



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

SEP 30 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 OCT 23 P 2:34
REGIONAL HEARING
CLERK

Mr. Roy Barrie, President
Materials Management, Inc.
P O Box 2241
Toa Baja, PR 00951

Re: **In the Matter of Materials Management, Inc.**
Docket Number RCRA-02-2013-7104

Dear Mr. Barrie:

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

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

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

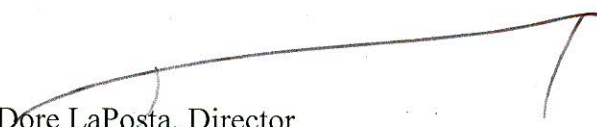
You will find enclosed a copy of the "Consolidated Rules of Practice" which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.)

For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

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

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

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 OCT 23 P 2:44
REGIONAL HEARINGS
CLERK

In the matter of:

Materials Management, Inc.

Respondent.

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

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

Docket No. RCRA-02-2013-7104

I. COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Materials Management, Inc. ("Respondent") has violated provisions of RCRA and federal regulations concerning the management of hazardous waste.

Under Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico ("Puerto Rico" or "the Commonwealth") is a "State" within the meaning of this provision. Puerto Rico has not received authorization to operate a hazardous waste program pursuant to this provision. As a result, federal hazardous waste regulations remain in effect.

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

JURISDICTION

1. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

NOTICE

2. EPA has given notice of this action to the Commonwealth of Puerto Rico.

RESPONDENT

3. Respondent is Materials Management, Inc.
4. Since about 2003, Respondent has been, and remains, the owner and operator of a commercial auto crushing and scrap recycling business located at Carr. 2 Km. 26.6, Bo. Espinosa, Dorado, Puerto Rico 00646.

GENERAL ALLEGATIONS

5. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste and used oil. 42 U.S.C. § 6901 *et seq.*
6. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.
7. Pursuant to Section 3014 of RCRA, 42 U.S.C. § 6935, the Administrator of EPA has promulgated regulations governing the management of used oil. These regulations are set forth in 40 C.F.R. Part 279.
8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which includes the regulations referenced above.
9. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$37,500 per day of each violation occurring after January 12, 2009. 40 C.F.R. Part 19.
10. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

11. The Dorado, Puerto Rico location where Respondent conducts its scrap recycling business constitutes a “new facility” and a “facility” as those terms are defined in 40 C.F.R. § 260.10 (hereinafter “facility”).
12. Respondent is and has been the “owner” of the facility as that term is defined in 40 C.F.R. § 260.10.
13. Respondent is and has been the “operator” of the facility as that term is defined in 40 C.F.R. § 260.10.
14. In 1996, EPA Identification Number PRO007000706 was assigned to Maelo Auto Sales, the business operating at the site prior to Respondent’s business.
15. Respondent did not submit a Section 3010 Notification of Regulated Waste Activity to EPA. However, EPA assigned Respondent Identification Number PRO007000706 after the inspection of the facility in October 2008.
16. Respondent is and has been a “generator” of “hazardous waste” at its facility as those terms are defined in 40 C.F.R. § 260.10. The requirements for generators are set forth in 40 C.F.R. Part 262.
17. Respondent did not submit a Part A or a Part B Permit Application to EPA for its facility.
18. Respondent did not receive “interim status” and does not have a hazardous waste permit to treat, store or dispose of hazardous waste at its facility.

Description of Business Operations

19. Respondent has primarily operated as a scrap metal recycler and processor of ferrous and non ferrous metals.
20. In its operations, Respondent stores, partially dismantles, shreds, crushes, and bales junked automobiles and some refrigerators at its facility.
21. Prior to shredding, crushing, or storing junked vehicles at its facility, Respondent generally does not remove engines, transmissions, airbags or airbag components, mercury switches, oil filters, fuel filters, catalytic convertors, or air conditioners, and does not drain gas tanks, air conditioner fluids, or any other auto fluids.
22. On or about October 22, 2008, July 15, 2010, June 8, 2012, and September 19, 2012, EPA inspected Respondent’s facility to determine its compliance with RCRA and its implementing regulations (hereafter respectively referred to as “the 2008 Inspection;” “the 2010 Inspection;” “the June 2012 Inspection;” and “the September 2012 Inspection;” or, if referred to jointly, “the Inspections.”)

