



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

SEP 29 2011

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 OCT -4 P 3:39
REGIONAL HEARING
CLERK

David Samson
Chairman
Port Authority of New York and New Jersey
225 Park Avenue South
New York, NY 10003

Re: **In the Matter of the Port Authority of New York and New Jersey**
Docket No. RCRA-02-2011-7110

Dear Mr. Samson:

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 an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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**

In the Matter of:

The Port Authority of New York and
New Jersey

Respondent.

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

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

Docket No. RCRA-02-2011-7110

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 OCT -4 P 3:39
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 United States Code (U.S.C.) §§ 6901-6991 (referred to collectively as the "Act" or "RCRA").

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the preliminary determination of the United States Environmental Protection Agency ("EPA") that the Port Authority of New York and New Jersey has violated certain requirements of the federally enforceable authorized New York and New Jersey State hazardous waste programs that apply to the management of hazardous waste at its facilities.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program. The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. *See* 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005), and 74 Fed. Reg. 31380 (July 1, 2009). New York is authorized to administer most of the hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

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 (Aug. 2, 1999). There have been 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 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in 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 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 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

This Complaint cites authorized regulations in both New York and New Jersey. Where a facility is located in New York, reference is made to the New York Codes, Rules and Regulations. Where a facility is in New Jersey, the New Jersey Administrative Code, which incorporates provisions of the Code of Federal Regulations is cited. Both regulations are mentioned where appropriate.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the authorized regulations comprising the State programs. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation." Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides in part, that "[i]n the case of a violation of any requirement [of Subtitle C of RCRA] where such violation occurs in a state which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. § 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order."

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

JURISDICTION

1. This administrative 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 States of New York and New Jersey prior notice of this action.

RESPONDENT

3. Respondent, the Port Authority of New York and New Jersey ("PANYNJ" or "Respondent"), operates "facilities" in New York and New Jersey. Specifically, PANYNJ operates the Lincoln Tunnel at 39th Street and 11th Avenues in New York, New York; the Port Authority Bus Terminal ("Bus Terminal") at 825 8th Avenue in New York, New York; the Port Authority Technical Center ("PATC") at 241 Erie Street in Jersey City, New Jersey; and the Newark Liberty International Airport (aka "EWR") in Newark, New Jersey (the "Facilities").

4. Respondent conceives, builds, operates and maintains infrastructure in the New York/New Jersey region's trade and transportation network. These facilities include America's busiest airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Bus Terminal in Manhattan, and the World Trade Center site.

GENERAL ALLEGATIONS

5. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b)), and 40 C.F.R. § 260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).

6. Respondent has been and remains the "owner" of more than one "facility" as those terms are defined in 6 NYCRR § 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

7. Respondent has been and remains the "operator", as that term is defined in 6 NYCRR § 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a), of the Facilities as described in paragraph 3 above.

8. Respondent currently generates and has been generating "solid waste," as defined in 6 NYCRR 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

9. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated April 1986, that it was a large quantity generator of hazardous waste at its Lincoln Tunnel New York Facility. EPA issued Respondent an EPA Identification Number NYD981483332 for that Facility.

10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated August 1992, that it was a large quantity generator of hazardous waste at its Bus Terminal Facility. EPA issued Respondent an EPA Identification Number NYD987012689 for that Facility.

11. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated November 1986, that it was a large quantity generator of hazardous waste at its Technical Center Facility. EPA issued Respondent an EPA Identification Number NJD060792918 for that Facility.

12. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated August 1982, that it was a large quantity generator of hazardous waste at its Newark Liberty International Airport Facility. EPA issued Respondent an EPA Identification Number NJD980648497 for that Facility.

13. Respondent is a “generator” of “hazardous waste,” as those terms are defined in 6 NYCRR § 370.2(b), § 371.1(d), and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

14. The requirements for generators of hazardous waste are set forth in 6 NYCRR Part 372 and 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

EPA’s Inspections of the Facilities

15. On or about September 10, 2009 and October 7, 2010, a duly designated EPA representative (“Inspector”) conducted two separate inspections of the Lincoln Tunnel New York Facility including related buildings referred to as the “Land Building”, the “River Building” and the “Vent Building South” (“Lincoln Tunnel NY Inspections”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New York State’s authorized hazardous waste regulations.

