

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF:	)	Docket No. RCRA-01-2015-0024
	)	
Maine Health & Environmental	)	
Testing Laboratory	)	ANSWER TO AMENDED COMPLAINT
221 State Street	)	AND REQUEST FOR HEARING
Augusta, ME 04333	)	
Respondent	)	
	)	
EPA ID No. MER2832	)	
	)	
Proceeding under Section 3008(a)	)	
Resource Conservation and Recovery	)	
Act, 42 U.S.C. §6928(a)	)	
	)	
	)	

NOW COMES THE STATE OF MAINE HEALTH AND ENVIRONMENTAL TESTING LABORATORY (“Maine HETL,” “HETL,” or “Respondent”), by and through its undersigned attorneys and submits its Answer to the “Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing” and respectfully requests a hearing, and in support thereof states as follows:

**I. STATEMENT OF AUTHORITY**

1. The first sentence of Paragraph 1 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or conclusions and therefore denies them. As to the second sentence of Paragraph 1, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the allegation and therefore denies it.

2. Maine HETL denies that it violated 42 U.S.C. §§ 6922 and 6925, and denies that it violated Chapter 13 of Title 38 of the Maine statutes and Chapters 850 et seq. of the Maine rules (except where specifically admitted in the paragraphs below), but admits that it received notice, including the opportunity to request a hearing, in the form of the “Complaint, Compliance Order, and Notice of Opportunity for a Hearing” and the “Amended Complaint, Compliance Order, and Notice of Opportunity for a Hearing,” from the U.S. Environmental Protection Agency (EPA).

## **II. NATURE OF ACTION**

3. Paragraph 3 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL denies the alleged violations (except where specifically admitted in the paragraphs below) and lacks knowledge or information sufficient to form a belief as to the truth of the legal characterization of the action and therefore denies the statements and/or conclusions.

4. Maine HETL admits this paragraph but adds that the notice to the Maine Department of Environmental Protection (DEP) was dated the same day as the "Complaint, Compliance Order, and Notice of Opportunity for a Hearing."

## **III. STATUTORY AND REGULATORY FRAMEWORK**

5. Paragraph 5 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or conclusions and therefore denies them.

6. Paragraph 6 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that 42 U.S.C. § 6926 governs authorized State hazardous waste programs but lacks knowledge or information sufficient to form a belief as to the truth of the characterization in paragraph 6 and therefore denies it.

7. Maine HETL admits that EPA, as set forth at 53 Fed. Reg. 16264 (May 6, 1988), granted final authorization to the State of Maine to operate its hazardous waste program, effective May 20, 1988, but denies the first sentence of paragraph 7 to the extent that it fails to mention that such authorization was subject to certain limitations. As to the second sentence of paragraph 7, Maine HETL admits there are Maine Rules codified at Chapters 850-860.

8. Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements in paragraph 8 and therefore denies them, except that Maine HETL admits that EPA granted Maine final authorization for certain revisions and that the cited Federal Register notices describe the scope of those authorizations.

9. Paragraph 9 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or conclusions and therefore denies them.

10. Paragraph 10 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or conclusions and therefore denies them.

#### **IV. GENERAL ALLEGATIONS**

11. Maine HETL admits paragraph 11 except that Maine HETL has not performed analyses of wastewater for many years and so denies that allegation. Maine HETL further states that it is located within the Division of Public Health Systems, Maine Center for Disease Control and Prevention, Department of Health and Human Services, State of Maine.

12. Maine HETL admits the first sentence of paragraph 12 and explains that its wastes containing mercury did not contain RCRA hazardous levels of mercury, and that much of its waste was extremely dilute. Maine HETL admits the remaining allegations in paragraph 12, except that Maine HETL qualifies its answer by noting that (a) it uses a number of Satellite Accumulation Areas (“SAAs”), which are referred to in paragraph 12 of the complaint as “Satellite Storage Areas,” (b) at the time of the complaint, Maine HETL was neutralizing some hazardous waste, thereby rendering it non-hazardous, and any waste rendered non-hazardous by neutralization was poured down a sink drain and transported through the sewers of the Augusta Sanitary District, and (c) at the time of the complaint, HETL was storing raw material in the HWSA.

13. Maine HETL admits it is a unit within a department of State government and that the definition of “person” in 42 U.S.C. § 6903(15) includes a “State” but otherwise denies the allegation in paragraph 13.

