UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

March 15, 2012

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square
Boston, Massachusetts 02140

Re: In the Matter of Northland Environmental, LLC and PSC Environmental Services, LLC;
Docket No. RCRA-01-2012-0028

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Complaint. Thank you for your assistance in this matter.

Very truly yours,

Andrea Simpson
Senior Enforcement Counsel

cc: Chris Dods

Enclosure

Docket No. RCRA-01-2012-0028

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, the original and one copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk and copies were sent to Respondents, as set forth below:

Original and one copy
by hand delivery to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109

Copies by certified mail to:

Chris Dods, President
Northland Environmental, LLC
275 Allens Avenue
Providence, RI 02905

Chris Dods, President
PSC Environmental Services, LLC
5151 San Filipe Street, Suite 1600
Houston, TX 77056

Dated: 3/15/2012

Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region1
5 Post Office Square, Suite 100
Boston, MA 02109

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of: Northland Environmental, LLC 275 Allens Avenue Providence, RI 02905 PSC Environmental Services, LLC 5151 San Filipe Street, Suite 1600 Houston, TX 77056 Respondents Proceeding under Section 3008(a) Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)	Docket No. RCRA-01-2012-0028 **COMPLAINT, COMPLIANCE ORDER, NOTICE OF OPPORTUNITY FOR HEARING, AND NOTICE OF OPPORTUNITY TO CONFER**

I. STATEMENT OF AUTHORITY

1. This Complaint, Compliance Order, Notice of Opportunity for Hearing and Notice of Opportunity to Confer ("Complaint") is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (CROP), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency (EPA), Region 1 (Region 1).

2. Respondents, Northland Environmental, LLC ("Northland') and PSC Environmental Services, LLC ("PSC"), are hereby notified of Complainant's determination that Respondents

have violated Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924 and 6925, 40 C.F.R. Parts 262 and 264, and 265, Chapter 23-19.1 of the Rhode Island General Laws, and the Rhode Island Consolidated Rules and Regulations for Hazardous Waste Management formerly §§ 1.00 through 13.00 ("RI HW Rules") (currently §§ 1.0 through 13.0).

3. Complainant hereby provides notice of Respondents' opportunity to request a hearing and opportunity to confer concerning these allegations.

II. NATURE OF ACTION

4. This is an action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain compliance with RCRA and the hazardous waste regulations promulgated to implement RCRA and to seek civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for violations of RCRA and its implementing regulations.

5. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of commencement of this action has been given to the State of Rhode Island.

III. STATUTORY AND REGULATORY FRAMEWORK

6. RCRA was enacted on October 21, 1976, and amended thereafter by, among other things, the Hazardous and Solid Waste Amendments of 1984 (HSWA). Subchapter III of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. See 42 U.S.C. §§ 6921-6939e. Pursuant to Subchapter III of RCRA, EPA has promulgated regulations that set forth standards and requirements applicable to generators and transporters of hazardous waste, as well as standards and requirements that are applicable to owners and operators of facilities that treat, store, and dispose of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260-271.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be equivalent to the federal program.

8. On January 30, 1986, EPA granted the State of Rhode Island final authorization to administer its hazardous waste management program in lieu of the federal hazardous waste management program. See 51 Fed. Reg. 3780 (January 30, 1986). Updates to the Rhode Island hazardous waste management program were authorized by EPA on March 12, 1990, effective March 26, 1990; March 6, 1992, effective May 5, 1992; October 2, 1992, effective December 1, 1992; August 9, 2002, effective October 8, 2002; December 11, 2007, effective February 11, 2008; and September 20, 2010, effective September 24, 2010. The authority for the Rhode Island hazardous waste management program is set out at Chapter 23-19.1 of the Rhode Island General Laws, with implementing regulations formerly promulgated as RI HW Rules 1.00 through 17.00 (currently RI HW Rules 1.0 through 17.0).[1]

9. Because EPA has not yet authorized the State of Rhode Island to implement some HSWA portions of the federal RCRA program, there is a dual State/Federal RCRA program in Rhode Island. State law governs the base hazardous waste management program, but EPA has exclusive jurisdiction to implement and enforce the HSWA of 1984 requirements for which the State of Rhode Island is not authorized.

10. Pursuant to Sections 3006(g) and 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6926(g) and 6928(a) and (g), EPA may enforce the federally approved State of Rhode Island hazardous

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[1]The regulations in effect at the time of the violations are cited herein, with cross reference to the current regulatory citations.

waste program, as well as the federal regulations promulgated pursuant to HSWA, by issuing an order assessing a civil penalty for any past or current violation of RCRA and requiring immediate compliance. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, among other things, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subchapter C of RCRA.

11. Section 3008(a) of RCRA provides that upon finding that any person has violated or is violating any requirement of Subchapter C of RCRA, including violations in an authorized state, EPA may issue an order requiring compliance immediately or within a specified time and assessing a civil penalty for any past or current violation. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter C of RCRA shall be liable to the United States for a civil penalty in an amount of up to $25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 et seq., as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to $32,500 per day per violation for violations that occurred after March 15, 2004 and before January 13, 2009. Violations that occur on or after January 13, 2009 are subject to penalties up to $37,500 per day per violation.

IV. GENERAL ALLEGATIONS

12. Northland is a limited liability corporation organized under the laws of Delaware with its principal place of business located at 5151 San Filipe, Suite 1600, Houston, Texas. Northland is the "operator," as that term is defined in 40 C.F.R. § 260.10 and former RI HW Rule 3.00 (currently RI HW Rule 3.0), of an environmental services facility located at 252 and

275 Allens Avenue, Providence, Rhode Island ("Facility").

13. PSC is a limited liability corporation organized under the laws of Delaware with its principal place of business located at 5151 San Filipe, Suite 1600, Houston Texas. PSC is the "owner," as that term is defined in 40 C.F.R. § 260.10 and former RI HW Rule 3.00 (currently RI HW Rule 3.0), of the Facility.

14. Each Respondent is a "person," as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and former RI HW Rule 3.00 (currently RI HW Rule 3.0).

15. The Facility is a commercial hazardous and non-hazardous waste treatment, storage and transfer facility. The Facility accepts and handles a broad spectrum of wastes including, but not limited to, acids, alkalis, flammable wastes, water reactive wastes, cyanides, sulfides, oxidizers, toxic wastes, oily wastes, photochemical wastes, and laboratory packs ("lab packs").

16. The Facility consists of an approximately seven acre parcel of land. Hazardous and non-hazardous wastes are received at the Facility, stored and/or consolidated and then shipped off site for treatment and/or disposal.

17. On December 1, 2007, the Rhode Island Department of Environmental Management issued a permit ("Permit") to Northland Environmental, LLC to operate as a hazardous waste treatment, storage and disposal ("TSD") facility in accordance with Chapter 23-19.1 of the General Laws of Rhode Island and the RI HW Rules. The Permit's term is five years. Pursuant to the general "Compliance" paragraph of the Permit, the Permit Application submitted in June 2007, final revision in September 2008, as amended, is considered to be part of the Permit.

18. The Facility is, and at all times relevant to this Complaint has been, used for treating, storing, or transferring "hazardous waste" within the meaning of Section 1004(5) of

RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3, and former RI HW Rule 3.00 (currently RI HW Rule 3.0).

19. At all times relevant to this Complaint, the Facility is and has been a "generator" as that term is defined in 40 C.F.R. § 260.10 and former RI HW Rule 3.00 (currently RI HW Rule 3.0).

20. Accordingly, as owners and/or operators of a facility that generates, treats and stores hazardous waste, Respondents are subject to RCRA, the Permit, the federal regulations promulgated at 40 C.F.R. Parts 260-271 and 273 and former RI HW Rules 1.00-13.00 (currently RI HW Rules 1.0 - 13.0).

21. On July 20-23 and September 1-2, 2009, authorized representatives of EPA Region 1 conducted a RCRA compliance evaluation inspection of the Facility ("Inspection") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. During the Inspection, EPA Region 1 inspectors evaluated conditions observed at the Facility and reviewed various documents.

22. On October 15, 2009, EPA issued an Early Warning Letter to Northland regarding its Inspection findings.

23. On January 7, 2010, EPA issued an information request to Northland pursuant to Section 3007 of RCRA. Northland submitted a written response on January 22, 2010.

V. VIOLATIONS

Based on the Inspection, Northland's response to EPA's information request and other information contained in Northland's and EPA's files, Complainant has identified the following violations of RCRA, the Permit and the RI HW Rules.

Count 1 - Failure to Conduct Adequate Hazardous Waste Determinations

24. Complainant incorporates by reference the allegations in paragraphs 1 to 23 above.

25. Pursuant to former RI HW Rule 5.08 (currently RI HW Rule 5.8), a generator of hazardous waste must conduct hazardous waste determinations. See 40 C.F.R. § 262.11; see also 40 C.F.R. §§ 268.7(a) and (b) and 268.9(a). Permit Condition 23 (Waste Analysis) requires compliance with former RI HW Rule 9.02 (currently RI HW Rule 8.1), as described in Section 5.00 of the Permit Application (Waste Analysis Plan). Former RI HW Rule 9.02 (currently RI HW Rule 8.1) incorporates 40 C.F.R. § 264.13 (General Waste Analysis), which requires that before an owner or operator treats, stores or disposes of any hazardous wastes, (or non-hazardous wastes under certain closure situations), it must obtain a detailed chemical and physical analysis of a representative sample of the wastes. Such analysis must contain all the information which must be known to treat, store or dispose of the waste and be sufficient in detail to comply with the land disposal restriction requirements of 40 C.F.R. Part 268.

26. At the time of the Inspection, Respondents had not conducted adequate hazardous waste determinations for the following containers of waste and waste stream categories in the areas specified:

(a) Respondents shipped 50 columns used to recover silver from photographic processing waste. On the corresponding bill of lading dated October 7, 2008, the waste stream was described as "exhausted photo film developing material." At the time of the Inspection, there was no indication that Respondents had conducted a waste determination or performed any analysis of this waste. The waste may have contained silver above regulatory limits;

(b) Tank S-12: At the time of the Inspection, there were 10,302 gallons of material in this

tank which is located in the oil/oily water tank farm. The tank was labeled "non-hazardous." On August 26, 2009, Respondent shipped 5,050 gallons of this waste as hazardous waste (toxic, flammable liquid containing xylene and toluene) under manifest number 004939658 JJK. At the time of the Inspection, EPA representatives sampled the waste in this tank. EPA's analytical results demonstrated the presence of lead (EPA waste code D008), chromium (D007), tetrachloroethene and trichlorofluoromethane (F002) at or above regulatory limits, confirming that this waste was hazardous;

(c) Tank S-29: At the time of the Inspection, this tank contained 18,989 gallons of waste that were identified by Facility personnel as non-hazardous effluent. On August 14, 2009, 8,640 gallons of this waste were shipped off site under bill of lading number 31302-09. EPA sampled this waste during the Inspection. The analytical results indicated the presence of methylene chloride and acetone, listed hazardous wastes (EPA waste codes F001 and F003, respectively);

(d) Drum PRO-09653-004: This 55-gallon drum was shipped off site as non-hazardous waste using manifest number 0327192, dated August 13, 2009. EPA sampled this drum during the Inspection. The analytical results demonstrated the presence of listed hazardous wastes, including ethyl benzene, xylenes, acetone and toluene (EPA waste codes F003 and F005);

(e) Drum A1439-010: This 55-gallon drum was shipped off site as non-hazardous waste on July 31, 2009, using manifest number 0327195. EPA sampled this drum during the Inspection. The analytical results indicated the presence of listed hazardous wastes including toluene, ethyl benzene and xylenes (EPA waste codes F003 and F005); and

(f) Drum A1474-001: This 55-gallon drum was shipped off site on August 30, 2009, as non-hazardous waste using manifest number 0327159. EPA sampled this drum during the

Inspection. The analytical results indicated the presence of listed hazardous wastes including benzene, toluene, ethyl benzene and xylenes (EPA waste codes F003 and F005).