Count 1 - Failure to Make Hazardous Waste Determinations

23. Complainant re-alleges each allegation above, as if fully set forth herein.
24. Pursuant to 40 C.F.R. § 262.11, a person who generates “solid waste,” as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the method set forth therein.
25. Pursuant to 40 C.F.R. § 261.2(b)(3) materials are solid wastes if they are “abandoned by being disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of....”
26. In the course of its operations, Respondent receives motor vehicles and other discarded goods, including refrigerators, for recycling.
27. Many if not most of the vehicles received contain fluids and/or parts that may constitute and/or contain hazardous waste.
28. The fluids and parts discussed in paragraphs 21 & 27 include automotive fluids (including gasoline, diesel, used oil and other petroleum products as well as antifreeze/coolant); fuel filters; lead wheel weights; lead ends of battery cables; automobile components that may contain mercury (including light switches, anti-lock brake systems, ride leveling sensors, headlights and taillights, and virtual image instrument panels); and/or airbag cartridges which may contain sodium azide.
29. At the time of the Inspections and at times prior thereto, many of the vehicles received at Respondent’s facility contained some or all of the fluids and/or parts as described in Paragraphs 21 & 27-28 which may constitute and/or contain hazardous waste.
30. During at least the time period starting with the date of the 2008 Inspection and continuing through the date of the September 2012 Inspection, Respondent crushed, shredded, and stored junked motor vehicles without first removing or draining all of the remaining fluids and parts referenced in Paragraphs 21 & 27-29 from the vehicles.
31. During at least the time period starting with the date of the 2008 Inspection and continuing through the date of the September 2012 Inspection, Respondent crushed, shredded and stored large piles of vehicles directly on top of earthen ground (soil) at its facility.
32. The storage, shredding, and crushing of junked vehicles resulted in the generation and uncontrolled release, leaking, spilling or placing of some of the fluids and parts referenced in Paragraphs 21 & 27-30 directly onto the earthen ground (soil) at its facility.
33. Many, if not all, of the fluids and parts identified in Paragraphs 21, 27-30 & 32 were “abandoned by being disposed of” at Respondent’s facility, within the meaning of 40 C.F.R. § 261.2(b) and each of these therefore constituted a “solid waste,” as defined in 40 C.F.R. § 261.2.

34. Respondent did not make the required determinations as to whether the solid wastes referenced in Paragraphs 21, 27-30 & 32 constituted hazardous wastes.
35. Each failure by Respondent to determine whether the solid wastes referenced in Paragraphs 21, 27-30 & 32 constituted a hazardous waste is a violation of 40 C.F.R. § 262.11.
36. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 262.11.

Count 2 – Disposal of Hazardous Waste Without a Permit

37. Complainant re-alleges each allegation above, as if fully set forth herein.
38. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c), an owner or operator cannot dispose of hazardous wastes at its facility without having obtained a permit or interim status authorizing such disposal.
39. “Disposal” is defined in 40 C.F.R. § 260.10 as the “discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”
40. During at least the time period starting with the 2008 Inspection through to the date of the September 2012 Inspection, Respondent, in the course of and/or as a result of, shredding, crushing, dismantling, and storing motor vehicles, has deposited, disposed of, dumped, spilled and/or leaked the following onto the soil and/or into the air at its facility:
 - a. fuel filters;
 - b. automotive fluids (including gasoline, diesel, used oil and other petroleum products as well as antifreeze/coolant);
 - c. lead wheel weights;
 - d. lead ends of battery cables;
 - e. automobile components that may contain mercury (including light switches, anti-lock brake systems, ride leveling sensors, headlights and taillights, hand virtual image instrument panels); and/or
 - f. airbag cartridges which may contain sodium azide.
41. Pursuant to 40 C.F.R. § 261.3, any solid waste which exhibits any characteristic identified in Subpart C of 40 C.F.R. Part 261 (*i.e.*, ignitability, corrosivity, reactivity, or toxicity) constitutes a hazardous waste.
42. Spent/discarded gasoline is both an ignitable hazardous waste (D001) and a toxic characteristic waste for benzene (D018), as those characteristics are defined in 40 C.F.R. § 261.21 and 40 C.F.R. § 261.24, respectively.