14. Maine HETL admits paragraph 14 except denies that it is the owner of the laboratory and explains that the State of Maine owns the laboratory.

15. Maine HETL admits paragraph 15 but explains that the version of Chapter 850<sup>1</sup> cited in this paragraph is the version effective February 8, 2012.

16. Maine HETL admits paragraph 16.

17. Maine HETL denies the allegations of paragraph 17 and explains that the notification dated April 20, 2000 indicates that HETL is a federal small quantity generator (“SQG”) of hazardous waste.

18. Maine HETL admits paragraph 18 but explains that from approximately 2008, Maine HETL believed it was a small quantity generator plus (SQG+).

19. Maine HETL admits paragraph 19.

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<sup>1</sup> All citations to Chapter 850 in this Answer are to the February 8, 2012 version, except where specific reference is made to the March 11, 2015 version.

20. Paragraph 20 introduces the sections in the complaint containing the alleged violations and does not require a response. To the extent that a response is required, Maine HETL denies the alleged violations except where specifically admitted in the following paragraphs.

## V. VIOLATIONS

### Count 1 - Failure to Conduct Adequate Hazardous Waste Determinations

21. Maine HETL repeats and reasserts its responses to paragraphs 1-20 as though fully set forth herein.

22. Paragraph 22 seeks to characterize a Maine Rule and provide citation to federal rules, and does not require a response. To the extent that a response is required, Maine HETL admits that EPA adequately paraphrased Section 5 of Chapter 851.<sup>2</sup> Regarding the citation to federal rules, Maine HETL lacks knowledge or information sufficient to form a belief as to the accuracy of the citations and therefore denies them.

23. Maine HETL denies the allegations in the first sentence of paragraph 23 that it failed to conduct hazardous waste determinations for wastes that it neutralized and disposed of into the sink drain in the Neutralization Area of Room 119. Maine HETL admits the first part of the second sentence in paragraph 23 that it identified chemicals contained in testing solutions used in its laboratory. Maine HETL denies the second part of that sentence that it failed to perform hazardous waste determinations for the constituents contained in the test samples exclusive of the testing solutions added to the sample. As explanation for its denial, Maine HETL states that it did perform chemical analyses of its test samples (with the nature of the analysis dependent on the purpose of the laboratory test and the equipment used), and the results are contained in the instruments and databases maintained by HETL. Maine HETL denies the allegations in the third sentence of paragraph 23 that it neutralized and disposed of the waste streams listed in paragraph 23(a)-(1) without conducting hazardous waste determinations, and explains that HETL staff applied their knowledge and/or testing to all waste streams below and that not all waste streams were neutralized or hazardous and further explains below:

(a) Waste generated in Lab 102 (Drinking Water and Environmental Samples Metals Lab). Maine HETL admits the allegations regarding the 5 gallon container labeled as a hazardous waste located at the Optima Inductively Coupled Plasma (“ICP”) analyzer labeled as containing trace metals and nitric acid. Maine HETL explains this waste is hazardous for corrosivity only. Maine HETL admits the allegations regarding the 5 gallon container labeled as containing hazardous waste located at an ICP/Mass Spectrometry analyzer; waste was labeled as containing nitric acid, hydrochloric acid and lead, D002, D008. Maine HETL explains the label D008 should not have been used as it incorrectly suggested that there was over 5 ppm lead in the

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<sup>2</sup> All citations to Chapter 851 in this Answer are to the July 23, 2008 version, except where specific reference is made to the Sept. 3, 2013 version.

waste; the label has been corrected. Maine HETL explains this waste is hazardous for corrosivity only. Maine HETL admits the allegations regarding the 3 gallon container labeled as a hazardous waste located at the flow injection mercury system (“FIMS”), and explains this waste labeled as containing nitric acid and ferric nitrate is hazardous for corrosivity only.

(b) Waste generated in Lab 121 (Metals Analysis). HETL admits the allegations regarding the label on the waste in Lab 121. HETL explains the label for D006 (cadmium) was incorrect because the amount of cadmium in the waste was much lower than the level set forth in Chapter 850, Table 1, and not hazardous. The D006 label has been removed and a correct label made. In addition this waste stream is hazardous for corrosivity only.

(c) Waste generated in Lab 122 (Drinking Water Lab). HETL admits the allegations in this sub-paragraph. Maine HETL explains this waste is hazardous for corrosivity only.