27. Accordingly, Respondents' failure to conduct adequate hazardous waste determinations of the tanks and containers of waste described in paragraph 26 above constitutes violations of former RI HW Rule 5.08 (currently RI HW Rule 5.8) and Permit Condition 23 which requires compliance with former RI HW Rule 9.02 (currently RI HW Rule 8.1). See 40 C.F.R. § 262.11; see also 40 C.F.R. §§ 268.7(a) and (b) and 268.9(a).

Count 2 - Failure to Comply with Land Disposal Restriction Requirements

28. Complainant incorporates by reference the allegations in paragraphs 1 to 27 above.

29. Pursuant to 40 C.F.R. § 268.7(a) a generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This can be done by determining if the hazardous waste meets the treatment standards in 40 C.F.R. §§ 268.40, 268.45 or 268.49. If the waste does not meet the treatment standards, the generator must send a one time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The one-time notification must include, among other information, EPA hazardous waste numbers, the constituents of concern for F001-F005 and F039, and underlying hazardous constituents ("UHCs") in characteristic wastes, unless the waste will be treated and monitored for all constituents. Pursuant to 40 C.F.R. § 268.7(b), treatment facilities must test their waste in accordance with their wastes analysis plans as required by 40 C.F.R. § 264.13. A one-time notice must be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice must be placed in the treatment facility's file. If the waste changes, a new notice must be sent and a copy placed in the treatment facility's file. The notice must

include, among other information, the EPA hazardous waste numbers and constituents of concern for F001-F005 and F039 and UHCs in characteristic wastes, unless the waste will be monitored and treated for all constituents.

30. Respondents did not comply with the land disposal restriction ("LDR") requirements in the following manner:

(a) Respondents shipped the contents of tank S-19 on October 6, 2008, using manifest number 002452331 FLE. Respondents did not maintain the LDR notice for this waste stream in its files. The copy of the LDR notice for this waste retrieved from the receiving facility listed D002 and D004-D011 hazardous wastes;

(b) Respondents shipped the contents of tank S-19 on February 2, 2009, using manifest number 002470681 FLE. Respondents did not maintain the LDR notice for this waste stream in its files. The copy of the LDR notice for this waste retrieved from the receiving facility listed D006, D008 and D011 hazardous wastes;

(c) Respondents shipped a variety of hazardous wastes off site on February 5, 2009, using manifest number 004941005 JJK. The waste profiles, inbound manifests and Respondents' analytical data for the wastes included in this shipment indicated the presence of silver (D011), benzene (D018) and methyl ethyl ketone (D035). However, the LDR notice associated with this shipment did not list these constituents;

(d) Respondents shipped hazardous waste to Ross Incineration on October 9, 2008, using manifest number 004938042 JJK. The first line item on the manifest included thirty-seven drums. Respondents did not comply with LDR requirements for this line item as follows:

(1) Regarding container numbers 83302 and 83308: analytical data and waste

codes listed on the profile for this waste were D001, D004-D011, D018 and D035. The LDR notice did not include waste codes D004, D006, D009, D010, D011 and D035;

(2) Regarding container numbers 86448 through 86450 and containers 87577 through 87578 (generated by Northland): The waste codes listed in Respondents' analytical reports (Acceptance Forms) for these containers included D001, F001- F003 and F005. The LDR notice for the out-bound manifest did not include the F002 waste code;

(3) Regarding container numbers 84116, and 84803 through 84805 (generated by Northland): The waste codes listed on Respondents' analytical reports (Acceptance Forms) for these containers included D001, F001-F003 and F005. The LDR notice for the out-bound manifest did not include the F002 waste code; and

(4) Regarding container number 87333 (waste stream # 3D53660): The incoming manifest listed waste codes D001, D035 and F005. The LDR notice for the out-bound manifest did not include the D035 waste code;

(e) On the manifest described in subparagraph (d) above, one T-pack was listed on line 3 (container number 87509). This container was generated by Respondents. The waste codes listed on the analytical report (Acceptance Form) and the tracking sheet pasted with the individual container labels (from containers consolidated into the T-pack) included D001 and F003. The LDR notice for the out-bound manifest listed the waste codes for this container as D001 and F005;

(f) Line 4 of the manifest described in subparagraph (d) above, listed two T-Packs (container #85808, #85809, and waste stream # 3S108876). The inbound manifest for these

wastes listed the following waste codes: F002, F003, F005, D039 and D040. The LDR notice for the out-bound manifest did not list F002 for this waste stream;

(g) Manifest number 002455090 FLE, dated September 10, 2008, was for the shipment of a tanker load of hazardous waste from tank S-21B. This tank is a permitted acid storage tank. The pH of the outgoing load was 1.39 standard units. Respondents' analytical data for this out-bound shipment indicates that the load contained 17.7 ppm cadmium. The LDR notice for this waste did not list the EPA waste code for cadmium (D006);

(h) Manifest number 004938036 JJK, dated October 1, 2008, was used for the shipment of a tanker load of hazardous waste from tank S-61. Respondents' analytical data for this shipment indicated a silver concentration of 7.17 ppm. The LDR notice associated with this waste stream did not list silver (D011);

(i) Outgoing waste from tank S-21A was shipped under manifest number 002436954 JJK on September 5, 2009. The waste profile for this out-bound shipment indicated the presence of mercury. EPA sampled this waste during the Inspection. EPA's analytical results confirmed the presence of total mercury at a concentration of 0.48 ppm, above the universal treatment standard set forth in 40 C.F.R. § 268.40. However, the manifest and the LDR notice for this waste did not list mercury (D009);

(j) Outgoing waste from tank S-21B was shipped under manifest 002438348 JJK on August 27, 2009. The waste profile for this outbound shipment indicated the presence of mercury. EPA sampled this waste during the Inspection. EPA's analytical results confirmed the presence of total mercury at a concentration of 0.48 ppm, above the universal treatment standard

set forth in 40 C.F.R. § 268.40. However, the manifest and LDR notice for this waste did not list mercury (D009);

(k) Outgoing waste from tank S-51 was shipped under manifest number 002438330 JJK on August 25, 2009. Chromium is listed on the waste profile for this waste. In addition, EPA sampled this waste during the Inspection. EPA's analytical results indicated the presence of total chromium at a concentration of 43 ppm, in excess of the universal treatment standard listed in 40 C.F.R. § 268.40. However, the outbound manifest and LDR notice did not list chromium (D007);

(l) Container number A1410-22 was shipped under manifest number 006049209 JJK on December 1, 2009. The waste profile for this waste listed the EPA waste codes for mercury, toluene, trichloroethene, ethyl benzene and p/m-xylenes. EPA sampled this container during the Inspection and confirmed the presence of these constituents. The analytical results showed the presence of total mercury (0.98 ppm) and trichloroethene (33 ppm) in concentrations above the universal treatment standards listed in 40 C.F.R. § 268.40. However, these constituents were not listed on the manifest or LDR notice;

(m) Container A1410-013 was shipped under the same manifest described in subparagraph (l) above. The waste profile for this waste listed the waste codes for mercury, toluene, trichloroethene, ethyl benzene and p/m-xylenes. EPA sampled this container during the Inspection and confirmed the presence of these constituents. Total mercury was detected at a concentration of 0.69 ppm, above the universal treatment standard listed in 40 C.F.R. § 268.40. However, none of the constituents listed above were included in the outbound manifest or LDR notice;

(n) Container PRO-08859-004 was shipped under manifest number 005435575 JJK, dated August 4, 2009. Barium (D005) was listed on the waste profile for this waste. EPA sampled this waste during the Inspection. EPA's analytical results indicated the presence of total barium at a concentration of 640 ppm, above the universal treatment standard listed in 40 C.F.R. § 268.40. Barium (D005) was not listed on the out-bound manifest or LDR notice;

(o) Container PRO-9472-003 was shipped under manifest number 005927816 JJK on October 7, 2009. LDR constituents of concern and UHCs were not filled out or checked off on the generic Safety Kleen LDR notification. EPA sampled this container during the Inspection. EPA's analytical results showed the presence of the following constituents: toluene (20.0 ppm); ethyl benzene (26.0 ppm), p/m xylenes (93.0 ppm) and o-xylene (47.0 ppm). These concentrations were above the universal treatment standards listed in 40 C.F.R. § 268.40;

(p) Container PRO-9436-006 was shipped under manifest number 005435890 JJK, dated August 5, 2009. The waste profile for this waste indicated that this waste was a flammable liquid, Number 2, 4, and 6 fuel oil containing numerous characteristic and listed wastes. EPA sampled this container during the Inspection. EPA's analytical results showed the presence of total mercury at a concentration of 0.33 ppm, above the universal treatment standard set forth in 40 C.F.R. § 268.40. Mercury was not listed on the waste profile, manifest or the generic Safety Kleen LDR notice;

(q) Container PRO-08017-013 was shipped under manifest number 005435895 JJK, dated August 11, 2009. EPA sampled this container during the Inspection. EPA's analytical results showed the presence of tetrachloroethene (a.k.a. tetrachloroethylene (F001/F002)) at a concentration of 270 ppm and benzene (F005) at a concentration of 77 ppm, which are above the

universal treatment standards set forth in 40 C.F.R. § 268.40. The LDR notice accompanying the shipment of this waste did not list tetrachloroethene (a.k.a. tetrachloroethylene (F001/F002)) and benzene (F005) as UHCs;

(r) Container PRO-02258-003 was shipped under manifest number 004939691 JJK, dated September 10, 2009. EPA sampled this container during the Inspection. EPA's analytical results indicated the presence of barium (D005), lead (D008), chlorobenzene (F002) and acetone (F003). The LDR notice accompanying the shipment of this waste did not list any UHCs. After the Inspection, Mr. Fitzgerald of PSC/Northland confirmed that the LDR notice did not include the page listing the UHCs;

