of such equipment.
38. At the time of the November 2007 Inspection, Respondent had failed to identify equipment at its Facility that was in contact with organic hazardous waste for less than 300 hours per calendar year in a log that was kept in the Facility operating record.
39. At the time of the November 2007 Inspection, Respondent had not conducted monthly monitoring of equipment which was in contact with organic hazardous waste for more than 300 hours per calendar year.
40. At the time of the November 2007 Inspection, Respondent had conducted annual monitoring of equipment which was in contact with organic hazardous waste for more than 300 hours per calendar year.

NOV, Information Request and Response

41. On or about December 13, 2007, EPA issued to Respondent a combined Notice of Violation and Request for Information (“NOV/IRL”).
42. The NOV/IRL sought, in part information and documentation relating to MBI’s compliance at the Phillipsburg Facility with the air emission requirements of 40 C.F.R Part 265 subpart BB (N.J.A.C 7:26G-9.1(a)) and informed Respondent that

EPA had identified a number of violations of the air emissions requirements including those found at 40 C.F.R. Part 265 Subpart BB (1993)(N.J.A.C. 7:26G-9.1(a)).

43. On January 18, 2008, Respondent submitted its response to the combined NOV/IRL (“January Response”).
44. In response to EPA’s November 2007 Inspection, on or about January 10, 2008, the Respondent identified and listed in its operating log, approximately 44 valves and 3 pumps which were in contact with organic hazardous waste for less than 300 hours per calendar year and which, once identified and listed, were exempt from the monitoring requirements of 40 C.F.R. § 265 Subpart BB(1993)(N.J.A.C. 7:26G-9.1(a)).
45. In its January Response, Respondent admitted that there are “three valves that are in service more than 300 hours per year {and} are numbered 255, 272, 282, 288, 291, and 703.”
46. Prior to EPA’s November 2007 Inspection, Respondent had tested the valves described in paragraph 45, above, on an annual basis.
47. Following EPA’s November 2007 Inspection, Respondent began monthly testing beginning November 2007 of the valves described in paragraph 45, above.

Count 1 -Failure to Conduct Required Monitoring of Approximately Forty-Seven Valves in Light Liquid Hazardous Waste Service

48. Complainant realleges each allegation contained in paragraphs “1” through “47”, inclusive, as if fully set forth herein.
49. Pursuant to 40 C.F.R. §265.1057(a)(1993)(N.J.A.C. 7:26G-9.1(a)), each valve in light liquid hazardous waste service shall, *inter alia*, be monitored monthly to detect leaks in accordance with the provisions of 40 C.F.R. § 1063(b) (1993) (N.J.A.C. 7:26G-9.1(a))
50. The leak detection monitoring shall comply with Reference Method 21.
51. Pursuant to 40 C.F.R. § 265.1050(e) (1998) (N.J.A.C. 7:26G-9.1(a)), equipment that contains or contacts hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours is excluded from, *inter alia*, the monitoring requirements of 40 C.F.R. Part 265, Subpart BB, provided such equipment is identified as required in 40 C.F.R. § 265.1064(g)(1998) (N.J.A.C. 7:26G-9.1(a)).

52. 40 C.F.R. § 265.1064(g)(1993)(N.J.A.C. 7:26G-9.1(a)) requires that all equipment subject to the requirements in 40 CFR §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility's operating record. 40 C.F.R. § 265.1064(g)(6)(1998)(N.J.A.C. 7:26G-9.1(a)) specifically requires the identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 % by weight for less than 300 hours per calendar year.
53. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent had approximately 44 valves that contained or contacted hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
54. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent failed to identify and document in a log that was kept in the Facility operating record at its Facility approximately 44 valves that contained or contacted hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year as required by 40 C.F.R. § 265.1064(g)(6)(1998)(N.J.A.C. 7:26G-9.1(a)).
55. As a result of Respondent's failure to identify, as required, the equipment in paragraph 53 above, Respondent was subject to Subpart BB air emissions requirements.
56. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent was required to perform monthly emission monitoring of approximately 44 valves in light liquid hazardous waste service using Reference Method 21.
57. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Facility personnel did not perform the monthly monitoring of the valves described in the paragraph 53, above.
58. Respondent's aforementioned failure to conduct monthly monitoring of approximately 44 valves constitutes a violation of 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)).
59. Between and including, but not necessarily limited to, the period between the May 2005 Inspection and the November 2007 Inspection, at least three valves at Respondent's Facility were in contact with hazardous waste with at least an organic concentration of 10% for more than 300 hours per calendar year.

60. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent was required to perform monthly emission monitoring of the valves in light liquid hazardous waste service, described in paragraph 59, above, using Reference Method 21.
61. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Facility personnel did not perform monthly monitoring of the valves described in the paragraph 59, above.
62. Respondent's aforementioned failure to conduct the monthly monitoring of the valves described in paragraph 59 above, constitutes a violation of 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)).
63. The requirement to conduct the aforementioned monthly monitoring as set forth in 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

Count 2 - Failure to Conduct Required Monitoring of Three Pumps in Light Liquid Hazardous Waste

64. Complainant realleges each allegation contained in paragraphs "1" through "47," inclusive, as if fully set forth herein.
65. Pursuant to 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)), each pump in "light liquid service" (as defined by reference in 40 C.F.R. § 265.1051 to the definition found in 40 C.F.R. § 264.1031) shall be monitored monthly to detect leaks by methods specified in 40 C.F.R. § 265.1063(b) (1993) (N.J.A.C. 7:26G-9.1(a)).
66. Pursuant to 40 C.F.R. § 265.1063(b)(1) (1993) (N.J.A.C. 7:26G-9.1(a)), monitoring shall comply with Reference Method 21 set forth in 40 C.F.R. Part 60.
67. Pursuant to 40 C.F.R. § 265.1050(e) (1998) (N.J.A.C. 7:26G-9.1(a)), equipment that contains or contacts hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours is excluded from, *inter alia*, the monitoring requirements of 40 C.F.R. Part 265, Subpart BB, provided such equipment is identified as required in 40 C.F.R. § 265.1064(g)(6)(1998) (N.J.A.C. 7:26G-9.1(a)).
68. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, there were approximately 3 pumps that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.

69. Respondent had not identified in a log that was kept in the Facility operating record, either by list or location, approximately 3 pumps at the Phillipsburg Facility that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.
70. As a result of Respondent's failure to identify, as required, the equipment in paragraph 68 above, Respondent was subject to Subpart BB air emissions requirements.
71. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent was required to conduct monthly monitoring of three pumps using Reference Method 21.
72. Respondent did not conduct the aforementioned monthly monitoring of approximately 3 pumps described in paragraph 68, above.
73. Respondent's aforementioned failure to conduct the monthly monitoring of the pumps described in paragraph 68, above, constitutes a violation of 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)).
74. The requirement to conduct the aforementioned monthly monitoring as set forth in 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

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, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. The penalty amounts in the 2003 RCRA Civil Penalty Policy were amended later to reflect inflation adjustments. These adjustments were made pursuant to a 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)" and a January 11, 2005 document entitled "Revised Penalty Matrices for the RCRA Civil Penalty Policy." This RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a

periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between January 31, 1997 and March 15, 2004 is \$27,500 per day of violation. 40 C.F.R. Part 19 (2003). The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after March 15, 2004 is \$32,500 per day of violation. 40 C.F.R. Part 19 (2004).

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including consideration of the seriousness of the violations, and any good faith efforts by the Respondent to comply with applicable requirements and utilizing the RCRA Civil Penalty Policy, the Complainant herewith proposes the assessment of a civil penalty in the total amount of **THIRTY-TWO THOUSAND FIVE HUNDRED (\$32,500) DOLLARS**.

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues the following Compliance Order to Respondent, which shall take effect (*i.e.*, the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

- (1) The Respondent shall, within 30 days of the effective date of this Order, if it has not already done so:
 - (a) Identify and document in a log that is kept in the Facility operating record each piece of equipment that contains or is in contact with hazardous waste having an organic concentration of at least 10% by weight for less than 300 hours per calendar year in order to be exempt from the monitoring requirements of Subpart BB pursuant to 40 C.F.R. §265.1064(g)(6) (1998)(N.J.A.C. 7:26G-9.1(a)); **or**
 - (b) Fully comply with all of the applicable 40 C.F.R. 265 Subpart BB (1993)(N.J.A.C. 7:26G-9.1(a)) requirements for this equipment; and
- (2) For other equipment (*i.e.*, equipment that contains or contacts hazardous waste having an organic concentration of 10% by weight for 300 hours or more), conduct monthly monitoring of valves in light liquid hazardous waste service in

accordance with 40 CFR §265.1057(a)(1993) (N.J.A.C. 7:26G-9.1(a)) and record in the Facility's operating record all of the information required in 40 CFR §265.1064(g)(1993 and 1998) (N.J.A.C. 7:26G-9.1(a)).

- (3) Documentation that the above referenced order has been complied with shall be sent within fifty (50) days of the effective date of this order to:

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

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

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$32,500 for each day of continued noncompliance which occurs after March 15, 2004. 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 (2007). 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 violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if

Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

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

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3205

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing pursuant to 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 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.