(d) Waste generated in Lab B-3 (Mass Spectroscopy Lab). HETL admits the allegations in this sub-paragraph. HETL explains this waste stream is hazardous only for corrosivity.

(e) Waste generated in Lab B-7 (Volatile Organics Lab). HETL admits the allegations in this sub-paragraph. HETL explains these waste streams are hazardous for corrosivity only.

(f) Waste generated in B-11B (Wet Chemistry Lab). HETL admits the allegations in this sub-paragraph about the waste stream in a four-liter container labeled as hazardous waste and containing acids, alkalis, phenol and sodium hypochlorite. HETL explains this waste stream is hazardous for corrosivity only.

(g) Waste generated in B-11B (Phosphorus Lab). HETL admits the allegations in this sub-paragraph. HETL explains this waste stream is hazardous only due to characteristic of corrosivity.

(h) Waste generated by inorganic ammonia analysis. HETL admits the allegations in this sub-paragraph regarding the Waste Stream Identification Form that notes “per local ordinance, waste stream must be collected as hazardous waste.” HETL explains this note is incorrect and the waste stream is hazardous for corrosivity only.

(i) Wastes generated by fluoride analysis at the inorganics autoanalyzer I. HETL admits the allegations in this sub-paragraph regarding the waste described in this part of the Waste Stream Identification Form. HETL explains this is waste from analyzing drinking water for fluoride using an older process that is only run when the newer machine is “down.” HETL explains this waste is hazardous for only characteristic of corrosivity.

(j) Waste generated by color analysis at the inorganics autoanalyzer I. HETL admits the allegations in this sub-paragraph regarding the waste described in this part of the Waste Stream Identification Form. HETL explains this waste stream is hazardous only due to characteristic of corrosivity.

(k) Four Organic wastes streams from Gas Chromatography (“GC”) and Mass Spectrometry (“MS”) analyzers. HETL admits the allegations in this sub-paragraph that the Waste Stream Identification Form identifies the waste streams as described. Maine HETL explains the 5970MS and 5890GC waste streams are not hazardous waste and denies the general allegation that these streams are neutralized. Maine HETL explains waste streams 5971GC/MS and 5973GC/MS are hazardous for corrosivity only. Maine HETL further explains that the Waste Stream Identification Forms identify compounds that evaporate during the processes as reflected in EPA documents regarding these methods, and therefore are not present in the waste stream at the time it is neutralized.

(l) Wastes generated by inorganic sulfate analysis at the inorganics autoanalyzer II. HETL admits the allegations in this sub-paragraph regarding this Waste Stream Identification Form. Maine HETL explains this Waste Stream Identification Form is for a test which is no longer run on this machine and that HETL no longer uses barium chloride dehydrate in sulfate analysis and has not created (and so has not neutralized) this waste stream since 2006.

24. Maine HETL denies the allegation in paragraph 24. By way of explanation, Maine HETL incorporates by reference its responses to Paragraph 23 and notes that hazardous waste determinations were made and completed by HETL staff applying knowledge and/or by testing. Also, not all waste streams cited were hazardous and not all waste streams cited were neutralized. In addition, Maine HETL questions the use of the term “solid waste” in Paragraph 24 because Chapter 851, Section 5 of the Maine Rules does not use the term “solid waste”.

### **Count 2 - Treatment of Hazardous Waste in an On-Site Neutralization Unit without a License**

25. Maine HETL repeats and reasserts its responses to paragraphs 1-24 as though fully set forth herein.

26. Paragraph 26 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that EPA has adequately paraphrased part of Chapter 856, Section 5.A.

27. Paragraph 27 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL denies that EPA has provided all applicable citations for the license requirements or the exemptions in the Maine Rules and denies that EPA has adequately paraphrased Chapter 856, Section 6.I of the Maine Rules.

28. Paragraph 28 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL denies that EPA in the first sentence has correctly paraphrased Chapter 856, Section 3.C of the Maine Rules. To the extent that a response is required to the conclusions in the second sentence, Maine HETL admits the first

conclusion and Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the second conclusion and therefore denies it.

29. Paragraph 29 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required to the first sentence, Maine HETL admits that EPA has adequately paraphrased Chapter 851, Section 5 of the Maine Rules. To the extent that an answer is required to the second sentence, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or conclusions and therefore denies them.