43. Discarded diesel fuel #2 is likely to be an ignitable hazardous waste (D001).
44. Spent/discarded antifreeze/coolant can become contaminated during use with benzene (D018), tetrachloroethylene (D039), trichloroethylene (D040), and metals such as lead (D008), cadmium (D006), or mercury (D009).
45. Lead wheel weights may exhibit the toxic characteristic for lead (D008).
46. Discarded lead-acid batteries contain both lead and acid (sulfuric acid), and they generally exhibit the hazardous wastes characteristics for lead (D008) and corrosivity (D002).
47. Spent mercury can be a toxic hazardous waste (D009).
48. Sodium azide, in its commercial chemical form, is a RCRA acutely hazardous waste for toxicity (P105), and discarded airbag cartridges are likely to exhibit the reactivity characteristic (D003) since it is self-reactive.
49. Oil drains from a vehicle's engine onto the bare soil during crushing operations, and also drains from crushed or shredded vehicles during long-term storage.
50. The leaking and/or discarded oil described in the previous paragraph can be contaminated with hazardous waste or hazardous waste constituents.
51. Stormwater runoff from the facility from fluids released from the oil storage area and the shredding, crushing, and storing of junked vehicles may contain hazardous waste and/or hazardous waste constituents such as transmission fluids, gasoline, diesel, motor oil, antifreeze/coolant, windshield washer fluid, refrigerants, brake fluid, lead, and/or mercury.
52. Stormwater runoff from the facility, contaminated with hazardous waste or hazardous waste constituents, is not managed and either percolates into onsite soil or flows off the facility property where it either percolates into the offsite soil or flows into the local sinkhole and/or into storm water channels and possibly into surface water off site.
53. The solid wastes identified in Paragraphs 40 & 42-52 above are disposed of at Respondent's facility and some or all of these wastes constitute a "hazardous waste" as defined in 40 C.F.R. §§ 261.21 and 261.24.
54. Some or all of the releases of the solid wastes identified in Paragraphs 40 & 42-52 onto the soil at the Respondent's facility constitutes a "disposal" of "hazardous waste" as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 261.3, respectively.
55. Respondent's disposal of hazardous waste at its facility, which does not have interim status or a permit authorizing such disposal, is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

56. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. §6928(a), Respondent is subject to injunctive relief and liable for civil penalties for each violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