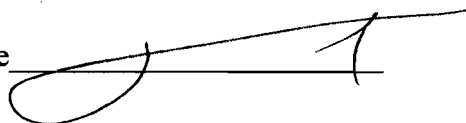
VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

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

Complainant:

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

Date



MARCH 28, 2003

To: Ron Harding, Vice President
Mallinckrodt Baker, Incorporated
222 Red School Ln
Phillipsburg, NJ 08865

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 MAR 31, 2008, 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-02-2008-7104, 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 Mr. Ron Harding, Vice President, Mallinckrodt Baker, Incorporated, 222 Red School Ln, Phillipsburg NJ 08865. 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, 16th floor, New York, New York 10007-1866.

Dated: MAR 31, 2008
New York, New York

Mildred N. Bae

Attachment I

PENALTY COMPUTATION WORKSHEET-COUNTS ONE AND TWO

Company Name: Mallinckrodt Baker, Incorporated
Address: 600 N. Broad Street, Phillipsburg, New Jersey 08865

Violations: Count 1 - 40 C.F.R. §265.1057(a)(1)(1993)(N.J.A.C. 7:26G-9.1(a)): Failure to Monitor Valves in Light Liquid Hazardous Waste Service.

Count 2 - 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)): Failure to Conduct Required Monitoring of Pumps Used to Transport Organic Hazardous Waste.

1. Gravity based penalty from matrix	<u>\$26,000</u>
(a) Potential for harm.....	<u>MODERATE</u>
(b) Extent of Deviation.	<u>MAJOR</u>
2. Select an amount from the appropriate multi-day matrix cell.....	<u>\$1,300</u>
3. Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)]	<u>\$6,500</u>
4. Add line 1 and 3	<u>\$32,500</u>
5. Percent increase/decrease for good faith	<u>N/A</u>
6. Percent increase for willfulness/negligence	<u>N/A</u>
7. Percent increase for history of noncompliance.....	<u>N/A</u>
8. Total lines 5 through 7.....	<u>N/A</u>
9. Multiply line 4 by line 8	<u>N/A</u>
10. Calculated economic benefit	<u>N/A</u>
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	<u>\$32,500</u>

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

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

1. Gravity Based Penalty

(a) **Potential for Harm:** The “Potential for Harm” was “Moderate.” Failure to comply with the 40 C.F.R. §265 Subpart BB monitoring requirements for valves and pumps poses a substantial harm to the purposes/procedures of the RCRA program, and also might result in a potential threat to human health and the environment. However, although the Facility failed to identify the existence of equipment subject to the requirements, between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, and failed to monitor that equipment until January 2008, the potential for harm is mitigated because the Facility conducted annual monitoring of some valves. Additionally, only a relatively small percentage of the Facility’s equipment would have been subject to monthly monitoring had Respondent taken the required steps to identify equipment.

(b) **Extent of Deviation:** The “Extent of Deviation” was determined to be “Major.” EPA’s November 2007 Inspection discovered the same violations for which the Respondent received a warning after EPA’s May 2005 Inspection. Between and including, but not necessarily limited to the period between the May 2005 Inspection and the November 2007 Inspection, Respondent failed to comply with applicable Subpart BB requirements.

The low point of the cell range in the penalty matrix was selected because the Facility did perform annual emissions monitoring of the valves.

(c) **Multiple Violations:** Respondent failed to comply with the applicable Subpart BB regulations for the ancillary equipment (pumps and valves) associated with its hazardous waste tank. Approximately 47 valves and 3 pumps were not monitored in accordance with Subpart BB regulations since September 2005. The penalties assessed take into account past violations during the period 180 days prior to EPA’s discovery of the violations. Respondent should have conducted 6 monitoring events of such equipment during this period.

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

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

Willfulness/Negligence: Not applicable

History of Compliance: Prior warning was given to the Facility on May 2005. No separate adjustment is being made under this factor.

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. **Economic Benefit:** The economic benefit derived from all violations was determined to be less than ten percent of the proposed penalty. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

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

**ATTACHMENT II
GRAVITY MATRIX**

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$32,500 to 26,000	\$25,999 to 19,500	\$19,499 to 14,300
	MODERATE	\$14,299 to 10,400	\$10,399 to 6,500	\$6,499 to 3,900
	MINOR	\$3,899 to 1,950	\$1,949 TO 650	\$649 TO 130

MULTI-DAY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
		MAJOR	MODERATE	MINOR
P O T E N T I A L F O R H A R M	MAJOR	\$6,500 to \$1,300	\$6,499 to \$975	\$3,900 to \$715
	MODERATE	\$2,860 to \$520	\$2,080 to \$325	\$1,300 to \$195
	MINOR	\$780 to \$130	\$390 TO \$130	\$130