30. Maine HETL admits EPA inspectors spoke with HETL employee John Nims but denies knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 30 and so denies those allegations.

31. Maine HETL admits that it provided EPA inspectors with waste stream identification documents but denies that the conclusions of the EPA inspectors are accurate and so denies the rest of this allegation.

32. Maine HETL admits paragraph 32 except that it denies: that every waste stream described in paragraph 23(a)-(1) of the Amended Complaint was neutralized; that every waste stream that was neutralized was sent to Room 119 for neutralization; and that every waste stream neutralized was neutralized in this exact manner. HETL explains that EPA inspectors did not see all neutralized waste streams being neutralized.

33. Maine HETL denies paragraph 33 and disputes that no evidence was provided by Maine HETL to establish any waste determinations are or had been performed with respect to the wastes that were neutralized, other than the pH testing.

34. Maine HETL denies it neutralized all the waste streams mentioned in Count I and therefore denies the first sentence. HETL denies allegations that any of the waste streams it was neutralizing contained amounts of any metal or other items at levels prohibited by RCRA or was hazardous for any reasons other than corrosivity and therefore denies the second and third sentences. HETL further explains it was no longer using the barium chloride dehydrate as stated in Count I. As further explanation, HETL incorporates by reference its responses to paragraph 23.

35. Maine HETL admits the first sentence of paragraph 35, but explains the pre-treatment agreement with the POTW is misdated 2003 and that the correct date is January 13, 2004. Maine HETL denies that the Spill and Clean-Up Plan calls for Quarterly Inspections of the elementary neutralization units and so denies that part of the second sentence. HETL admits that the Spill and Clean-Up Plan requires daily inspections of the Elementary Neutralization Units. HETL

explains that the Plan states that "...Elementary Neutralization Units and Satellite Accumulation Areas are inspected on a daily basis using the HETL Hazardous Waste Satellite Accumulation Area (SAA) Inspection Log..." Regarding the third sentence, HETL explains that the SAA inspection logs for 3 of 4 rooms containing Elementary Neutralization Units have been provided to EPA. The SAA inspection logs do not say "Elementary Neutralization Unit" on them but HETL denies that the Spill and Clean-Up Plan requires that. HETL partially admits the third sentence because there were no SAA logs regarding the fourth elementary neutralization unit area. Also, in accordance with the Spill and Clean-up Plan lab staff routinely inspect the elementary neutralization areas to ensure quick detection of, and response to, any spills or releases. In light of the waste HETL was neutralizing, the agreement with the POTW, Spill and Clean-up Plan, and regulatory scheme, the issues alleged with the inspection documentation are not substantial.

36. Maine HETL admits the first sentence of paragraph 36. HETL admits the second and third sentences of paragraph 36, but notes there is another similar form stating "Analyze each lot for metals to ensure below regulatory limits. Then to sewer after neutralizing."

37. Maine HETL denies paragraph 37 and explains by incorporating by reference its responses in paragraphs 23, 34, and 35, except Maine HETL admits in part that it lacks documentation of daily SAA inspection logs for one of the 4 elementary neutralization units. Furthermore one of the neutralization processes may qualify for the Section 6(G) license exemption.

### **Count 3 - Failure to Provide Waste Training to Employees Managing Hazardous Waste**

38. Maine HETL repeats and reasserts its responses to paragraphs 1-37 as though fully set forth herein.

39. Paragraph 39 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 39 paraphrases 40 CFR § 264.16 in part, but denies that 40 CFR § 264.16 is accurately quoted or paraphrased in full.

40. Maine HETL denies paragraph 40 and explains that these lab personnel had training that meets Chapter 851, Section 8B(5). HETL explains the "RCRA training" referred to by personnel listed in paragraph 40 is "outside" training provided by "Summit technologies, inc.," which is not required under Chapter 851. HETL also provides annual safety training in-house, as well as on-the-job safety training that meets Chapter 851, Section 8B(5).

41. Maine HETL incorporates its answer to paragraph 40 and denies paragraph 41 and explains that all lab personnel received annual safety training in-house, as well as on-the-job safety training that meets Chapter 851, Section 8B(5).

42. Maine HETL denies paragraph 42 and explains that all personnel neutralizing hazardous waste received adequate training on-the-job, and that regarding the second part of that sentence HETL lacks knowledge or information sufficient to form a belief as to the truth of the statement and/or conclusion and therefore denies it.