(s) Container A1450-022 was shipped under manifest number 005435892 JJK, dated August 10, 2009. The EPA waste codes for mercury, toluene, ethyl benzene, p/m/o-xylenes and acetone were listed on the waste profile for this waste. EPA sampled this container during the Inspection. EPA's analytical results indicated the presence of total mercury at a concentration of 0.3480 ppm, which was above the universal treatment standard set forth in 40 C.F.R. § 268.40, as well as toluene, ethyl benzene p/m/o-xylenes and acetone (F003 and F005 wastes). However, mercury, toluene, ethyl benzene p/m/o-xylenes and acetone were not listed on the out-bound manifest or the LDR notice;

(t) Container PRO-07190-005 was shipped under manifest number 005435570 JJK, dated July 30, 2009. This container was sampled during the Inspection. EPA's sample results indicated this waste was ignitable (D001) and contained total lead (D008) at a concentration of 18.0 ppm, p/m-xylenes (F003) at 1.5 ppm, and acetone (F003) at 25 ppm. Although, EPA waste

codes D008 and F003 were listed on the waste profile for this waste, the manifest and LDR notice did not list D008 or F003;

(u) Container PRO-09219-006 was shipped as hazardous waste under manifest number 005927803 JJK, dated September 30, 2009. The waste profile for this waste listed chromium. EPA sampled this container during the Inspection. EPA's analytical results indicated the presence of total chromium at a concentration of 10.0 ppm. However, no UHCs were listed on the generic Safety Kleen LDR notice. Although this waste was listed as off-specification used oil, chromium (D007) should have been listed on the LDR form;

(v) Container PRO-08956-011 was shipped under the same manifest cited in subparagraph (u) above. EPA waste codes F003 and F005 were listed on the waste profile for this waste. This container was sampled during the Inspection. EPA's analytical results indicated the presence of F003 and F005 wastes (ethyl benzene, p/m/o-xylenes, and toluene). No UHCs were listed on the generic Safety Kleen LDR notice accompanying the manifest; and

(w) Container PRO-08843-002 was shipped under the same manifest listed in subparagraph (u) above. EPA waste codes F001-F003 and F005 were listed on the waste profile for this waste. EPA sampled this container during the Inspection. EPA's analytical results indicated the presence of F001 - F003 and F005 wastes (tetrachloroethylene, ethyl benzene, p/m/o-xylenes, acetone and toluene). No UHCs were listed on the generic Safety Kleen LDR notice accompanying the manifest.

31. By failing to properly determine if hazardous wastes had to be treated before they were land disposed and/or list all UHCs on the LDR notifications, Respondents violated 40 C.F.R. § 268.7(a) and (b).

Count 3 - Failure to Determine the Average Volatile Organic Concentration of Hazardous Waste Placed in a Tank.

32. Complainant incorporates by reference the allegations in paragraphs 1 to 31.

33. Pursuant to 40 C.F.R. § 264.1083(a)(1), in order to be exempt from using air emission controls on a hazardous waste tank, an owner or operator shall determine the average volatile organic ("VO") concentration at the point of waste origination for each hazardous waste placed in a waste management unit (i.e., tank). If the waste entering the unit has an average VO concentration of less than 500 ppm by weight, the tank is exempt from standards specified in 40 C.F.R. § 264.1084.

34. At the time of the Inspection, Respondents managed tank S-12 as a non-hazardous waste tank, and the tank was not equipped with any air emission controls set forth in 40 C.F.R. § 264.1084. However, during the Inspection, EPA representatives collected a sample from the top of the tank that revealed volatile organic compound concentrations above the threshold amount of 500 ppm by weight. Specifically, the analytical results showed the presence of tetrachloroethene, trichlorofluoromethane, toluene, p/m/o xylene, and 1,2,4-trimethylbenzene, each with a total volatile organic concentration above 500 ppm.

35. By failing to determine the average VO concentration at the point of waste origination for each hazardous waste placed in tank S-12, Respondents violated 40 C.F.R. § 264.1083(a)(1).

Count 4 - Storage of Hazardous Wastes in Tanks that are in Poor Condition and Failure to Support and Protect Ancillary Equipment.

36. Complainant incorporates by reference the allegations in paragraphs 1 to 35.

37. Pursuant to Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), tanks used for the storage and/or treatment of hazardous wastes must be designed, constructed and operated in a manner equivalent to the requirements of 40 C.F.R. Part 264, Subpart J ("Subpart J"). Subpart J requires, among other things, that for each tank, owners and/or operators obtain a written assessment certified by a professional engineer attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating hazardous waste. The written assessment must be kept on file at the facility. See 40 C.F.R. § 264.192(a) and (g). In addition, ignitable waste must not be placed in tank systems unless the waste is stored in such a way that it is protected from any material or conditions that may cause the waste to ignite. See 40 C.F.R. § 264.198(a)(2). Further, ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction. See 40 C.F.R. § 264.192(e).

38. At the time of the Inspection the following hazardous waste tanks were not being operated in accordance with the Subpart J requirements:

(a) Tank M-1: At the time of the Inspection, tank M-1, which contained 215 gallons of alkali waste, was not viable because its liner was melted;

(b) Tank M-3: The July 13, 2009 tank assessment report conducted by an independent third party documented that a visual inspection of the interior roof plates of the tank revealed minor to moderate corrosion and that the interior chlorobutyl rubber liner was failing at 18 noted locations. At the time of the Inspection, tank M-3 contained 5,966 gallons of photochemical waste;

(c) Tank S-12: The July 17, 2009 tank assessment report conducted by an independent third party documented that the metal insulation jacket was deteriorating. Specifically, numerous small to medium holes were identified in the jacket. Also, the insulation on the tank roof was deteriorating, the tank had no formal means of venting, the interior shell plates were exhibiting widely scattered pitting, and the tank system was not adequately grounded to prevent the hazardous accumulation of static electricity. In addition, the report states that the two-inch fill piping was not properly supported or secured on the tank roof allowing for significant lateral movement. This condition may have been causing excessive stress on the associated pipe fittings. Tank S-12 contained 10,302 gallons of hazardous waste at the time of the Inspection;

(d) Tank S-51: The July 17, 2009 tank assessment report conducted by an independent third party documented that: the shell-to-bottom area and leading edge of the 20-inch man-way-to-shell joint exhibited delamination; previous repairs on the interior tank had begun to fail; the tank had no formal means of venting; and the foam insulation on the tank roof had begun to fail. Tank S-51 contained 4,650 gallons of cyanide waste at the time of the Inspection; and

(e) Tank FS-2: The June 17, 2009 tank assessment report conducted by an independent third party documented that the two-inch discharge piping required additional support at the two -inch tee fitting adjacent to the valve. Tank FS-2 contained 5,000 gallons of alkali laboratory waste at the time of the Inspection.

39. By failing to maintain hazardous waste tanks and ancillary equipment in accordance with the requirements of 40 C.F.R. Part 264, Subpart J (specifically, 40 C.F.R. §§ 264.192(a), (e), and (g) and 264.198(a)(2)), Respondents violated Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1).

Count 5 - Storage of Incompatible Hazardous Wastes in Tanks.

40. Complainant incorporates by reference the allegations in paragraphs 1 to 39.

41. Pursuant to Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which references 40 C.F.R. Part 264, Subpart J, hazardous waste or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode or otherwise fail. See 40 C.F.R. § 264.194(a).

42. At the time of the Inspection, Tank M-3 contained 5,966 gallons of alkaline waste. Respondents had consolidated two 55-gallon containers of acidic waste in the tank, specifically, waste corrosive acid, waste sulfuric acid and waste hydrochloric acid. The mixing of these alkaline and acid wastes in a single tank could cause an exothermic reaction that generates heat which could result in a potential explosion, fire and/or the release of toxic gases and hazardous wastes.

43. By storing incompatible hazardous wastes in a hazardous waste tank, Respondents violated Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which incorporates by reference 40 C.F.R. § 264.194(a).

Count 6 - Failure to Use Appropriate Controls and Practices to Prevent Spills and Overflows from Tanks or Containment Systems.

44. Complainant incorporates by reference the allegations in paragraphs 1 to 43.

45. Pursuant to Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which references 40 C.F.R. Part 264, Subpart J, owners and operators must use appropriate controls and practices to prevent spills and overflows from tanks. See 40 C.F.R. § 264.194(b).

46. At the time of the Inspection, the external level gauges on acid hazardous waste tanks S-21A and S-21B were severely rusted and not in service. Mr. Fitzgerald, Respondents' General Manager, stated that the gauges did not function because the corrosive nature of the waste had deteriorated their mechanisms. The June 17, 2009 tank assessment report for tank S-21A documented that the mechanical level float gauge had a detached wire and a missing float. Further, the high level sensor/overfill alarm was tested and determined to be non-functional (i.e., the system was disconnected). In addition, at the time of the Inspection, the high level alarm power switch located in the tank farm control house was manually switched to the off position for tank S-21A. The June 17, 2009 tank assessment report for Tank S-21B documented that the mechanical level float gauge had a detached wire and that the float was missing. Further, the high level alarm electrical conduit was broken at the connection on the exterior top of the tank and the conduit casing was filled with water.

47. The July 17, 2009 tank assessment report for tank S-12, prepared by an independent third party, documented that the tank was not equipped with a high liquid level alarm for overfill protection.

48. By failing to use appropriate controls and practices to prevent spills and overflows from tanks, Respondents violated Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which incorporates by reference 40 C.F.R. Part 264, Subpart J. See 40 C.F.R. § 264.194(b).

Count 7 - Failure to Promptly Remove Standing Water from Tank Secondary Containment Systems.

49. Complainant incorporates by reference the allegations in paragraphs 1 to 48.

50. Pursuant to Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which references 40 C.F.R. Part 264, Subpart J, secondary containment systems must be sloped, designed or operated to drain and remove liquids resulting from leaks, spills or precipitation, and such accumulated liquids must be removed from the containment system within 24 hours, or in as timely a manner as possible. See 40 C.F.R. § 264.193(c)(4).

51. On or about July 20, 2009, storm water had accumulated in the secondary containment structures, trenches and pipe galleries of hazardous waste tanks S-21A and S-21B. Storm water also had accumulated in the secondary containment structures, trenches and pipe galleries of the alkali/cyanide tank farm. According to the National Weather Service, no rain events occurred on July 19, 2009 or July 20, 2009, and 0.18 inches of rain fell on July 18, 2009.

52. Respondents' failure to promptly remove accumulated water from secondary containment systems constitutes a violation of Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which references 40 C.F.R. § 264.193(c)(4).

Count 8 - Storage of Hazardous Waste Containers in Unpermitted Areas.