Count 3 - Failure to Minimize the Possibility of Releases

57. Complainant re-alleges each allegation above, as if fully set forth herein.
58. Pursuant to 40 C.F.R. § 264.1(b), owners and operators of all facilities which treat, store or dispose of hazardous waste must, unless subject to certain exceptions which do not apply to Respondent, comply with the requirements set forth in 40 C.F.R. Part 264.
59. Pursuant to 40 C.F.R. § 264.31, owners and operators must design, construct, maintain and operate their facilities 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.”
60. On at least 180 days during the time period starting at least from the 2008 Inspection and continuing through to the September 2012 Inspection, while operating and maintaining its facility, Respondent:
- a. failed to remove, and did not have procedures in place for removing all fluids (such as gasoline and diesel fuel) and parts (such as mercury containing light switches, high intensity discharge systems {e.g., headlights and tail lamps}, and mercury containing G-force sensors in anti-lock brake systems) from junked automobiles prior to receiving and storing such vehicles, potentially permitting the release of hazardous waste and/or hazardous waste constituents into the environment from such fluids and parts;
 - b. stored, shredded, and crushed motor vehicles directly on the soil in a manner that allowed fluids which may contain hazardous waste or hazardous waste constituents to be released directly onto the soil at the facility;
 - c. shredded or crushed motor vehicles containing volatile hazardous constituents, including benzene, thereby allowing fluids that may contain hazardous waste or hazardous constituents to volatilize into the air;
 - d. failed to have a sufficient stormwater runoff collection system to minimize or eliminate ponding, runoff, or percolation of stormwater mixed with fluids released from the oil storage area and the shredding, crushing, and storing of junked vehicles, thereby allowing such stormwater, which may be contaminated with hazardous wastes and/or hazardous waste constituents, to contaminate the earthen soils at the facility and the sinkhole and mogote beyond the facility property;
 - e. stored lead-based battery cable ends and wheel weights uncovered in the open air on bare soil, thus permitting the release of hazardous waste or hazardous waste constituents into the soil or stormwater which may run into surface water; and

- f. collected and stored hazardous fluids in the secondary concrete containment channel constructed around the shredder/baler, however Respondent did not remove the accumulation of fluids in the channel so that there was a release of hazardous wastes and/or hazardous waste constituents into the soil, surface water, and/or air.
61. The facility is located:
- a. in a region of high rainfall of approximately 62 inches per year which increases the risk of offsite migration of hazardous waste contaminants from releases;
 - b. over the Puerto Rico North Coast Limestone aquifer system, a large and productive source of ground water on Puerto Rico which underlies a populous and industrialized area that extends along the north coast of Puerto Rico;
 - c. over an area of karst topography which is characterized by rapid groundwater flow rates which can lead to the increased risk of contamination of drinking water wells and in a sensitive ecosystem which serves as prime habitat for native and wildlife species, some of which are threatened and endangered;
 - d. near a sinkhole located at the northwest corner of the facility and a heavily vegetated mogote directly north of the facility which has rapid groundwater flow rates increasing the risk of contamination of drinking water wells;
 - e. near surface waters including fresh water wetlands and a fresh water pond; and
 - f. near eight Puerto Rico Aqueduct and Sewer Authority public water supply wells and eleven other wells, identified by the U.S. Geological Service as water supply wells, which are down gradient of the facility.
62. Each action or inaction set forth in Paragraph 60 constitutes a failure by Respondent to design, construct, maintain and/or operate its facility in a manner minimizing 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 in violation of 40 C.F.R. § 264.31.
63. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is subject to injunctive relief and subject to civil penalties for each violation of 40 C.F.R. § 264.31.

Count 4 – Improper Disposal of Used Oil

64. Complainant re-alleges each allegation above, as if fully set forth herein.

65. "Used oil" is "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." 40 C.F.R. § 279.1.
66. Subpart I of 40 C.F.R. Part 279 sets forth the standards for the disposal of used oil that is not being recycled and is being disposed of. Pursuant to 40 C.F.R. § 279.81, used oils that are identified as hazardous waste and cannot be recycled in accordance with Part 279 must be managed and/or disposed of in accordance with hazardous waste requirements set forth in 40 C.F.R. Parts 260-266, 268, 270, and 124. Pursuant to 40 C.F.R. § 279.81(b), used oils that do not constitute hazardous waste and cannot be recycled under Part 279 must be disposed of under the requirements of 40 C.F.R. Parts 257 and 258.
67. During at least the time period starting from the 2008 Inspection through the September 2012 Inspection, Respondent received junked motor vehicles which contained "used oil" as defined in 40 C.F.R. § 279.1.
68. During at least the period of time from the 2008 Inspection through the September 2012 Inspection, Respondent shredded and crushed vehicles without removing all of the used oil and in a manner that allowed oil and similar automobile fluids to be released onto the soil.
69. Respondent's disposal of used oil at its facility without complying with hazardous waste requirements (if the used oil was a hazardous waste) or without complying with 40 C.F.R. Parts 257 and 258 (if the used oil was not a hazardous waste) constitutes a violation of 40 C.F.R. § 279.81.
70. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is subject to injunctive relief and liable for civil penalties for each violation of 40 C.F.R. § 279.81.