43. Maine HETL denies paragraph 43 and explains by incorporating by reference its answers to paragraphs 39-42.

#### **Count 4 - Failure to maintain a complete personnel training plan**

44. Maine HETL repeats and reasserts its responses to paragraphs 1-43 as though fully set forth herein.

45. Paragraph 45 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 45 paraphrases 40 CFR § 264.16(d) in part, but denies that 40 CFR § 264.16(d) is accurately quoted or paraphrased in full.

46. Maine HETL denies paragraph 46, and denies that this paragraph accurately reflects the personnel training plan requirements of 40 CFR § 264.16(d).

47. Maine HETL denies paragraph 47 and explains that HETL's training plan may not have been set up exactly as contemplated in the Maine Rules, however, its training plan meets the intent and purposes of the Maine Rules.

#### **Count 5 - Failure to maintain a complete hazardous waste contingency plan**

48. Maine HETL repeats and reasserts its responses to paragraphs 1-47 as though fully set forth herein.

49. Paragraph 49 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 49 paraphrases 40 CFR § 264.52 in part, but denies that 40 CFR § 264.52 is accurately quoted or paraphrased in full.

50. Maine HETL denies the first sentence of paragraph 50 and explains it had a Hazardous Waste Contingency Plan updated in 2008. Maine HETL admits the remainder of this paragraph that, at the time of the inspection, Maine HETL had a Safety Manual that included a Bio-Safety Plan, a Chemical Hygiene Plan, an Emergency Action Plan, and a Radiation Safety Plan and that these plans were dated 2012, and that it has a Spill Control and Clean-up Plan written in 2003.

51. Maine HETL denies the allegations in paragraph 51 and explains that there were some issues in regards to the plans EPA lists in its paragraph 50, if those had been the only “contingency” plans HETL had. HETL explains that if HETL’s Hazardous Waste Contingency Plan, 2008 version, had been fully considered it would resolve the deficiencies alleged in paragraph 51 and so HETL denies that its Contingency Plan was deficient.

52. Maine HETL denies paragraph 52 and explains Maine HETL had a specific Hazardous Waste Contingency Plan in place from about 2003 and updated in February 2008, in addition to the other safety related plans referred to in paragraph 50.

**Count 6 - Failure to conduct and/or document daily inspections at SAAs and failure to conduct adequate inspections at the HWSA**

53. Maine HETL repeats and reasserts its responses to paragraphs 1-52 as though fully set forth herein.

54. Paragraph 54 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 54 in the first and third sentences adequately paraphrases Chapter 851, Section 13D, in part, for the version of Section 13D effective as of July 23, 2008. Maine HETL further explains that Section 13D was amended to change “daily inspections” to “weekly inspections” in the version of Chapter 851 effective September 3, 2013, a few weeks after EPA’s inspection. To the extent that a response is required to the second sentence of Paragraph 56, that sentence does not accurately paraphrase Chapter 851, Section 13D, and so Maine HETL denies it.

55. Maine HETL admits allegations in paragraph 55 that Maine HETL stored containers of hazardous waste in the SAAs and the HWSA, among other areas, but lacks knowledge or information sufficient to form a belief as to the truth of which inspection logs were inspected and therefore denies that allegation.

56. Maine HETL admits part of paragraph 56 but explains regarding (a) Lab 118, that three of the days listed (9/3/12; 10/8/12 and 3/2/13) were not work days and regarding (b) Lab 121, the lab was not in use during this period except for about a day, and so denies paragraph 56 to that extent. In addition the change in the Maine Rules from daily to weekly inspections came within a few weeks of EPA’s inspection.

57. Maine HETL admits the first sentence of paragraph 57 but explains that Maine Rules do not require separate checklists for SAAs and HWSAs. HETL denies the second sentence of paragraph 57, and denies that it adequately represents the requirements of Chapter 851, Section 13D. Maine HETL denies the third sentence and explains that a number of the containers referred to were empty or were not hazardous waste for other reasons as explained specifically in

answers to Counts 7-11 below, and further that not all containers were covered with dirt and dust. HETL admits the fourth sentence.

58. Maine HETL partially admits the first clause of paragraph 58 and explains by incorporating its answer in paragraph 56. Maine HETL denies the second and third phrases of paragraph 58 and explains by incorporating its answer in paragraph 57, and so denies the conclusion.