53. Complainant incorporates by reference the allegations in paragraphs 1 to 52.

54. Pursuant to Permit Condition 39, Respondents shall operate the Facility as described in the Permit Application. Pursuant to Section 3.00 of the Permit Application, certain types of waste are to be stored in certain permitted areas of Building 4 and Building 11, as specified by Table 3.2 of the Permit Application.

55. The areas specified by Table 3.2 are, according to Section 3.22 of the Permit Application, depicted on the facility diagrams contained in Appendix G. More specifically, Figures C-1 and C-3 in Appendix G depict the permitted storage areas of different waste types

for Building 4 and Building 11, respectively.

56. Additionally, Section 3.43 of the Permit Application states that "in all cases, consolidation from lab packs occurs in a contained area." This area is designated in Appendix G, Figure C-3, as a dedicated room called the "Lab Pack Consolidation Bay."

57. At the time of the Inspection, Respondents stored hazardous wastes in unpermitted areas of the Facility in the following ways:

(a) Respondents stored hazardous wastes in the common aisle space area between the southeast area and the southwest area of Building 11. This area was filled with many multi-stacked rows of containers of ignitable and toxic wastes, solvent waste, cyanide waste, flammable gas and non-hazardous waste. The containers were marked as having been received on July 17, 2009 (three days prior to the Inspection). According to Mr. Fitzgerald, these containers were awaiting removal to their designated storage locations. The Permit Application does not provide for the storage of hazardous waste in this area;

(b) At the time of the Inspection, a lab pack decontainerization and consolidation process was taking place in the center aisle of Building 11, directly behind the north-side garage door. According to Mr. Yozura, Respondents' Lab Pack Manager, this center aisle space was being used for these operations while the designated Lab Pack Consolidation Bay was being upgraded. The Permit does not provide for temporary decontainerization or consolidation in this area;

(c) At the time of the Inspection, Respondents stored corrosive hazardous wastes in the southwest area of the Lower Warehouse of Building 11. The Permit does not provide for the storage of corrosive hazardous wastes in this area; and

(d) At the time of the Inspection, Respondents stored numerous 55-gallon containers of hazardous waste in the immediate area surrounding Tank FS-2 in Building 4. The Permit does not provide for the storage of containers in this area.

58. Accordingly, Respondents' storage of hazardous wastes in areas not set forth in the specifications of Sections 3.00, 3.22, and 3.43 of the Permit Application constitutes violations of Permit Condition 39.

Count 9 - Failure to Maintain Adequate Aisle Space Between Hazardous Waste Containers.

59. Complainant incorporates by reference the allegations in paragraphs 1 to 58.

60. Pursuant to Permit Condition 28 and former RI HW Rule 9.08 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.35, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of the facility in an emergency. Further, Section 4.30 of the Permit Application requires a minimum 2 - 12 foot range of aisle space depending on the type of hazardous waste stored in containers.

61. At the time of the Inspection, Respondents failed to maintain adequate aisle space as follows:

(a) In the East Warehouse of Building 4, Respondents stored hazardous waste containers in three rows designated by EPA Inspectors as "Rows 2, 3 and 4" without sufficient aisle space;

(b) In the East Warehouse of Building 4, Respondents stored hazardous waste containers and totes in three rows designated by EPA Inspectors as "Rows 9, 11 and 12" without sufficient aisle space; and

(c) In the West Warehouse of Building 4, Respondents stored hazardous waste containers in two rows designated by EPA Inspectors as "Rows 10 and 11" without sufficient aisle space.

62. Accordingly, Respondents' failure to store hazardous waste containers with sufficient aisle space constitutes a violation of Permit Condition 28, Section 4.30 of the Permit Application, and former RI HW Rule 9.08 (currently RI HW Rule 8.1).

Count 10 - Failure to Separate Containers of Incompatible Wastes.

63. Complainant incorporates by reference the allegations in paragraphs 1 to 62.

64. Permit Condition 34 requires Respondents to comply with former RI HW Rule 9.18 (currently RI HW Rule 8.1), which requires the facility owner or operator to manage containers in a manner equivalent to 40 C.F.R. Part 264, Subpart I. Pursuant to 40 C.F.R. § 264.177(c), a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

65. At the time of the Inspection, Respondents stored the following hazardous waste containers with other incompatible wastes nearby without any means of separation or protection:

(a) In the East Warehouse of Building 4, Respondents stored several rows of waste containers, which EPA Inspectors designated as "Rows 6, 7, 8 and 9." At the end of Row 7, Respondents stored three black 55-gallon drums and one yellow over-pack drum on the same pallet. The first black drum, number PRO-09290-004, was labeled as "waste hydrochloric acid and chromium"; the second black drum, number PRO-08957-003, was a bulging drum labeled "50% nitric acid"; the third black drum, number PRO-09242-022, was labeled "waste sulfuric

acid"; and the yellow over-pack drum contained a leaking 55-gallon drum of sulfuric acid. The collocation of hydrochloric, nitric and/or sulfuric acids increases the potential for heat generation, formation of flammable and/or toxic gases, increased pressurization within containers, ignition, exothermic reactions, or the release of corrosive liquid;

(b) In the East Warehouse of Building 4, Respondents stored two drums, numbers PRO-9341-001 and PRO-9341-002, in a row of waste containers that EPA Inspectors designated as "Row 5." Both drums were labeled "methane sulfonic acid, lead" and "sulfuric acid, copper sulfate, ALT, Technic Inc." Collocated on the same pallet with these drums were two other 55-gallon drums from "Waters Corporation." These 55-gallon drums were labeled "PRO-09584-050, waste nitric acid, chromium," and "PRO-09584-044, waste sodium hydroxide." The collocation of sodium hydroxides, alkyl sulfonic acids, sulfuric acid, copper sulfate and/or nitric acid increases the potential for heat generation and exothermic reactions (e.g., flammability and/or ignition), formation of toxic gases, and/or increased pressurization within containers;

(c) At the end of a row of waste containers designated by EPA Inspectors as "Row 6" in the East Warehouse of Building 4, Respondents stored two black 55-gallon poly drums of waste nitric acid on the same containment pallet as a 55-gallon blue poly drum of waste hydrochloric acid. The drums were labeled as "PRO-08957-001 (nitric acid and sulfuric acid)," "PRO-08957-004 (nitric acid)," and "PRO-08957-002 (hydrochloric acid and chromium)." The collocation of hydrochloric acid, nitric acid and/or sulfuric acid increases the potential for heat generation, exothermic reactions (i.e., explosion and/or flammability), formation of flammable and toxic gases, and/or release of corrosive liquids;

(d) In a row designated by EPA Inspectors as "Row 10" in the West Warehouse of Building 4, Respondents stored nine pallets, each containing approximately four 55-gallon drums, totaling approximately 36 individual containers without separating or protecting any of the pallets or containers from their adjoining pallets or containers (either vertically or horizontally). The following is a list of the incompatible waste containers that were stored in close proximity to one another in Row 10, in the following configuration:

Configuration of containers in Row 10:

Top: Pallet 1 Pallet 4 Pallet 7

Middle: Pallet 2 Pallet 5 Pallet 8

Bottom: Pallet 3 Pallet 6 Pallet 9

On Pallet 1-top: Containers of potassium hydroxide; formalin; unidentified hazardous liquid (in drum number PRO-8951-001, labeled "D018, aromatic hydrocarbons" (most probably gasoline)); silver and ammonium thiosulfate;

On Pallet 2-middle: Four drums of sodium hydroxide and chromium;

On Pallet 3-bottom: Four drums of sodium hydroxide and chromium;

On Pallet 4-top: Two containers of formalin; one container of 1,1,1-trichloroethane; and one container of non-hazardous diphosphoric acid;

On Pallet 5-middle: Four drums of waste lead;

On Pallet 6-bottom: Four drums of waste lead;

On Pallet 7-top: One container of sodium hydroxide; one container of gasoline solids; one container labeled as "corrosive [illegible]"; and one container labeled as "corrosive, pH=13 S.U. [illegible]";

On Pallet 8-middle: Containers of sodium hydroxide, trace penetrant dye and water, waste chromic acid, and phosphoric acid; and

On Pallet 9-bottom: Containers of chromium waste; chromic acid; phosphoric acid; trace penetrant dye and water; non-hazardous waste, CR04; and poly-hydroxide dyes (illegible label);

The collocation of these wastes increases the potential for heat generation, exothermic reactions (e.g,. combustion, explosion and/or flammability), formation of toxic and/or flammable gases, and release of corrosive liquids;

(e) In a row designated by EPA Inspectors as "Row 11" in the West Warehouse of Building 4, Respondents stored containers of waste acetic acid, waste potassium hydroxide, waste liquid caustic soda and waste acidic liquids in close proximity. The collocation of these wastes increases the potential for heat generation, exothermic reactions (e.g,. combustion, explosion and/or flammability), formation of toxic and/or flammable gases, and release of corrosive liquids;

(f) In a row designated by EPA Inspectors as "Row 9" in the West Warehouse of Building 4, Respondents stored a 15-gallon container, labeled as "hazardous waste, waste trifluoroethane, F001, Drum Number PRO-03096-004," next to a five-gallon container labeled as "waste caustic, sodium hydroxide, potassium hydroxide, D002, Drum No. PRO-03613-002," as well as another five-gallon container labeled as "waste caustic liquid, basic inorganic, D002, Drum No. PRO-01223-017." The collocation of caustic soda, 1,1,1-trifluoroethane and/or potassium hydroxide increases the potential for heat generation, exothermic reactions (i.e., explosion and/or flammability) and release of toxic and/or flammable gases;

(g) In a row designated by EPA Inspectors as "Row 19" in the West Warehouse of Building 4, Respondents stored a 55-gallon container, labeled "liquid, inorganic, copper sulfate, Drum No. PRO-09004-006, 6/24/09, waste profile 3142991-00," next to a 55-gallon container with a torn hazardous waste label indicating "waste cyanide solution, sodium cyanide, copper cyanide, Drum No. PRO-09007-007, waste profile 3D64123-00." The collocation of sodium cyanide with copper sulfate increases the potential for heat generation, release of toxic and/or flammable gases, or the release of corrosive liquids. The collocation of copper cyanide with copper sulfate and/or sodium cyanide increases the potential for the release of flammable gases;

(h) In a row designated by EPA Inspectors as "Row 19" in the West Warehouse of Building 4, Respondents stored a 55-gallon container labeled as "non-hazardous waste, nickel plating solution, environmentally hazardous substance, Drum No. PRO-05837-002, waste profile 406712-00" next to another 55-gallon container labeled as "hazardous waste, cyanide solution, Drum No. PRO-8574-002." The collocation of these wastes increases the potential for heat generation, release of toxic and/or flammable gases, and corrosive and/or toxic compounds;