16. On or about October 28, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Bus Terminal Facility (“Bus Terminal Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New York State’s authorized hazardous waste regulations.

17. On or about October 27, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Port Authority Technical Center Facility (“PATC Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations.

18. On or about November 16, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Newark Liberty International Airport Facility (“EWR Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations.

19. On or about May 13, 2010, Respondent submitted documentation to EPA that was requested during the April 6, 2010 Inspection of the Lincoln Tunnel Facility.
20. Pursuant to Section 3007 of RCRA, 42 U.S.C. §§ 6927, on or about July 8, 2010, EPA issued an Information Request Letter ("IRL") to Respondent regarding its management of hazardous waste at its Lincoln Tunnel Facilities.
21. On or about September 10, 2010, Respondent submitted its response to EPA's July 2010 IRL ("IRL Response").
22. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about December 13, 2010, EPA issued a second Information Request Letter ("Second IRL") and a Notice of Violation ("NOV") to Respondent regarding its management of hazardous waste at its Facilities.
23. On or about February 16, 2011, Respondent submitted its response to EPA's December 2010 IRL/NOV.

Count 1
Failure to Make Hazardous Waste Determinations

24. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
25. Pursuant to 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 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.
26. Pursuant to 6 NYCRR § 371.1(c)(2) and 40 C.F.R. § 261.2, as incorporated by reference by NJAC 7:26G-5.1(a), subject to certain exclusions inapplicable here, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined.
27. Pursuant to 6 NYCRR § 371.1(c)(3) and 40 C.F.R. § 261.2(b), as incorporated by reference by NJAC 7:26G-5.1(a), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."
28. Prior to the EWR Inspection on November 16, 2010, Respondent "abandoned" solvent-soaked rags on-site by storing and/or accumulating them at EWR in the general trash before, or in lieu of, disposing them off-site.

29. Prior to the Bus Terminal and EWR Inspections on October 28, 2010 and November 16, 2010, respectively, Respondent "abandoned" aerosol cans on-site by storing and/or accumulating them at the Bus Terminal and EWR in the general trash before, or in lieu of, disposing them off-site.

30. Prior to the October 27, 2010 PATC Inspection, Respondent generated and abandoned the following waste materials, among others, at its PATC facility:

Old, unlabelled samples from August 2008 and other unlabelled chemicals in the Chemical and Environmental Testing Lab on the 2nd floor.

31. Each of the materials identified in Paragraphs 28 through 30, above, was a "discarded material" and "solid waste," as defined in 6 NYCRR § 371.1(c)(2) and 40 C.F.R. § 261.2, as incorporated by reference by NJAC 7:26G-5.1(a).

32. In its December 13, 2010 NOV, EPA alleged that PANYNJ had generated the waste streams described in paragraphs 28 through 30 above without making a hazardous waste determination as required by the regulations.

33. With respect to the allegation in paragraph 28 above, in its February 16, 2011 Response to the NOV, PANYNJ stated that at its EWR Facility "[a]ll shop rags are now placed in a 35-gallon or 55-gallon steel drum...The drum is labeled "hazardous waste"."

34. With respect to the allegation in paragraph 29 above, in its February 16, 2011 Response to the NOV, PANYNJ stated that at its Bus Terminal Facility that "[f]acility staff was not fully informed of the hazardous waste designation for aerosol cans. In the short term, aerosol cans will be managed and disposed of as hazardous waste." The Response continued with respect to the EWR Facility that "[f]acility staff has been instructed to handle these cans as hazardous waste...Accordingly, all aerosol cans are now placed in a 55-gallon steel drum...The drum is labeled "hazardous waste"."

35. With respect to the allegation in paragraph 30 above, in its February 16, 2011 Response to the NOV, PANYNJ stated that at its PATC Facility "[u]n-labeled chemicals have been labeled or sent out for testing. Old samples will be sent to the PA contract laboratory for testing."

36. Prior to inspections of the above-cited Facilities, Respondent had not determined if any of the solid wastes identified in Paragraphs 28 through 30, above, constituted a hazardous waste.