### **Count 7 - Failure to separate incompatible hazardous wastes**

59. Maine HETL repeats and reasserts its responses to paragraphs 1-58 as though fully set forth herein.

60. Paragraph 60 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 60 adequately paraphrases Chapter 851, Section 13C(6) of the Maine Rules in part.

61. Maine HETL admits the first sentence. Maine HETL denies the allegation in the first part of the second sentence of paragraph 61 (that none of the containers in the HWSA had secondary containment) - all the containers in the HWSA had secondary containment since the HWSA room itself provides adequate secondary containment. Maine HETL denies the second part of the second sentence for reasons set forth in responses to sub-paragraphs (a)-(o) below and explains that the containers that did contain hazardous waste were not incompatible with each other due to concentration/dilution and properties of the waste. Maine HETL admits the third sentence in paragraph 61 as of the time of the inspection. As to the fourth sentence in paragraph 61, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statement. Maine HETL denies the allegations in the fifth sentence of paragraph 61 that the containers in the HWSA listed in sub-paragraphs (a)-(o) held potentially incompatible wastes, as explained below:

- (a) Maine HETL admits the 30-gallon drum with label and markings as noted, but denies that Container #1 contained (potentially incompatible) hazardous waste because Container #1 was empty. See Chapter 850, Section 3(A)(7). Maine HETL further explains that the "Hg"(mercury) designation on this container was inaccurate as the waste stream destined for this container no longer contained "Hg."
- (b) Maine HETL admits the 30-gallon drum with label and markings as noted, but denies that the contents of Container #2 held potentially incompatible waste due to the concentration/dilution and properties of the waste.
- (c) Maine HETL admits the 30-gallon drum with label and markings as noted, but denies that the contents of Container #3 held potentially incompatible waste due to the concentration/dilution and properties of the waste.
- (d) Maine HETL admits the one-gallon bottle with label and markings except explains that the container was plastic and thus not a glass bottle, but denies that the contents of

Container #5 held potentially incompatible waste due to the concentration/dilution and properties of the waste.

- (e) Maine HETL admits the half-gallon can had no hazardous waste label and admits the markings as noted, but denies that Container #6 contained hazardous waste because Container #6 was empty. See Chapter 850, Section 3(A)(7).
- (f) Maine HETL admits the three-gallon can with label and markings as noted, but denies that Container #7 contained hazardous waste because Container #7 was empty. See Chapter 850, Section 3(A)(7).
- (g) Maine HETL admits the square box had no hazardous waste label and admits the markings as noted and that several of the aerosol cans contained liquid, but denies that Container #8 contain hazardous waste because Container #8 contains aerosol cans with contents that remain useful to the lab and do not fall under the definition of “waste” under Chapter 850, Section 3(A) of the Maine Rules, and so are not hazardous waste.
- (h) Maine HETL admits the 1 ½ gallon can with label and markings as noted, but denies that Container #10 contained hazardous waste because Container #10 was empty. See Chapter 850, Section 3(A)(7).
- (i) Maine HETL admits the two-gallon can with label and markings as noted, but denies that Container #12 contained hazardous waste because Container #12 was empty. See Chapter 850, Section 3(A)(7).
- (j) Maine HETL admits the five-gallon container with label and markings as noted, but denies Container #14 held potentially incompatible waste because Container #14 contained closed vials and so there were multiple layers of containment of this hazardous waste, and therefore it was segregated in a manner that would prevent the waste from coming into contact with another hazardous waste. HETL further denies the waste was potentially incompatible waste due to the concentration/dilution and properties of the waste.
- (k) Maine HETL admits the five-gallon container with label and markings as noted, but denies Container #15 held potentially incompatible waste because Container #15 contained closed vials and so there were multiple layers of containment of this hazardous waste, and therefore it was segregated in a manner that would prevent the waste from coming into contact with another hazardous waste. HETL further denies the waste was potentially incompatible waste due to the concentration/dilution and properties of the waste.
- (l) Maine HETL admits the approximately nine-gallon container with label and markings as noted, except explains it was a 15-gallon container, but denies that the contents of Container #16 were incompatible with contents of other containers due to concentration/dilution of and properties of the waste.
- (m) Maine HETL admits the five-gallon container with label and markings as noted, but denies Container #17 held potentially incompatible waste because Container #17 contained closed vials and so there were multiple layers of containment of this hazardous

waste, and therefore it was segregated in a manner that would prevent the waste from coming into contact with another hazardous waste. HETL further denies the waste was potentially incompatible waste due to the concentration/dilution and properties of the waste.