(i) In a row designated by EPA Inspectors as "Row 11" in the West Warehouse of Building 4, Respondents stored a 55-gallon container labeled as "hazardous waste, Con Test Labs, methylene chloride, F002, Drum No. PRO-07672003," next to another 55-gallon container labeled as "Pump and Engine Control Systems, sodium hydroxide, rust strip, Drum No. PRO-08303-002, waste profile 3D59764-00." The collocation of caustic soda with methylene chloride increases the potential for heat generation, highly exothermic reactions, and the release of toxic and/or flammable gases;

(j) At the time of the Inspection, Respondents stored the following incompatible waste containers without any means of separation or protection on a single wooden pallet in the Lab Pack Staging Area of the General Warehouse of the Upper Warehouse of Building 11: containers with labels indicating waste flammable liquids (propanol, petroleum ether); lauric and acetic acid; waste corrosive liquid basic (potassium hydroxide, liquid hydroxide, magnesium hydroxide, benedicts solution); and asbestos. The collocation of these wastes increases the potential for intense reactions that generate heat, exothermic reactions (e.g., combustion and/or flammability), release of toxic and/or flammable gases and release of corrosive compounds; and

(k) In the common aisle space between the southeast area and the southwest area of Building 11, Respondents stored various types of incompatible wastes in close proximity and without any means of protection or separation, including non-hazardous wastes, ignitable wastes, solvents toxic wastes, cyanide wastes, flammable gases, alkalis, acids, and chlorinated wastes. These containers were marked as received on July 17, 2009, and were staged in the main north to south corridor of the Lower Warehouse of Building 11. The collocation of these wastes increases the potential for heat generation, exothermic reactions (e.g., combustion, flammability and/or explosion), release of toxic and/or flammable gases and release of corrosive compounds.

66. Accordingly, Respondents' storage of incompatible hazardous waste containers near one another without any means of separation or protection constitutes violations of Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.177(c).

Count 11 - Failure to Store Hazardous Waste in Containers that Are in Good Condition.

67. Complainant incorporates by reference the allegations of paragraphs 1 to 66 above.

68. Permit Condition 34 requires Respondents to comply with former RI HW Rule 9.18 (currently RI HW Rule 8.1). Particularly, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) states that facility owners and operators must manage containers in a manner equivalent to 40 C.F.R. Part 264, Subpart I, specifically, 40 C.F.R. § 264.171. Pursuant to 40 C.F.R. § 264.171, if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition.

69. At the time of the Inspection, Respondents stored one severely dented 55-gallon container labeled as "hazardous waste, Walco Electric, waste flammable liquids, varnish, D001, paint sludge, Drum No. PRO-08380-001, waste profile 3D79584-06" in a row designated by EPA Inspectors as "Row 16" of the West Warehouse of Building 4.

70. At the time of the Inspection, Respondents stored a severely corroded drum (drum number PRO-05837-008) labeled as "nickel plating solution, environmentally hazardous substances, solid (nickel), Darlene Group, Pawtucket, Rhode Island" in a row designated by EPA Inspectors as "Row 8" in the southeast area of the Lower Warehouse of Building 11.

71. Accordingly, Respondents' storage of hazardous waste in containers that were not in good condition constitutes violations of Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.171.

Count 12 - Failure to Keep Hazardous Waste and Universal Waste in Closed Containers.

Hazardous Waste Containers

72. Complainant incorporates by reference the allegations of paragraphs 1 to 71.

73. Pursuant to the general "Compliance" paragraph of the Permit, the "Permittee shall

operate the facility in strict compliance with the [Rhode Island Hazardous Waste Management Act of 1979 (the Act)], as amended, the RI HW Rules and Regulations for Hazardous Waste Management (the Regulations)], and all subsequent amendments, and all Permit Conditions." Pursuant to former RI HW Rule 5.02 (currently RI HW Rule 5.2A), generators of hazardous waste may store hazardous waste on site for 90 days or less without a permit provided that they comply with the requirements of 40 C.F.R. § 262.34, except for 262.34(d), (e) and (f). Pursuant to 40 C.F.R. § 262.34(a)(1), a generator may accumulate waste in containers provided that it complies with, among other requirements, 40 C.F.R. Part 265, Subpart I, which includes 40 C.F.R. § 265.173(a). Forty C.F.R. § 265.173(a) provides that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

74. Permit Condition 34 requires compliance with former RI HW Rule 9.18 (currently RI HW Rule 8.1). Specifically, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) requires the facility owner or operator to manage containers in a manner equivalent to 40 C.F.R. Part 264, Subpart I. In particular, 40 C.F.R. § 264.173(a) provides that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

75. At the time of the Inspection , Respondents failed to keep the following hazardous waste containers closed, except when it was necessary to add or remove waste:

(a) Drum IDI-1: The lid and ring were not tightened onto the rim of Drum IDI-1 in the hazardous waste storage area adjacent to the laboratory of Building 4. Drum IDI-1 was labeled as "hazardous waste, waste flammable liquid, n.o.s., 3, UN1993, 4/2/09";

(b) Under the PCB Fume Hood in the Laboratory, a 1-liter satellite accumulation container which contained pipettes, test tubes and small amounts of liquid waste residual, was

open and unlabeled; and

(c) A one-cubic yard tote in the cyanide storage area of the Upper Warehouse of Building 11 was open with cyanide salt content on the top of the tote exposed to the environment. This tote was labeled "hazardous waste, PRO-09545-019, profile 3560437-00, cyanide salts."

76. At the time of the Inspection, Respondents were not adding or removing waste from the containers described above in paragraph 75.

77. Accordingly, Respondents' failure to keep hazardous waste containers closed, except when necessary to add or remove waste, constitutes violations of former RI HW Rule 5.02 (currently RI HW Rule 5.2A), which incorporates 40 C.F.R. § 262.34, which references 40 C.F.R. § 265.173(a), Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. § 264.173(a).

Universal Waste Mercury-Containing Lamps

78. Complainant incorporates by reference the general "Compliance" paragraph of the Permit.

79. Former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I) incorporates 40 C.F.R. § 273.33 by reference and further requires a large quantity handler of universal waste mercury-containing lamps to manage them in a way that prevents releases to the environment. In particular, such a handler must contain universal waste mercury-containing lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. This container must be closed, structurally sound, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. Furthermore, unbroken mercury-containing lamps must be kept in closed packaging

that will minimize breakage during normal conditions.

80. Pursuant to former RI HW Rule 3.00 (currently RI HW Rule 3.0), a large quantity universal waste handler is one who accumulates 5,000 kilograms (11,000 pounds) or more total of all other universal waste (such as universal waste batteries, pesticides, thermostats, mercury-containing devices, or mercury-containing lamps), calculated collectively at any time.

81. The Facility was a large quantity handler of universal waste at all relevant times.

82. At the time of the Inspection, Respondents failed to manage universal waste mercury-containing lamps to prevent releases to the environment in the following manner:

(a) Two universal waste mercury-containing lamps resting on the cover of one of the tanks located in the Lower Pretreatment Room of Building 4 at 252 Allens Avenue were not contained in any kind of packaging;

(b) Approximately seven universal waste mercury-containing fluorescent lamps stored on a make-shift shelf located on the exterior wall of Building 1 were not contained in any kind of packaging; and

(c) Backed-up to the Loading/Unloading Area of the Upper Warehouse of Building 11 was a truck trailer in which Respondents stored universal waste mercury-containing fluorescent lamps and a few lead-acid batteries. The trailer was approximately three-quarters full, representing over 5,000 kilograms of lamps and batteries. The boxes containing such lamps had open lids, were poorly sealed, and were distorted by the weight and pressure of other overlaying boxes. There also was evidence of broken lamp glass in the trailer.

83. Respondents' failure to manage universal waste mercury-containing lamps so as to prevent releases to the environment constitutes violations of the general "Compliance" paragraph

of the Permit and former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I). See 40 C.F.R. § 273.33.

Count 13 - Failure to Properly Label Hazardous Waste and Universal Waste Containers.

84. Complainant incorporates by reference the allegations of paragraphs 1 to 83.

Hazardous Waste Containers

85. Permit Condition 34 requires compliance with former RI HW Rule 9.18 (currently RI HW Rule 8.1).

86. Pursuant to former RI HW Rule 9.18(B) (currently RI HW Rule 8.1), facility owners and operators must label the side of all hazardous waste containers containing 110 gallons or less with information required by former RI HW Rule 5.04(C) (currently RI HW Rule 5.4.C). Under Rule 5.04(C) (currently RI HW Rule 5.4.C), a generator must label containers in satellite accumulation with the words "Hazardous Waste" and other words that identify the contents of the containers. Pursuant to 40 C.F.R. § 268.50(a)(2)(i), the owner/operator of a treatment, storage or disposal facility may store hazardous waste on site in containers for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal, provided that each container is clearly marked to identify its contents.

87. Pursuant to former RI Rule 5.04(A) (currently RI HW Rule 5.4.A), the generator shall label all hazardous waste containers, excluding satellite accumulation containers, with the words "Hazardous Waste." Pursuant to former RI HW Rule 5.04(C) (currently RI HW Rule 5.4.C), the generator must include on each container in satellite accumulation, pursuant to former RI HW Rule 3.00 (currently RI HW Rule 3.0), the words "Hazardous Waste" and other words that identify the contents of the container.