Count 5 – Failure to Label Used Oil Storage Containers

71. Complainant re-alleges each allegation above, as if fully set forth herein.
72. A "used oil generator" is defined at 40 C.F.R. § 279.1 as any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation."
73. Respondent removes and accumulates "used oil" as that term is defined in 40 C.F.R. § 279.1 from its service and support vehicles, as well as from heavy equipment used and/or maintained on site. Respondent is a "used oil generator" as that term is defined in 40 C.F.R. § 279.1.
74. Subpart C of 40 C.F.R. Part 279 ("Standards for Used Oil Generators") sets forth the requirements for used oil generators.

75. Forty C.F.R. § 279.22(c) requires that containers used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."
76. During the 2008 and 2010 Inspections, Respondent stored used oil in numerous containers that were not labeled or marked clearly with the words "Used Oil."
77. During the 2008 and 2010 Inspections, Respondent stored used oil in 450 gallon tank that was not labeled or marked with the words "Used Oil."
78. Respondent violated 40 C.F.R. § 279.22 by failing to properly label the 450 gallon tank and containers used to store used oil during the 2008 and 2010 Inspections.
79. Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. §6928(a), Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 279.22.

II. PROPOSED CIVIL PENALTY

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

Count 1: \$ 32,915.00
Count 2: \$ 32,915.00
Count 3: \$114,470.00
Count 4: \$ 9,210.00
Count 5: \$ 5,670.00

Total Proposed Penalty for Counts 1-5 is \$195,180.00

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. For violations after January 12, 2009, for instance, adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary

Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule (with a further revision not relevant to this action on April 6, 2010).

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

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

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, 42 U.S.C. § 6928, Complainant herewith issues the following Compliance Order to Respondent:

- 1) Within twenty (20) calendar days of the effective date of this Compliance Order, Respondent shall:
 - a. make hazardous waste determinations for each solid waste generated at its facility pursuant to 40 C.F.R. § 262.11;
 - b. maintain and operate the facility in a manner that minimizes 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 pursuant to 40 C.F.R. § 264.31;
 - c. cease the disposal of hazardous waste at its facility unless or until it receives a hazardous waste permit from EPA authorizing such disposal pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.1(c);
 - d. comply with the requirements of the requirements of 40 C.F.R. § 279.81 and manage and dispose of used oil in accordance with 40 C.F.R. Parts 257, 258, 260 - 266, 268, and 270; and
 - e. comply with all applicable requirements for used oil generators set forth in 40 C.F.R. Part 279 including labeling containers used to store used oil.
- 2) Respondent shall submit to EPA within thirty (30) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in paragraph "1" of this Compliance Order. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement(s).

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

Sam Kerns, Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
kerns.sam@epa.gov

- 4) This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).
- 5) Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or commonwealth) provisions, nor does such compliance release Respondent from liability for any RCRA violations occurring or existing at the Materials Management facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce against Respondent any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Materials Management facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend

that Respondent are entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

(NOTE: any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

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

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

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

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

B. Opportunity To Request A Hearing

If requested by Respondent(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after the Compliance Order is served, the Compliance Order shall automatically become final 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A hearing of this matter will be conducted in accordance with the provisions of

the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

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

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

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondents have filed an Answer should be filed with the Headquarters Hearing Clerk, acting for the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other Courier, or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
Ronald Reagan Building, Rm M1200
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion Of Administrative Remedies