- (n) Maine HETL admits the 30-gallon drum with label and markings as noted, but denies that the contents of Container #23 held potentially incompatible waste due to the concentration/dilution and properties of the waste.
- (o) Maine HETL admits the 30-gallon drum with label and markings as noted, but denies that the contents of Container #24 held potentially incompatible waste due to the concentration/dilution and properties of the waste.

62. Maine HETL denies the first sentence in paragraph 62 because these hazardous wastes are not incompatible if they are not at high enough concentrations or if they lack properties to cause any incompatibility. Maine HETL also points out that EPA's cross reference to Paragraph 59 appears to be mistaken and the cross reference likely should have been to Paragraph 61. Maine HETL admits the second sentence as a general statement regarding actual incompatibility. Maine HETL denies the third sentence and explains that due to the concentration/dilution of some wastes and properties of the wastes, there would be no incompatibility, much less the potential for a significant fire, even if all containers of hazardous waste leaked or failed simultaneously.

63. Maine HETL denies the allegations in paragraph 63, and explains its answer by incorporating herein its responses in paragraphs 61 and 62.

#### **Count 8 – Failure to Have Adequate Aisle space in the HWSA**

64. Maine HETL repeats and reasserts its responses to paragraphs 1-63 as though fully set forth herein.

65. Paragraph 65 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 65 adequately paraphrases Chapter 851, Section 13C(7) of the Maine Rules, in part.

66. Maine HETL admits the first two sentences of paragraph 66, except that it denies any suggestion that all of the containers referred to contained hazardous waste because many of the containers were not hazardous waste or were empty and so did not contain hazardous waste. Furthermore, the hazardous waste containers were sound and mostly accessible for the purposes of Chapter 851, Section 13C(7). HETL denies the third sentence except it admits the aisle space was less than thirty six (36) inches wide.

67. Maine HETL partially admits the allegations in paragraph 67 for some containers, but denies the allegations for the remaining containers and explains, as stated in response to Counts 7 and 9-11, that many of the containers referred to were empty or were not hazardous waste, and

that the containers which did have hazardous waste were mostly accessible for the purposes of Chapter 851, Section 13C(7).

**Count 9 – Failure to Keep Containers of Hazardous Wastes Closed**

68. Maine HETL repeats and reasserts its responses to paragraphs 1-67 as though fully set forth herein.

69. Paragraph 69 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 69 adequately paraphrases Chapter 851, Section 8B(2) of the Maine Rules, in part.

70. Paragraph 70 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that Paragraph 70 adequately paraphrases Chapter 855, Section 9(C) of the Maine Rules, in part, and adequately paraphrases 40 CFR § 265.173, in part.

71. Maine HETL denies the allegations in paragraph 71, as explained below, except as specifically admitted below:

- (a) In HWSA, Room B10 (Maine HETL notes that EPA’s cross reference to Paragraph 59 appears to be mistaken and the cross reference likely should have been to Paragraph 61):
  - (i) Maine HETL admits the first sentence of this sub-paragraph but denies the second sentence because the photos show that one of the bungs on Container #3 was loose but covering the opening, while the other bung looks closed.
  - (ii) Maine HETL admits the first sentence of this sub-paragraph but denies the second sentence because the photos show that the bungs on Container #24 appear closed.
- (b) In Lab B-11:
  - (i) Maine HETL admits the first and second sentences of this sub-paragraph. Maine HETL denies the third sentence because the container was being added to.
  - (ii) Admitted.
- (c) Lab B-3: Maine HETL admits the jug was open but denies that no one was filling or emptying it because the opening allows tubes into container so the instrument can drain and container was being added to.
- (d) Lab B-7:
  - (i) Admitted.
  - (ii) Admitted.
- (e) Room 119 (neutralization area): Admitted.
- (f) Lab B-9: Maine HETL admits the allegations in this sub-paragraph except Maine HETL denies the allegations regarding the second container because that container was being added to.

72. Maine HETL partially admits the allegations in paragraph 72 for several of the containers, but denies the allegations for the remaining containers because some of the containers were being added to or not yet in storage or were closed, as further explained in the response in paragraph 71 incorporated herein.