88. At the time of the Inspection, Respondents failed to properly label satellite accumulation containers and other hazardous waste containers in the following manner:

(a) Under the fume hood in the Spot Test / Screening Room Respondents stored a plastic-lined, 5-gallon satellite accumulation container that was labeled "hazardous waste, satellite accumulation container, basic, R.Q. hazardous waste solid, n.o.s., 9, NA 3077" on July 20, 2009. On July 21, 2009, this container was relabeled "basic, debris, solid, gloves, pipettes, test tubes." There were no words, however, identifying the actual wastes being tested in the spot tests and disposed of into this satellite accumulation container;

(b) Under the fume hood in the Metal Digestion Area there was a 5-gallon satellite accumulation container labeled as "hazardous waste, satellite accumulation area, R.Q. hazardous waste solid, n.o.s., NA 3077." There were no words, however, identifying the actual wastes being tested in this area and disposed of into this satellite accumulation container;

(c) In the Gas Chromatography / Mass Spectrometer ("GC/MS") room there was a full 4-liter amber glass bottle serving as a satellite accumulation container for the off-line GC/MS. At the time of the Inspection, a tube was running from the discharge port of the GC/MS into the opening of the amber glass satellite accumulation container. This container was labeled "sample drain waste," "drain waste," and "waste." The words "hazardous waste" and words identifying the wastes disposed of into this satellite accumulation container were missing. The Laboratory Manager, Mr. Haroutounian, indicated that the content of this amber glass container is normally emptied into a five-gallon carboy located in a cabinet under a bench near the PCB Fume Hood of the Laboratory in Building 4. During the July 20, 2009 inspection, this carboy was full and unlabeled. On the next inspection date, July 21, 2009, this carboy was relabeled as "hazardous

waste, waste flammable liquid, n.o.s. F002, F005 (methanol, methylene chloride), UN 1993." While Mr. Haroutounian explained that these words reflected the chemical reagents used during the GC/MS analysis, there still were no words identifying the actual residual wastes tested on the GC/MS and disposed of into this satellite accumulation container;

(d) Associated with the inductively coupled plasma spectrometer ("ICP") used for in-house metals analysis was a five-gallon satellite accumulation container. A tube was running from the ICP discharge port into the opening of this container. The container was labeled "hazardous waste, satellite accumulation area, R.Q. hazardous waste solid, n.o.s., NA3077, acidic, acid rinse water." The Laboratory Manager, Mr. Haroutounian, stated that the content of this container consisted of trace amounts of nitric acid, hydrochloric acid, and waste samples. There were no words, however, identifying the actual waste samples tested on the ICP and disposed of into this satellite accumulation container;

(e) The satellite accumulation container for the Total Organic Carbon ("TOC") Analyzer was labeled "hazardous waste, satellite accumulation area, phosphoric acid." There were no words, however, identifying the actual waste samples tested using the TOC Analyzer and disposed of into this container;

(f) In the East Warehouse of Building 4, Respondents stored a row of totes designated as "Row 12" by EPA inspectors. Row 12 contained totes with labels identifying Northland as the generator. There were, however, no words identifying the contents of the totes;

(g) In the East Warehouse of Building 4, Respondents stored an one-cubic yard tote located in a row of totes designated as "Row 9" by EPA inspectors. This tote had a hazardous waste label indicating "Circuit Boards Express, waste corrosive liquid, acidic, inorganic (mixed

acids)." This label did not identify, however, which acids in particular were contained in this tote;

(h) In the West Warehouse of Building 4, Respondents stored a 55-gallon drum located in a row designated as "Row 8" by EPA inspectors. This drum was labeled "non-hazardous waste, The Hospital of Central Connecticut, lab solution, non-regulated, 6/5/09, Drum No. PRO-07960-006." This drum was sampled by EPA. EPA's analytical results indicated, however, that the waste in this drum contained ethyl benzene and p/m/o-xyelenes. Additionally, Respondent shipped this drum off-site on July 27, 2009 as "waste flammable liquid, toxic (xylene, toluene), D001, F001, F002, F003, F005, R011" under manifest number 005435568 JJK; and

(i) In the Flammable/Water Reactive Storage Area of the Upper Warehouse of Building 11 at 275 Allens Avenue Respondents stored a 16-gallon container labeled "A1377-010, [illegible], dangerous when wet." There were no words identifying the contents of the container.

89. Respondents' failure to label hazardous waste containers with the words "Hazardous Waste" and other words that identify the contents of each container constitutes violations of Permit Condition 34 and former RI HW Rules 9.18(B), 5.04(A) and 5.04(C) (currently RI HW Rules 8.1, 5.4.A, and 5.4.C, respectively) and 40 C.F.R. § 268.50(a)(2)(i).

Universal Waste Mercury-Containing Lamps

90. Former RI HW Rule 13.06(L)(3) incorporates and revises 40 C.F.R. § 273.34(e) by requiring large quantity universal waste handlers to label or clearly mark universal waste mercury-containing lamps, or the container in which such lamps are contained, with one of the following phrases: "Universal Waste – Mercury-Containing Lamps(s)," or "Waste Mercury-Containing Lamp(s)," or "Used Mercury-Containing Lamp(s)." (Currently, RI HW Rule 13.5.N

incorporates 40 C.F.R. § 273.34 in its entirety without any change specifically related to universal waste mercury-containing lamps.)

91. Respondents were universal waste handlers at all times relevant to this Complaint.

92. At the time of the Inspection, Respondents failed to label or mark universal waste mercury-containing lamps in the following manner:

(a) Two universal waste mercury-containing lamps resting on the cover of one of the tanks located in the Lower Pretreatment Room were not labeled; and

(b) Approximately seven universal waste mercury-containing fluorescent lamps stored on a make-shift shelf located on the exterior wall of Building 1 were not labeled.

93. Accordingly, Respondents' failure to label or mark universal waste mercury-containing lamps described in paragraph 92 with the phrase "Universal Waste – Mercury-Containing Lamps(s)," or "Waste Mercury-Containing Lamp(s)," or "Used Mercury-Containing Lamp(s)," constitutes violations of former RI HW Rule 13.06(L)(3) (currently RI HW Rule 13.5.N). See 40 C.F.R. § 273.34(e).

Count 14 - Failure to Date Hazardous Waste and Universal Waste Containers.

94. Complainant incorporates by reference the allegations of paragraphs 1 to 93.

95. Pursuant to former RI HW Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5), the generator must label all hazardous waste containers with the containerization date (accumulation start date). The accumulation start date is the date that hazardous waste first begins accumulating in a container or tank, exclusive of satellite accumulation. Pursuant to 40 C.F.R. § 268.50(a)(2)(i), the owner or operator of a treatment, storage or disposal facility may store hazardous waste on site in containers for the purpose of accumulation as necessary to facilitate

proper recovery, treatment, or disposal, provided that each container is clearly marked with the date each period of accumulation begins.

96. At the time of the Inspection, Respondents failed to mark roll-off number 440, located in Roll-off Storage Area 252-A, with the accumulation start date. This roll-off was labeled as "hazardous waste, debris for micro (BDS1/BDS2), Northland as generator, profile CJ2681-00, D002, D004-D011, D018, F006-F012, F019 and R011."

97. Accordingly, Respondents' failure to mark roll-off number 440 with the accumulation start date constitutes a violation of former Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5) and 40 C.F.R. § 268.50(a)(2)(i).

Universal Waste Mercury-Containing Lamps

98. Former RI HW Rule 13.06(M) incorporates 40 C.F.R. § 273.35 by reference and further specifies that mercury-containing lamps are subject to the requirements of 40 C.F.R. § 273.35(c). (Currently, RI HW Rule 13.5 incorporates 40 C.F.R. Part 273 in its entirety.)

99. Pursuant to 40 C.F.R. § 273.35(c), a large quantity handler of universal waste must be able to "demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received." The handler can do so using one of the following methods: (1) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; (2) marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received; or (3) maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received; or (4) maintaining an inventory system on-site that identifies the earliest date that any universal

waste in a group of universal waste items or a group of containers of universal waste became a waste or was received; (5) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (6) any other method which clearly demonstrates the length of time.

100. At the time of the Inspection, two universal waste mercury-containing lamps, as described above in paragraph 92(a), and seven mercury-containing lamps, as described above in Paragraph 92(b), were not labeled, or placed a container that was labeled, with the earliest date that such lamps became wastes or were received.

101. There was no evidence that Respondents employed any other method which clearly demonstrated the length of time that such lamps have been accumulating from the date such lamps became wastes or were received.

102. Accordingly, Respondents' failure to clearly demonstrate the length of time that universal waste mercury-containing lamps had been accumulating from the date such lamps became wastes or were received constitutes a violation of former RI HW Rule 13.06(M) (currently RI HW Rule 13.5), which incorporates 40 C.F.R. § 273.35(c).

Count 15 - Failure to Minimize the Possibility of a Fire, Explosion or Unplanned Hazardous Waste Release.

103. Complainant incorporates by reference the allegations of paragraphs 1 to 102.

104. Permit Condition 28 requires Respondents to comply with former RI HW Rule 9.08 (currently RI HW Rule 8.1) as described in Section 9.00 of the Permit Application.

105. Pursuant to former RI HW Rule 9.08 (currently RI HW Rule 8.1), the facility owner or operator must comply with preparedness and prevention requirements equivalent to those in

40 C.F.R. Part 264, Subpart C. Specifically, 40 C.F.R. § 264.31 requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

106. Permit Condition 5 requires Respondents to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Respondents to achieve compliance with the conditions of the permit. Proper operation and maintenance includes adequate laboratory and process controls.

107. Permit Condition 4 requires that, in the event of noncompliance with the Permit, Respondents shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health and the environment.

108. At the time of the Inspection, Respondents failed to maintain and operate the Facility in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste, and failed to properly operate and maintain all facilities and systems of treatment and control in the following manner:

(a) Tank M-3: Tank M-3 is located in the Photochemical Treatment Room (also known as the Photo Developer Treatment Area) of Building 4. The General Manager, Mr. Kevin Fitzgerald, indicated that Respondents used Tank M-3, which was labeled "M-3 Hazardous," to treat photographic waste. The access port at the top of Tank M-3 was open at a time when the tank contained 5,966 gallons of photographic waste (approximately 92 percent of its 6,500 gallons maximum capacity). The visible surface of the waste in Tank M-3 was about one foot

from the open access port. No associated high level alarm had been activated at the time. A strong odor resembling ammonia was emanating from this room;

(b) Drums PRO-09242-019 and PRO-09242-020: Two black metal drums were leaking onto their respective wooden pallets in the East Warehouse of Building 4 at 252 Allens Avenue. During the Inspection, EPA sampled the liquid waste leaking from each drum. The analytical results indicated pH values of approximately 1.0 S.U. for both drums. Both drums were labeled "Order No. 990034, Colt Mfg. West Hartford, CT, sulfuric acid." Drum PRO-09242-019 was standing on a stained wooden pallet with leaks flowing through its sidewall pinholes and onto the warehouse floor. Drum PRO-09242-019 was co-located with another leaking drum already placed in a yellow over-pack drum. The pooled leak from this other drum could be seen through the yellow over-pack sidewall. Drum PRO-09242-020 was standing, with leaks flowing through its sidewall pinholes, on a stained wooden pallet situated over a secondary containment pallet. Drum PRO-09242-20 was co-located with a third bulging drum, labeled "PRO-08957-003 50% nitric acid," on the same wooden pallet;

(c) Boxes of Waste Solids Containing Flammable Liquids: Standing in a row designated by EPA Inspectors as "Row 18" in the West Warehouse of Building 4 were two containers. One was a 1-cubic yard cardboard box standing on a secondary containment pallet with the label "waste solids containing flammable liquids (D001)." The bottom of the box was wet and appeared as though it was about to leak its contents. The box was not marked with Respondents' "PRO" container number. Mr. Fitzgerald indicated that all of the containers in Row 18 were wastes generated by Northland from the consolidation of the flammable solids drums into cubic-yard totes, which would ultimately be shipped off-site for incineration. The other container in

Row 18, also stored on a secondary containment pallet, was a similar 1-cubic yard box with signs of leakage at the bottom of the box. Additionally, a strong odor was emanating from Row 18 in the proximity of these two containers;