37. Respondent's failure to determine if each solid waste generated at its Facilities constitutes a hazardous waste is a violation of 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a).

38. PANYNJ's violation of 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

Count 2

Storage of Hazardous Waste Without a Permit

39. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

40. Respondent's Lincoln Tunnel NY, PATC, and EWR facilities have been "storage" facilities as that term is defined in 6 NYCRR § 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

41. Pursuant to 6 NYCRR § 373-1.2(a), 40 C.F.R. § 270.1 as incorporated by reference by NJAC 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, a RCRA permit or interim status is required for the storage of hazardous waste.

42. Respondent's Facilities do not have interim status or a permit authorizing the storage of hazardous waste at these Facilities.

43. Subsections 6 NYCRR § 373-1.1(d), 6 NYCRR § 372.2(a)(8)(ii) and 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a) provide, in part, that a generator may accumulate hazardous waste on-site for a period of 90 days or less without being subject to the permitting requirements [*i.e.* without having obtained a permit or without having interim status], provided such generator complies in New York with the requirements of, *inter alia*, 6 NYCRR §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx) and in New Jersey with Subparts C, D and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with Container Storage Area Requirements

44. 6 NYCRR § 372.2(a)(8)(ii) requires that the date upon which each period of accumulation begins be clearly marked and visible for inspection on each container of hazardous waste.

45. 6 NYCRR § 373-3.9(d)(3) requires the generator to mark clearly each container in storage areas with the words "Hazardous Waste" and with other words that identify the contents of the containers.

46. 40 CFR § 262.34(a)(3), as incorporated by reference by NJAC 7:26G-6.1(a), requires the generator to clearly mark on each container in storage areas with the words "Hazardous Waste".

47. 40 CFR § 262.34(c)(1)(ii) as incorporated by reference by NJAC 7:26G-6.1(a), requires the generator to clearly mark each container in accumulation areas at or near any point of generation where wastes initially accumulate with the words “Hazardous Waste” or with other words that identify the contents of the containers.

48. At the time of the September 2009 Lincoln Tunnel NY Inspection, waste containers of lead based paint chips and lead contaminated personal protective equipment (PPE) in the storage area of the Land Building did not have any labels with the words “hazardous waste” or accumulation start dates.

49. In Respondent’s May 13, 2010 Response, Respondent stated that lead waste materials generated from Lincoln Tunnel lead abatement projects were analyzed in 2001 and were determined to be hazardous waste and that, since the testing, the waste from these projects has been considered hazardous waste based on “generator knowledge”.

50. In its December 13, 2010 NOV, EPA alleged that PANYNJ had generated the hazardous waste described in paragraph 49 without labeling the containers as “hazardous waste” or marking the containers with the accumulation start date.

51. Respondent stated in its NOV Response dated February 16, 2011, that with regard to the waste containers observed during the Lincoln Tunnel NY Inspection, “[a]fter the inspection and prior to receipt of further correspondence from EPA, labels were added to all drums.”

52. During the PATC Inspection, in the garage, EPA observed waste containers in a PPE waste storage area with no hazardous waste labels. The containers included four drums labeled “Debris from Hepa vacuum and shotgun shells”.

53. In its February 16, 2011 Response to the Information Request Letter, PANYNJ stated that “[t]he spent shotgun shells were first analyzed on December 9, 2009 showing a TCLP lead concentration of 80 mg/L.”

54. Waste materials with a TCLP lead concentration of 80 mg/L are hazardous waste.

55. At the time of the EWR Inspection, the inspector observed thirteen drums of waste materials in a waste storage area with labels, including one labeled “1735”. However, none of the waste containers in the area had any labels indicating that the drums contained hazardous waste.

56. During the EWR Inspection, Respondent’s representative stated that the drum labeled 1735 contained hazardous waste.

57. At the time of the EWR Inspection, a 55-gallon drum of waste oil-based paint was observed in the Paint Shop. The drum was closed with no label.

58. In its February 16, 2011 Response to the NOV, PANYNJ stated that as a result of the inspection, “the observed drum was labeled ‘hazardous waste’”.