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

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

VI. INFORMAL SETTLEMENT CONFERENCE

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

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

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

Jeannie M. Yu
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, N.Y. 10007-1866
Telephone (212) 637-3205
Yu.jeannie@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference

procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

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

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

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

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

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

Dated: SEPTEMBER 30, 2013 **COMPLAINANT:**
New York, New York

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

To: Mr. Roy Barrie,
President
Materials Management, Inc.
P.O. Box 2241
Toa Baja, Puerto Rico 00951

cc: Melvin Sotomayor Rivera, Director
Land Pollution Control Division
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

In re: MATERIALS MANAGEMENT, INC. Docket No. RCRA-02-2013-7104

CERTIFICATE OF SERVICE

This is to certify that on the day of October 23, 2013, I caused to be mailed a true and correct copy of the foregoing “COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING,” bearing Docket Number RCRA-02-2013-7104, together with Attachments I & II (collectively henceforth referred to as the “Complaint”), and with a copy of the “CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS,” 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Mr. Roy Barrie
President
Materials Management, Inc.
P.O. Box 2241
Toa Baja, Puerto Rico 00951

Dated: October 23, 2013
New York, New York

Mildred Baez
MILDRED BAEZ

ATTACHMENT I

**PENALTY CALCULATION WORKSHEETS
WITH NARRATIVE EXPLANATION**

Materials Management, Inc.

**MATERIALS MANAGEMENT, INC, DORADO, PR:
 NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
 Penalty Computation Worksheet (Count 1)**

Respondent: Materials Management, Inc.

Facility Address: Carr. 2 Km. 26.6, Dorado, Puerto Rico 00646

Requirement Violated: 40 C.F.R. § 262.11

- Respondent failed to make hazardous waste determinations for solid waste streams at its facility.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$32,915
(a) Potential for harm	MAJOR
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$32,915
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
<hr/>	
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$32,915

MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm for a failure to conduct hazardous waste determinations is deemed to be MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure; and the adverse impact of the noncompliance on the regulatory scheme. The RCRA regulatory program is undermined when an owner/operator of a facility generating solid waste fails to determine whether each of the waste streams generated is hazardous. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be handled as such. In this instance, Respondent failed to determine if waste streams generated at its facility constituted hazardous waste. Consequently, Respondent was unaware that its waste was subject to regulation and mismanaged its hazardous waste at its facility which is located over a major aquifer, in karst, and near public water supply wells thereby increasing the risk of human or environmental exposure.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to make hazardous waste determinations for numerous waste streams, all of which Respondent generated regularly over an extended period of time during its crushing operations.

The applicable cell ranges from \$28,330 to \$37,500. The midpoint of the cell matrix was selected (\$32,915).

- c) Multiple/Multi-day – Hazardous waste identifications must be made at the point of waste generation. Because each waste stream referenced in Count 1 was generated during a single process (or point of generation) — the crushing of a junked vehicle — EPA has decided not to include a penalty component for each of the separate waste streams generated.

2) Adjustment Factors

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

- 3) Economic Benefit - No penalty is being sought to recoup Respondent's economic benefit for this violation since Respondent and/or its employees should have been able to make such determinations at no or low additional cost to Respondent.

**MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)**

Respondent: Materials Management, Inc.

Facility Address: Carr. 2 Km. 26.6, Dorado, Puerto Rico 00646

Requirements Violated: Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c)

- Respondent disposed of hazardous waste at its facility without having obtained a permit or qualifying for interim status authorizing such disposal.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$32,915
(a) Potential for harm	MAJOR
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1 (180 days -1):	\$0
4. Add line 1 and line 3	\$32,915
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$32,915

MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm in this violation was determined to be MAJOR. Operating a treatment, storage, or disposal facility without interim status or a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Potential for harm was determined to be Major because Respondent released hazardous waste directly on soil. Moreover, the facility's location over a major aquifer, in karst, and near public water supply wells increased the risk of human or environmental impacts.

- a) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Hazardous waste was disposed of at the facility without a permit or interim status. The practices at the facility were a significant departure from what the regulations require.