(d) East End Loading Dock: The East End Loading Dock of Building 4 is used for off-loading tankers of hazardous and non-hazardous waste into the tank farms at 252 Allens Avenue as well as for off-loading waste containers. Liquid was accumulating in the immediate containment area of the dock. Dirt had built up in the containment area so that inspection of the surface conditions by Facility personnel could potentially be inhibited. Moreover, the area where the main containment pad and the sidewall berm intersected near the dock was deteriorating at a level significant enough to expose the underlying earth;

(e) Flammables Cut-Off Room: Rain water was leaking from the ceiling at three distinct locations into the Flammables Cut-Off Room of Building 4. The rain water also was falling and pooling on top of drums in the room. Rain water can cause corrosion of the drums;

(f) Water Reactive Storage Area: An overhead water sprinkler system was installed directly over the Water Reactive Storage Area in the Upper Warehouse of Building 11. In the event of an area fire, the sprinkler system on the overhanging ceiling would rain down onto the water reactive wastes. Mr. Fitzgerald indicated that the sprinklers were functional at the time of the Inspection. Moreover, although the water reactive wastes were stored under a roof, two sides of this storage area were exposed to the elements: the north side was partially exposed and the south side was completely exposed;

(g) Southeast Area of the Lower Warehouse: Two drums were leaking onto the floor just outside the southeast area of the Lower Warehouse in Building 11. Both leaking drums were

labeled as "chlorinated solvent and carbon (F002, D040), from Tanury Plating/Tanury Industries." One of these drums was marked with container number PRO-08382-007. The drums were situated on top of a containment pallet and hanging over the edge of a secondary containment pellet in such a way that the leaks were released to and flowing across the floor. When the leaks were pointed out to Facility personnel, the containers were moved into the containment pallet;

(h) Upper Warehouse, General Storage Area: The ceiling of the Upper Warehouse in the General Storage of Building 11 was leaking rain water onto an area storing toxic and corrosive hazardous wastes. Mr. Fitzgerald described the area as primarily being used for temporary storage of unclassified alkaline and cyanide wastes. All of the containers were stored in rows placed on top of wooden pallets. A 1-cubic yard tote, labeled "hazardous waste, PRO-09545-019, profile 3560437-00, cyanide salts," was open with its cyanide salt content found on the top of the tote;

(i) Roll-off Storage Area 252-A: The secondary containment pad and berm for Roll-off Storage Area 252-A were cracked and showing signs of substantial deterioration. The corner of this secondary containment pad and berm (near roll-off number 368) had accumulated a significant amount of liquid with an oil-sheen on the surface. EPA sampled this liquid during the Inspection. Analytical results indicated a pH value of approximately 10 to 11 S.U. Further, the valve used to remove liquid contents from this secondary containment pad and berm was partially open and leaking the liquid contents into the immediate parking lot and soil. Finally, the berm was cracked allowing water to leak from underneath the berm at several locations; and

(j) Roll-off Number 440: Roll-off number 440, labeled as "hazardous waste, debris for micro (BDS1/BDS2), Northland as generator, profile CJ2681-00, D002, D004-D011, D018, F006-F012, F019 and R011," was leaking a liquid at its back end, near the broken berm of the secondary containment structure. The leaking liquid was seeping into the ground near the severely broken containment berm. EPA sampled the liquid during the Inspection. Analytical results indicated a pH value of approximately 14.0 S.U. indicating that the liquid was corrosive. A strong odor was also emanating from the vicinity of this roll-off.

109. Accordingly, Respondents' failure to properly maintain and operate the Facility and all systems of treatment and control – resulting in actively leaking drums; compromised cubic yard boxes and roll-offs that held corrosive, flammable, toxic and chlorinated wastes; failed secondary containment structures; improperly utilized secondary containment structures and flow control devices (i.e. open valves, open tanks, and leaking drums overhanging secondary containments); failed protective mechanisms (i.e. leaking roofs pooling water onto hazardous waste drums and totes); and improperly designed storage areas (i.e., water sprinklers situated over water reactive wastes) – constitutes violations of Permit Conditions 4, 5, and 28 and former RI HW Rule 9.08 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. § 264.31.

Count 16 - Failure to Adequately Conduct and Document Inspections.

110. Complainant incorporates by reference the allegations in paragraphs 1 to 109.

111. Permit Condition 26 requires Respondents to comply with former RI HW Rule 9.05 (currently RI HW Rule 8.1), as described by Section 7.00 of the Permit Application.

112. Former RI HW Rule 9.05 requires the owner or operator of the facility to maintain an inspection program equivalent to 40 C.F.R. § 264.15. (Currently RI HW Rule 8.1 incorporates 40 C.F.R. § 264.15 by reference.)

113. Pursuant to 40 C.F.R. § 264.15, the owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, and/or may lead to, a release of hazardous waste constituents to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

114. Section 7.50 of the Permit provides the inspection schedule, as specified in Table 7.1.

115. Section 7.40 of the Permit requires Respondents to routinely inspect equipment or units not in use and to document associated findings.

116. Furthermore, Section 7.40 of the Permit requires the use of periodic inspection forms to document inspections. These forms include the date and time of the inspection, the inspector's name, inspection observations, and the date and nature of repairs. See 40 C.F.R. § 264.15(d).

117. Section 7.00 of the Permit requires that conditions noted during an inspection be remedied in a timely manner to minimize harm, and that corrections are to be made immediately where damage has already occurred (leaks, spill, etc.) or where imminent hazard is noted. See 40 C.F.R. § 264.15(c).

118. EPA inspectors reviewed the monthly, weekly, and daily in-house routine inspection reports and weekly sprinkler system inspection reports that Respondents prepared for April, May,

and June 2007; August, September, and October 2008; and June, July, and August 2009, pursuant to Section 7.00 and Section 7.50 of the Permit.

119. Respondents failed to conduct and adequately document inspections in the following manner:

(a) The "comment" fields on Respondents' monthly, weekly, and daily inspection reports (although occasionally filled out) were generally blank or sparsely filled in. In many instances, the inspection reports simply documented compliant conditions with phrases such as: "OK, NA, None, or No" to indicate that no problems existed. In these instances, there were no notations indicating whether Respondents did or did not observe malfunctions, deterioration, operator errors, or discharges which may be causing, or may lead to, release of hazardous waste constituents to the environment or threats to human health;

(b) Respondents' routine inspection reports immediately preceding EPA's July 2009 inspection did not record several of the concerns that EPA inspectors observed during the July 2009 inspection, including: cracked secondary containment walls, pitted tanks, holes in tanks, leaking roll-offs, compromised roll-off secondary containment pad, missing or broken or disengaged tank level indicators, bulging and leaking 55-gallon drums, storage of incompatible wastes, open totes, leaking roofs, and broken un-contained and unlabeled universal waste lamps. For example, the April 2009 monthly report, dated April 30, 2009, indicated "roll-off Area A (in NW corner) = OK." EPA's observation of this same area during the July 2009 inspection indicated that the damage was long-standing;

(c) Respondents' inspection logs repeatedly contained phrases such as "need to fix gate 275," "gate 275," "awaiting further repairs 275 gate," or other similar language indicating that a

problem existed with the gate at 275 Allens Avenue for the months of January 2009, June 2009, July 2009, and August 2009 – spanning a period of eight months. There was no remedial action recorded; and

(d) Among all of the inspection records that EPA inspectors reviewed, there was no record corresponding to the inspection of the Hazardous Waste Storage Area located in Building 4 near the Laboratory.

120. Accordingly, Respondents' failure to adequately conduct and document routine inspections and to undertake remedial measures in a timely manner constitutes violations of Permit Condition 26 and former RI HW Rule 9.05 (currently RI HW Rule 8.1). See 40 C.F.R. § 264.15.

VI. PROPOSED PENALTIES

121. In determining the amount of any penalty to be assessed, pursuant to Section 3008(a) of RCRA, EPA will take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged violations in this Complaint, Region 1 will take into account the particular facts and circumstances of ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. By this Complaint, Region 1 seeks to assess Respondents civil penalties of up to $37,500 per day per violation of RCRA for:

a. Six violations by Respondents for failing to make hazardous waste determinations on seven waste streams: These violations are significant because without making hazardous

waste determinations, a facility may not implement the appropriate hazardous waste management procedures required by RCRA, and hence, may increase the risk of exposure to human and/or environmental receptors.

b. Twenty-one violations by Respondents for failing to comply with land disposal restriction requirements associated with twenty-one manifests: These violations are significant because the failure to properly complete and maintain LDR notifications can lead to improper treatment of hazardous waste before land disposal.

c. One violation by Respondents for failing to determine the average volatile organic compound concentration at the point of waste origination for each hazardous waste placed in tank S-12: This violation is significant because tanks containing hazardous wastes with high VOC concentrations have the potential to pollute when applicable RCRA air emission controls are not followed. Respondents' failure to make the requisite determination circumvented such air emission controls and increased the potential for release of VOCs into the environment.

d. Five violations by Respondents for storing hazardous wastes in tanks that are in poor condition and for failing to support and protect ancillary equipment associated with five tanks (M-1, M-3, S-12, S-51, and FS-2): These violations are significant because maintaining the integrity of hazardous waste storage tank systems is paramount to preventing tank failure, which could cause large releases of hazardous wastes into the environment.

e. One violation by Respondents for storing incompatible hazardous wastes in tank M-3: This violation is significant because the commingling of acidic and alkaline wastes in tank M-3 could have generated heat and resulted in a potential explosion, fire and/or the

release of toxic gases and hazardous wastes.

f. One violation by Respondents for failing to use appropriate controls and practices to prevent spills and overflows from tanks S-21A, S-21B, and S-12: This violation is significant because tank overfill or failure could release large volumes of hazardous wastes into the environment.

g. One violation by Respondents for failing to remove accumulated water from secondary containment systems within 24 hours or in as timely a manner as possible: This violation is significant because prolonged exposure to standing precipitation can cause corrosion and deterioration of containment structures and ancillary equipment. Standing water also can interfere with Respondents' ability to visually inspect the integrity of containment structures and ancillary equipment, therefore, increasing the potential for spills, leaks and system failures.

h. Four violations by Respondents for storing hazardous wastes in unpermitted areas in four areas of the Facility: These violations are significant because precise storage of hazardous wastes in their specific permitted areas is necessary to ensure, among other things, adequate aisle space, the storage of compatible wastes, adequate secondary containment capacity, the presence of appropriate emergency response equipment, ventilation and ambient temperature necessary for the safe storage of hazardous wastes.

i. One violation by Respondents for failing to maintain adequate aisle space: This violation is significant because inadequate aisle space impedes the detection and correction of conditions that may lead to a release, fire and/or explosion, and hampers the timely and effective access of emergency responders and equipment to compromised containers.

j. Four violations by Respondents for failing to separate hazardous waste containers from nearby incompatible wastes or other materials by means of a dike, berm, wall, or other device in four major areas of the Facility: These violations are significant because the collocation of incompatible wastes increases the potential for, among other things, exothermic reactions, heat generation, formation of flammable and/or toxic gases, increased pressurization within containers, fire, explosion, and/or the release of corrosive or toxic compounds.