59. In its December 13, 2010 NOV, EPA alleged that, based on Lincoln Tunnel inspection logs from the September 10, 2010 IRL Response, hazardous waste lead based paint chips had been stored by Respondent for more than 90 days in the New York Land Building at various times during 2006, 2007, 2008, and 2009; in the River Building in 2007; and in Vent Building South in 2006.

60. In its February 16, 2011 Response to the NOV, PANYNJ stated that “[a] misunderstanding of the detailed requirements for storage areas was the cause of the extended storage of drums containing hazardous waste. Regrettably, some hazardous wastes were stored over 90-days, but safely within sealed drums in secured areas that are not open to the public.”

61. 6 NYCRR § 373-3.9(e) and 40 C.F.R. § 265.174, which is set forth in Subpart I of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a) requires the generator to inspect areas where hazardous waste containers are stored at least weekly, and to look for leaking containers, deterioration of containers and problems in the containment system caused by corrosion or other factors.

62. In its December 13, 2010 NOV, EPA alleged that, at the time of the PATC Inspection, both the area in Room 306A where lead filter hazardous waste was stored and the area in the garage where there was PPE hazardous waste storage were not being inspected weekly.

63. In its February 16, 2011 Response to the NOV, PANYNJ stated that with regard to weekly inspections in these areas “[i]nspection routines were immediately modified to ensure weekly inspections...”.

64. At the time of the Inspection, no third-party was conducting weekly inspections of the hazardous waste storage areas at the PATC facility.

Failure to Comply with the Requirements for Preparedness and Prevention

65. 6 NYCRR § 373-3.3(c)(3) and 40 CFR § 265.32(c), as incorporated by reference 40 CFR § 262.34(d)(4) and NJAC 7:26G-9.1(a) require that all facilities be equipped with fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

66. In its December 13, 2010 NOV, EPA alleged that, at the time of the Lincoln Tunnel NY Inspections, no fire extinguishers, spill control materials, or decontamination equipment were observed at the River Building in the location where hazardous waste was stored during the last lead abatement project.

67. In its February 16, 2011 Response to the NOV, PANYNJ stated that “[a] fire extinguisher, spill control packs and decontamination equipment have been added to this area.”

68. At the time of the PATC Inspection, no fire extinguishers, fire control equipment, spill control materials, or decontamination equipment were observed near or in the PPE waste storage area.

Failure to Satisfy Conditions for Generators which, if Complied With,
Would Have Exempted Respondent from Permitting Requirements

69. Prior to November 2010, Respondent failed to satisfy all the conditions set forth or cross-referenced in 6 NYCRR § 372.2(a)(8)(ii) and 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), including but not limited to conditions set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx) and Subparts C, D and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a), which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 90 days.

Storage of Hazardous Waste Without a Permit

70. At the time of the Inspections, Respondent stored hazardous waste at its Lincoln Tunnel NY, PATC, and EWR facilities without having interim status or a permit in violation of 6 NYCRR § 373-1.2(a), 40 C.F.R. § 270.1(c) as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.

71. PANYNJ's violation of 6 NYCRR § 373-1.2(a), 40 C.F.R. § 270.1(c) as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

II. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1: \$32,900

Count 2: \$50,900

Total Proposed Penalty for Counts 1 and 2: **\$83,800**

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>. This 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. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments relevant to the time period of the alleged violations in this case were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty 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 (with a further revision not relevant to this action on April 6, 2010).

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. See 40 C.F.R. Part 19.

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 Attachment II below.

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues PANYNJ the following Compliance Order:

1. Within twenty (20) days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent shall:

- a. make hazardous waste determinations for each solid waste generated at the Facilities pursuant to 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a);
- b. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including:

6 NYCRR § 372.2(a)(8)(ii), including but not limited to conditions set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx), 40 C.F.R. § 262.34(a), as incorporated by reference by NJAC 7:26G-6.1(a); and

- c. as an alternative to compliance with the generator provisions identified in this Compliance Order, obtain and comply with a hazardous waste storage permit from

the New York State Department of Environmental Conservation pursuant to applicable provisions in 6 NYCRR or the New Jersey State Department of Environmental Protection pursuant to applicable provisions set forth in 40 C.F.R. Part 270, as incorporated by reference by NJAC. 7:26G-12. However, Respondent must comply with the appropriate requirements cited in Paragraph 1b, above, until such permit is obtained.

2. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall submit to EPA: a) a written statement indicating for each of the facilities whether it intends to continue its operations as a Large Quantity Generator generating more than 1,000 kilograms of hazardous waste in a calendar month and observing the conditions for accumulation of hazardous waste without a permit, or as a permitted hazardous waste storage facility; and b) a statement indicating its compliance with this Compliance Order, and all documentation demonstrating such compliance. Respondent's submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates, and other identifying aspects, of these prior submissions should be indicated. If Respondent is not in compliance with a particular requirement, the notice shall state the reasons for such noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

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

Ms. Meghan La Reau
Senior Enforcement Team
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

This Compliance Order shall take effect 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).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations at the Facilities. Further, nothing herein shall waive, prejudice or otherwise affect EPA's right to enforce any applicable provisions of law regarding the Facilities.

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 regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008 and 40 C.F.R. Part 19 (2009)).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 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." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

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(s) to the Complaint, and such Answer(s) must be filed within thirty (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(s) 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 the 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 its 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 requests 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 thirty (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(s) 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 thirty (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 Environmental Appeals Board 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 the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin thirty (30) days after the initial decision is served upon the parties." 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected 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 forty five (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.

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, and/or (2) 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:

Stuart Keith
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, N.Y. 10007-1866
Telephone (212) 637-3217

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 request for 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(s) 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 shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the 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 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.

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.

Dated: SEPTEMBER 29, 2011
New York, New York

COMPLAINANT:



Dore LaPosta Director
Division of Enforcement and Compliance Assistance
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To: David Samson
Chairman
Port Authority of New York and New Jersey

225 Park Avenue South
New York, NY 10003

cc: Russ Brauksieck, Chief
Facility Compliance Section
NYSDEC
625 Broadway, 11th Floor
Albany, NY 12233-7251

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

ATTACHMENT 1

Penalty Computation Worksheet (Count 1)

Respondent: PANYNJ

Requirement Violated:

6 NYCRR § 372.2(a)(2), 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G-6.1(a).

Respondent failed to make hazardous waste determinations for each solid waste stream generated at its Facilities.

PENALTY AMOUNT

1. Gravity based penalty from matrix	\$32,915
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1.	Not applicable
4. Add line 1 and line 3.	\$32,915
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$32,900*

* Penalties have been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1. Gravity Based Penalty

- a. Potential for Harm – The Potential for Harm was determined to be MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure, and the adverse impact of the noncompliance on the regulatory scheme. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be treated as such. In this instance, Respondent failed to determine if waste streams generated at its Facilities, which were potentially hazardous, constituted hazardous waste. Consequently, some of the waste streams were disposed of in the municipal trash in a manner potentially harmful to human health and the environment.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. At three of the four facilities inspected, Respondent had failed to make waste determinations and the alleged failures involved more than one waste stream. The applicable cell ranges from \$28,330 to \$ 37,500. The mid-point of the range was selected.
- c. Multiple/Multi-day – Based on information presently available to it, multi-day penalties are not being sought at this time.

2. Adjustment Factors

- a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable
- d. Ability to Pay - Not applicable
- e. Environmental Project - Not applicable
- f. Other Unique Factors - Not applicable

3. Economic Benefit – Economic benefit is not being assessed at this time.

Penalty Computation Worksheet (Count 2a)

Respondent: PANYNJ Lincoln Tunnel NY Facility

Requirement Violated: 6 NYCRR § 373-1.2 and Section 3005 of the Act, 42 U.S.C. § 6925.

Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint. As a result of failing to comply with the specified management requirements, Respondent was not exempt from the legal requirement to obtain a permit or qualify for interim status.

Large quantity generators must comply with the hazardous waste container management requirements, the hazardous waste storage area requirements, and must meet certain preparedness and prevention requirements to be exempt from permitting.