The applicable cell ranges from \$28,330 to \$37,500. The midpoint of the range was selected (\$32,915).

- b) Multiple/Multi-day - The operating conditions and actions that resulted in this violation existed for a significant period of time. However, because the conditions and actions similar to those referenced in this Count are also referenced in Count 3, EPA believes the multi-day component of this violation has been captured in the multi-day penalty calculation for Count 3.

2) Adjustment Factors

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

- 3) Economic Benefit – Respondent could have avoided the need for a permit by removing all fluids and parts which may contain or constitute hazardous waste from the junked automobiles prior to crushing the vehicles. The cost of such removal may be significant, but EPA does not presently have enough information to make that determination. This information will be obtained during the course of litigation and/or settlement discussions with Respondent, and inclusion of any economic benefit figure in the penalty being sought will be evaluated at that time.

**MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

Respondent: Materials Management, Inc.

Facility Address: Carr. 2 Km. 26.6, Dorado, Puerto Rico 00646

Requirement Violated: 40 C.F.R. § 264.31

- Respondent failed to design, construct, operate, or maintain its facility 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.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix		\$37,500
(a) Potential for harm		MAJOR
(b) Extent of Deviation		MAJOR
2. Select an amount from the appropriate multiple matrix cell		430
3. Multiply line 2 by number of number of days minus 1:	179	\$76,970
4. Add line 1 and line 3		\$114,470
5. Percent increase/decrease for good faith		0%
6. Percent increase for willfulness/negligence		0%
7. Percent increase for history of noncompliance		0%
8. Total lines 5 through 7		0%
9. Multiply line 4 by line 8		\$0
10. Calculate economic benefit -- de minimis		\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint		\$114,470

MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm present in this violation was determined to be MAJOR. Respondent conducted numerous activities that increased the likelihood that hazardous waste and hazardous constituents would be released to the environment. These activities included crushing, shredding and storing, directly on the earthen soil, vehicles which contained automobile fluids and parts containing hazardous waste and hazardous waste constituents, which should have been removed prior to conducting such activities. These crushing and shredding operations are carried out in such a manner that hazardous waste or hazardous waste constituents were released directly into the environment (soil, air, and surface water). Because Respondent did not have an adequate or sufficient stormwater runoff system in place during the Inspections, contaminated stormwater runoff would flow down gradient to the northeast side of the property and either percolate into the soil at the facility or flow offsite by means of a stormwater channel or into a sinkhole. The facility's location over a major aquifer, in karst, and near public water supply wells increased the risk of human or environmental impacts. Additionally, the practices detailed in this Count increased the risk of fire, explosions, gaseous emissions, leaching, spillage, or other discharge of hazardous waste or constituents.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The Respondent failed to take numerous steps to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the environment.

The applicable cell ranges from \$28,330 to \$37,500. The highpoint of the cell matrix was selected (\$37,500) to reflect the heightened risk posed by the Respondent's operations over and adjacent to particularly sensitive ecosystems.

- c) Multiple/Multi-day - The operating practices and conditions that resulted in this violation are believed to have existed on many days between the 2008 Inspection and the 2012 Inspections. Nonetheless, in accordance with the RCRA Civil Penalty Policy, EPA is using its discretion and selecting 179 days as the period of time for which a multi-day penalty component is being sought (180 days minus 1 day).

Subject to further information, EPA determined that a reduction to MINOR/MODERATE was warranted for the multi-day component of the penalty calculation for this Count. EPA assessed a minor potential for harm for the multi-day component since the incremental increase in potential for harm may be relatively low when assessed on a daily basis, and a moderate extent of deviation since Respondent likely did not release hazardous waste at its facility during every day in the five year period.

The applicable MINOR/MODERATE cell ranges from \$150 to \$430. The highpoint for the cell matrix was selected (\$430) to reflect the heightened risk posed by the Respondent's operations over and adjacent to particularly sensitive ecosystems.