k. One violation by Respondents for failing to store hazardous wastes in containers that are in good condition: This violation is significant because Respondents' storage of hazardous wastes in severely dented and severely corroded containers containing flammable and corrosive wastes poses a considerable threat of harm to the health of Facility personnel working amongst such containers in the event of container failure.

l. One violation by Respondents for failing to keep hazardous waste and universal waste containers closed, except when necessary to add or remove waste: This violation is significant because the failure keep such containers closed increases the potential for direct contact of personnel with hazardous wastes, emissions of volatile wastes, reaction, ignition, spills, and/or commingling of incompatible wastes.

m. One violation by Respondents for failing to properly label hazardous waste containers and universal waste lamps: This violation is significant because Respondents' failure to properly label hazardous waste containers and universal waste lamps increases the potential for mismanagement and hampers emergency responders' ability to identify the contents of such containers.

n. One violation by Respondents for failing to properly date hazardous waste and universal waste containers: This violation is significant because the failure to mark hazardous waste and universal waste containers with the accumulation start date increases the potential that such wastes would be stored for more than the 90 days allowed under the Permit. Such long-term storage increases the likelihood of mismanagement and contamination due to leaks and spills.

o. Ten violations by Respondents for failing to maintain and operate a facility in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste and to properly operate and maintain all facilities and systems of treatment and control in eight areas of the Facility: These violations are significant because the actively leaking drums could have migrated to environmental receptors and caused harm to human health and the environment. Further, failed secondary containment structures, improperly utilized flow control devices, failed protective mechanisms, and improperly designed storage areas at the Facility increased the potential for a release of hazardous wastes into the environment.

p. One violation by Respondents for failing to adequately conduct and document routine inspections: This violation is significant because weekly inspections are necessary to ensure that hazardous waste management problems are detected early and remedied promptly. Moreover, poorly documented inspection logs prevent Facility personnel from being able to clearly demonstrate whether inspections revealed problems, and how and when such problems were remedied to prevent harm to human health and the environment.

122. Complainant will calculate a proposed penalty based, in part, on its current knowledge of Respondents' financial condition. Respondents shall pay the civil penalty with

a cashier's or certified check, payable to the Treasurer, United States of America. Respondents should note on this check the docket number of this Complaint (EPA Docket No. RCRA-01-2012-0028). The check shall be forwarded to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100, Mail Code ORA18-1
Boston, Massachusetts 02109

and
Andrea Simpson, Esq.
U.S. Environmental Protection Agency, Region 1
Mail Code OES04-2
5 Post Office Square, Suite 100
Boston, Massachusetts 02109

VII. COMPLIANCE ORDER

123. Based on the foregoing findings, Respondents are hereby **ORDERED** to achieve and maintain compliance with all applicable requirements of the Permit, the RI HW Rules and RCRA. Specifically, upon receipt of this Compliance Order, Respondents shall comply with the following requirements:

124. Immediately upon receipt of this Complaint, Respondents shall conduct hazardous waste determinations in accordance with the requirements of Section 5.00 (Waste

Analysis Plan) of the Permit Application and former RI HW Rule 5.08 (currently RI HW Rule 5.8). See also 40 C.F.R. § 262.11.

125. Immediately upon receipt of this Complaint, Respondents shall conduct hazardous waste determinations in accordance with the requirements of Permit Condition 23 and former RI HW Rule 9.02 (currently RI HW Rule 8.1). See also 40 C.F.R. § 264.13.

126. Immediately upon receipt of this Complaint and in accordance with the land disposal restriction requirements of 40 C.F.R. § 268.7(a) and (b), Respondents shall determine if a hazardous waste must be treated before it can be land disposed. If the waste does not meet these treatment standards, Respondent shall send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in its file. In this one-time notice Respondent shall include, among other information, EPA hazardous waste numbers, the constituents of concern for F001-F005 and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents.

127. Immediately upon receipt of this Complaint and in accordance with 40 C.F.R. § 264.1083(a)(1), Respondents shall determine the average Volatile Organic concentration of hazardous waste at the point of waste origination for each hazardous waste that Respondent places in tanks to ensure that air emission controls are implemented at the Facility when required by 40 C.F.R. § 264.1084.

128. Within 60 days of receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1), which incorporates 40 C.F.R. Part 264, Subpart J, Respondents shall store hazardous wastes in tanks that are in good condition and support and protect ancillary equipment, in accordance with the

requirements of 40 C.F.R. §§ 264.192(a), (e), and (g) and 40 C.F.R. § 264.198(a)(2).

129. Immediately upon receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.194(a), Respondents shall ensure that no hazardous wastes or treatment reagents are placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode or otherwise fail.

130. Within 30 days of receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.194(b), Respondents shall implement appropriate controls and practices to prevent spills and overflows from tanks.

131. Immediately upon receipt of this Complaint and in accordance with Permit Condition 35 and former RI HW Rule 9.19 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.193(c)(4), Respondents shall ensure that liquids accumulated in secondary containment systems at the Facility are removed from such systems within 24 hours or in as timely a manner as possible.

132. Immediately upon receipt of this Complaint and in accordance with Sections 3.00, 3.22, 3.43 and Table 3.2 of the Permit Application, Respondents shall store hazardous waste containers only in permitted areas of the Facility.

133. Immediately upon receipt of this Complaint and in accordance with Permit Condition 28 and former RI HW Rule 9.08 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.35, Respondents shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination

equipment to any area of the Facility in an emergency. Specifically, Respondent shall maintain, at minimum, the aisle space amounts specified in Section 4.30 of the Permit Application for the particular types of hazardous waste containers.

134. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.77(c), Respondents shall segregate all incompatible wastes and materials and implement management standards to ensure that all incompatible wastes and materials are kept separated from each other by means of a dike, berm, wall, or other device.

135. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34, former RI HW Rule 9.18(A) (currently RI HW Rule 8.1) which incorporates 40 C.F.R. § 264.173(c), and former RI HW Rule 5.02 (currently RI HW Rule 5.2.A), which incorporates 40 C.F.R. § 262.34(a)(1) and which in turn, references 40 C.F.R. § 264.173(c), Respondents shall ensure that all hazardous waste containers are closed during storage, except when it is necessary to add or remove waste.

136. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(K)(3) (currently RI HW Rule 13.5.I), Respondents shall store universal waste mercury-containing lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. This container must be closed, structurally sound, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. In addition, Respondent shall keep unbroken mercury-containing lamps in closed packaging that will minimize breakage during normal conditions. See also 40 C.F.R. § 273.33.

137. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34, former RI HW Rules 5.04(A), 5.04(C), and 9.18(B) (currently RI HW Rules 5.4.A, 5.4.C, and 8.1, respectively) and 40 C.F.R. § 268.50(a)(2)(i), Respondents shall clearly label or mark all containers holding hazardous wastes with the words "Hazardous Waste" and other words that identify the contents of the containers.

138. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(L)(3) (currently RI HW Rule 13.5.N), Respondents shall clearly label all universal waste mercury-containing lamps or containers in which such lamps are stored with one of the following phrases: "Universal Waste—Mercury-Containing Lamp(s)," "Waste Mercury-Containing Lamps(s)," or "Mercury-Containing Lamp(s)." See also 40 C.F.R. § 273.34(e).

139. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 5.04(A)(5) (currently RI HW Rule 5.4.A.5) and 40 C.F.R. § 268.50(a)(2)(i), Respondents shall label all hazardous waste containers, including roll-offs, with the accumulation start date.

140. Immediately upon receipt of this Complaint and in accordance with former RI HW Rule 13.06(M) (currently RI HW Rule 13.5) and 40 C.F.R. § 273.35(c), Respondents shall label universal waste mercury-containing lamps with the earliest date that such lamps became wastes or were received or Respondents shall otherwise maintain such lamps in a manner that clearly demonstrates the length of time such lamps have been accumulating since they became wastes or were received.

141. Within 30 days of receipt of this Complaint and in accordance with Permit

Conditions 4, 5 and 28, and former RI HW Rule 9.08 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.31, Respondents shall design, maintain, and operate the Facility and all systems of treatment and control in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. Specifically, Respondents shall correct the conditions listed in paragraphs 108(a) through (g) of this Complaint.

142. Immediately upon receipt of this Complaint and in accordance with Permit Conditions 26, Section 7.00 of the Permit Application, and former RI HW Rule 9.05 (currently RI HW Rule 8.1), Respondents shall adequately conduct routine inspections, document, and ensure adequate documentation of any observed malfunctions and deterioration, operator errors, and discharges which may be causing and/or may lead to a release of hazardous waste constituents to the environment or a threat to human health as well as the nature of any repairs performed.

143. Immediately upon receipt of this Complaint and in accordance with Permit Condition 26, Section 7.30 of the Permit Application and former RI HW Rule 9.05 (currently RI HW Rule 8.1), Respondents shall remedy all conditions noted during an inspection in a timely manner to minimize harm. Where damage has already occurred (leaks, spills, etc.) or where imminent hazard is noted, Respondents shall take corrective actions immediately.

144. Immediately upon receipt of this Complaint and in accordance with Permit Condition 34 and former RI HW Rule 9.18 (currently RI HW Rule 8.1) which incorporates by reference 40 C.F.R. § 264.171, Respondents shall store hazardous waste in containers that are

in good condition.

145. Within sixty-five (65) days of receipt of this Complaint, Respondents shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in paragraphs 124 through 144, above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

146. Respondents shall submit the above required information and notices to:

Andrea Simpson, Esq.
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109

147. If Respondents fail to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in which EPA may seek the imposition of additional penalties of up to $37,500 for each day of continued noncompliance.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

148. As provided by Section 3008(b) of RCRA, Respondents have the right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. **A request for a hearing on the violations alleged in this Complaint must be incorporated in a written Answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint.** In the Answer,

Respondents may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondents intends to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondents to admit, deny or explain any material fact contained in the Complaint constitutes an admission of that allegation.

149. Respondents' Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109

150. Respondents should also send a copy of the Answer, as well as a copy of all other documents which it files in this action, to Andrea Simpson, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

Andrea Simpson, Esq.
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109

IX. DEFAULT ORDER

151. If Respondents fail to file a timely answer to the Complaint, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default

by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

X. SETTLEMENT CONFERENCE

152. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide additional information that may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA Region 1. The issuance of such a Consent Agreement shall constitute a waiver of Respondents' right to a hearing on any issues of law, fact, or discretion included in the Agreement.

153. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Andrea Simpson, Senior Enforcement Counsel, at (617) 918-1738.

XI. EFFECTIVE DATE

154. This Complaint shall become effective immediately upon receipt by Respondents.

Date: 3/14/12

Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1