PENALTY AMOUNT

1. Gravity based penalty from matrix	\$28,330
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1.	Not applicable
4. Add line 1 and line 3.	\$28,330
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$28,300*

* Penalties have been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2a)

1. Gravity Based Penalty

- a. Potential for Harm – The Potential for Harm was determined to be MAJOR. Operating treatment, storage or disposal facilities without a permit is a serious violation and has a substantial adverse effect on the RCRA regulatory program. Respondent failed to comply with conditions for accumulating hazardous waste without a permit. The Lincoln Tunnel NY Facility had hazardous waste stored for greater than 90 days in three separate locations between 2006 and 2009. The longer waste is stored, the more potential there is for contamination or adverse exposure due to mismanagement. At the time of EPA's inspection, hazardous waste containers were observed with no labels or accumulation start dates. The failure to at least label containers of waste as hazardous poses a substantial potential for harm since personnel who may be required to respond to incidents involving this waste would be unable to determine what special precautions may be necessary to protect themselves. In addition, improperly marked containers may be mistaken for non-hazardous waste and be disposed of improperly. Furthermore, at this facility there were no fire extinguishers, spill control materials or decontamination equipment in one of the waste storage areas. The potential for harm for these combined violations is therefore deemed to be MAJOR.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. The Respondent substantially deviated from the requirements and did not have a RCRA permit or interim status. However, PANYNJ did meet some of the requirements and does maintain its own emergency responders, which improves its preparedness and prevention capabilities to address emergencies.

The applicable cell ranges from \$21,250 to \$28,330. The high point of the range was selected due to the seriousness of the violation and the size and sophistication of the PANYNJ.

- c. Multiple/Multi-day – Multi-day penalties are not being sought at this time.

2. Adjustment Factors

- a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable

- d. Ability to Pay - Not applicable
 - e. Environmental Project - Not applicable
 - f. Other Unique Factors - Not applicable
3. Economic Benefit – Economic benefit is not being assessed at this time.

Penalty Computation Worksheet (Count 2b)

Respondent: PANYNJ PATC Facility

Requirement Violated: 40 C.F.R. § 270.1 as incorporated by reference by NJAC. 7:26G-12.1(a) and Section 3005 of the Act, 42 U.S.C. § 6925.

Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint. As a result of failing to comply with the specified management requirements, Respondent was not exempt from the legal requirement to obtain a permit or qualify for interim status.

Large quantity generators must comply with the hazardous waste container management requirements, the hazardous waste storage area requirements, and must meet certain preparedness and prevention requirements to be exempt from permitting.

PENALTY AMOUNT

1. Gravity based penalty from matrix	\$11,330	
(a) Potential for Harm.	MODERATE	
(b) Extent of Deviation.	MODERATE	
2. Select an amount from the appropriate multi-day matrix cell.		Not applicable
3. Multiply line 2 by number of days of violation minus 1.		Not applicable
4. Add line 1 and line 3.		\$11,330
5. Percent increase/decrease for good faith.		Not applicable
6. Percent increase for willfulness/negligence.		Not applicable
7. Percent increase for history of noncompliance.		Not applicable
8. Total lines 5 through 7.		Not applicable
9. Multiply line 4 by line 8.		Not applicable
10. Calculate economic benefit.		Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.		\$11,300*

* Penalties have been rounded to the nearest hundred.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2b)**

1. Gravity Based Penalty

- a. Potential for Harm – The Potential for Harm was determined to be MODERATE. Operating treatment, storage or disposal facilities without a permit is a serious violation and has a substantial adverse effect on the RCRA regulatory program. The failure to at least label containers of waste as hazardous poses a potential for harm since personnel who may be required to respond to incidents involving this waste would be unable to determine what special precautions may be necessary to protect themselves. In addition, improperly marked containers may be mistaken for non-hazardous waste and be disposed of improperly. Some of the areas where the waste was stored were not inspected on a weekly basis and did not have the required emergency equipment. However, the amount of hazardous waste mismanaged was relatively small and most of the containers were sealed. For these reasons, the potential for harm has been determined to be MODERATE.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. The Respondent substantially deviated from the requirements and did not have a RCRA permit or interim status. However, PANYNJ did meet some of the requirements and does maintain its own emergency responders, which improves its preparedness and prevention capabilities to address emergencies.

The applicable cell ranges from \$7,090 to \$11,330. The high point of the range was selected due to the number of infractions and the size and sophistication of the PANYNJ.