2) Adjustment Factors

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

- 3) Economic Benefit - EPA does not presently have sufficient information to assess the amount of avoided or delayed costs incurred by Respondent for the actions or inactions identified in this Count. This information will be obtained during the course of litigation and/or settlement discussions with Respondent and Complainant will evaluate whether to include any economic benefit figure at that time.

**MATERIALS MANAGEMENT, INC, DORADO, PR:
 NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
 Penalty Computation Worksheet (Count 4)**

Respondent: Materials Management, Inc.

Facility Address: Carr. 2 Km. 26.6, Dorado, Puerto Rico 00646

Requirements Violated: 40 C.F.R. § 279.81

- Respondent failed to dispose of used oil in accordance with the requirements of Subpart I of Part 279 (Standards for ...Disposal of Used Oil).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$9,210
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$9,210
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$9,210

MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm in this violation was determined to be MODERATE. (While Respondent released used oil directly onto the soil, to the extent the used oil constituted hazardous waste, the potential for harm for this Count has been largely captured in the potential for harm component of the penalty assessed for Count 2.)
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. (While Respondent released used oil directly onto the soil, to the extent the used oil constituted hazardous waste, the extent of deviation for this Count has been largely captured in the extent of deviation component of the penalty assessed for Count 2.)

The applicable cell ranges from \$7,090 to \$11,329. The midpoint of the range was selected (\$9,210).

- c) Multiple/Multi-day - The operating procedures that resulted in this violation existed during at least the time period between the 2008 Inspection through the June 2012 Inspection. Nonetheless, because the actions that resulted in this violation are similar to those identified in Count 3, EPA believes the multi-day component for this violation was already captured in the penalty calculation for Count 3.

2) Adjustment Factors

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

- 3) Economic Benefit - Respondent could have avoided this violation by removing oil from the junked automobiles prior to crushing the vehicles, or by only accepting vehicles from which the oil was previously drained. The cost of such practices are likely insignificant, but EPA does not presently have enough information to make that determination. This information will be obtained and during the course of litigation and/or settlement discussions with Respondent and evaluated at that time.

**MATERIALS MANAGEMENT, INC, DORADO, PR:
 NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
 Penalty Computation Worksheet (Count 5)**

Respondent: Materials Management, Inc.

Facility Address: Carr. 2 Km. 26.6, Dorado, Puerto Rico 00646

Requirement Violated: 40 C.F.R. § 279.22

- Respondent failed to properly label used oil containers.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$5,670
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MINOR
2. Select an amount from the appropriate multiple matrix cell	0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$5,670
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$5,670

**MATERIALS MANAGEMENT, INC, DORADO, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)**

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm present in this violation was determined to be MODERATE. Failing to properly label containers can result in the improper management and/or disposal of the used oil.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MINOR. While the used oil tank and the containers of used oil observed by EPA inspectors were not labeled at the time of the 2008 and 2010 Inspections, they were in the area of the facility that was known to be used for storing used oil. At the time of the 2012 Inspections, the tank and containers were labeled. For these reasons, the Minor extent of deviation was chosen.

The applicable cell ranges from \$4,250 to \$7,089. The midpoint of the range was selected (\$5,670).

- c) Multiple/Multi-day - Multi-day penalties are not being sought.

2) Adjustment Factors

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

- 3) Economic Benefit - The economic benefit for this count is *de minimis*. There are virtually no costs associated with properly labeling containers.

ATTACHMENT II-TABLE I

GRAVITY MATRIX

(For violations that occur after January 12, 2009)

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$37,500 to \$28,330	\$28,329 to \$21,250	\$21,249 to \$15,580
	MODERATE	\$15,580 to \$11,330	\$11,329 to \$7,090	\$7089 to \$4,250
	MINOR	\$4,250 to \$2,130	\$2,129 to \$710	\$709 to \$150

ATTACHMENT II-TABLE II

MULTI-DAY MATRIX

(For violations that occur after January 12, 2009)

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	MINOR	\$850 to \$150	\$430 to \$150	\$150