- c. Multiple/Multi-day – Multi-day penalties are not being sought at this time.

2. Adjustment Factors

- a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable
- d. Ability to Pay - Not applicable
- e. Environmental Project - Not applicable

f. Other Unique Factors - Not applicable

3. Economic Benefit – Economic benefit is not being assessed at this time.

Penalty Computation Worksheet (Count 2c)

Respondent: PANYNJ EWR Facility

Requirement Violated: 40 C.F.R. § 270.1 as incorporated by reference by NJAC. 7:26G-12.1(a) and Section 3005 of the Act, 42 U.S.C. § 6925.

Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint. As a result of failing to comply with the specified management requirements, Respondent was not exempt from the legal requirement to obtain a permit or qualify for interim status.

Large quantity generators must comply with the hazardous waste container management requirements, the hazardous waste storage area requirements, and must meet certain preparedness and prevention requirements to be exempt from permitting.

PENALTY AMOUNT

1. Gravity based penalty from matrix	\$11,330
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1.	Not applicable
4. Add line 1 and line 3.	\$11,330
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$11,300*

* Penalties have been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2c)

1. Gravity Based Penalty

a. Potential for Harm – The Potential for Harm was determined to be MODERATE. Operating treatment, storage or disposal facilities without a permit is a serious violation and has a substantial adverse effect on the RCRA regulatory program. At the time of the EPA Inspection, none of the 13 drums in the Hazardous Waste Storage Area had hazardous waste labels. According to staff, all waste in this storage area is deemed hazardous waste until someone from the PA Materials Engineering Unit can come to make a proper determination. Despite this stated approach, Respondent was not following the rules for hazardous waste container labeling. In addition, 1 drum in the Paint Shop had no hazardous label. At least 1 of the drums in the Hazardous Waste Storage Area and the 1 drum in the Paint Shop did in fact contain hazardous waste. The failure to label containers of waste as hazardous poses a potential for harm since personnel who may be required to respond to incidents involving this waste would be unable to determine what special precautions may be necessary to protect themselves. In addition, improperly marked containers may be mistaken for non-hazardous waste and be disposed of improperly. However, at the time of the Inspection, all the containers were sealed and ultimately, the waste was properly identified. For these reasons, the potential for harm has been determined to be MODERATE.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. The Respondent substantially deviated from the requirements and did not have a RCRA permit or interim status. However, PANYNJ did meet some of the requirements and does maintain its own emergency responders which improves its preparedness and prevention capabilities to address emergencies.

The applicable cell ranges from \$7,090 to \$11,330. The high point of the range was selected due to the number of unlabelled drums and the size and sophistication of the PANYNJ.

c. Multiple/Multi-day – Multi-day penalties are not being sought at this time.

2. Adjustment Factors

a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

- c. History of Compliance - Not applicable
- d. Ability to Pay - Not applicable
- e. Environmental Project - Not applicable
- f. Other Unique Factors - Not applicable

Economic Benefit – Economic benefit is not being assessed at this time.

ATTACHMENT II

Gravity-based penalty matrix
to supplement the RCRA Civil Penalty Policy
for violations that occur after January 12, 2009*

Extent of Deviation from Requirement

Potential for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
MODERATE	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
MINOR	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

* All penalties calculated in this action have been rounded to the nearest \$100.

**Multi-Day Matrix of Minimum Daily Penalties
To Supplement the RCRA Civil Penalty Policy
For Violations That Occur After January 12, 2009***

Extent of Deviation from Requirement

Potential
for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
MINOR	\$850 to \$150	\$430 to \$150	\$150

* All penalties calculated in this action have been rounded to the nearest \$100

**In re: Port Authority of New York and New Jersey
Docket Number RCRA-02-2011-7110**

CERTIFICATE OF SERVICE

This is to certify that on OCT 03, 2011, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING" bearing Docket Number RCRA-02-2011-7110, hereinafter referred to as the "Complaint"), together with Attachments I and II 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 David Samson, Chairman, Port Authority of New York and New Jersey, 225 Park Avenue South, New York, NY 10003. On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Name: Mildred Baez
Mildred Baez