**Count 10 – Failure to label containers with the words “hazardous waste”**

73. Maine HETL repeats and reasserts its responses to paragraphs 1-72 as though fully set forth herein.

74. Paragraph 74 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that EPA has adequately paraphrased part of Chapter 851, Section 8(B)(3).

75. Maine HETL denies that the containers listed in paragraph 75(a)-(f) were required to be labeled or marked clearly with words “Hazardous Waste,” except as specifically admitted below, and also provides explanation below:

- (a) In HWSA, Room B10 (Maine HETL notes that EPA’s cross reference to Paragraph 59 appears to be mistaken and the cross reference likely should have been to Paragraph 61):
  - (i) Maine HETL admits the first and second sentences but denies that Container #4 contained hazardous waste, and therefore Container #4 was not subject to Chapter 851, Section 8(B)(3) of the Maine Rules.
  - (ii) Maine HETL admits the first and second sentences but denies that Container #6 contained hazardous waste because Container #6 was empty. See Chapter 850, Section 3(A)(7).
  - (iii) Maine HETL admits the first and second sentences but denies that Container #8 contains hazardous waste because Container #8 contains aerosol cans with contents that remain useful to the lab and do not fall under the definition of “waste” under Chapter 850, Section 3(A) of the Maine Rules, and so are not hazardous wastes.
  - (iv) Maine HETL admits the first and second sentences but denies that Container #9 contained hazardous waste because Container #9 was empty. See Chapter 850, Section 3(A)(7).
  - (v) Maine HETL admits the first sentence but denies that Container #11 contained hazardous waste because Container #11 was empty. See Chapter 850, Section 3(A)(7). As to the allegation that the contents could not be determined by EPA inspectors, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the allegation and therefore denies it.
  - (vi) Maine HETL admits the first sentence but denies that Container #13 contained hazardous waste because Container #13 was empty. See Chapter 850, Section 3(A)(7). As to the allegation that the contents could not be determined by EPA inspectors, Maine

HETL lacks knowledge or information sufficient to form a belief as to the truth of the allegation and therefore denies it.

(vii) Maine HETL admits the first sentence but denies that Container #20 contained hazardous waste because Container #20 was empty. See Chapter 850, Section 3(A)(7). As to the allegation that the contents could not be determined by EPA inspectors, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the allegation and therefore denies it.

(b) In Lab B-9:

(i) Admitted.

(ii) Admitted.

(c) In Lab B-8D:

(i) Admitted.

(ii) Maine HETL admits the first and second sentences but denies that the one-gallon bottle contained hazardous waste, and therefore this container was not subject to Chapter 851, Section 8(B)(3) of the Maine Rules.

(iii) Maine HETL admits the first and second sentences but denies that the one-gallon bottle contained hazardous waste, and therefore this container was not subject to Chapter 851, Section 8(B)(3) of the Maine Rules.

(d) In Lab B-3: Admitted.

(e) In Lab B-11: Admitted.

(f) In Room 103 of Forensics Area: Maine HETL admits the first and second sentences of this sub-paragraph regarding containers of wastes to be lab-packed but denies that all of these containers contained hazardous waste because only three of these containers (strontium nitrate/hydrochloric acid; yttrium/nitric acid; barium nitrate crystals) contained hazardous waste.

76. Maine HETL denies the allegations in paragraph 76 for most of the containers as stated above, except that Maine HETL partially admits the violations for two containers in Lab B-9, one container in Lab B-8D, one container in Lab B-3, one container in Lab B-11, and three containers in the lab pack bin in Room 103 of the Forensics Area.

#### **Count 11 – Failure to date containers of hazardous waste**

77. Maine HETL repeats and reasserts its responses to paragraphs 1-76 as though fully set forth herein.

78. Paragraph 78 contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL admits that EPA has adequately paraphrased part of Chapter 851, Section 8(B)(3).

79. Maine HETL denies that the containers listed in paragraph 79(a)-(j) were required to be marked with the date upon which the period of accumulation began, except as specifically admitted below, and also provides explanation below (in addition, Maine HETL notes that

EPA's cross reference to Paragraph 59 appears to be mistaken and the cross reference likely should have been to Paragraph 61):

- (a) Admitted.
- (b) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #7 contained hazardous waste because Container #7 was empty. See Chapter 850, Section 3(A)(7).
- (c) Maine HETL admits the first and second sentences of this sub-paragraph but denies that Container #8 contains hazardous waste because Container #8 contains aerosol cans with contents that remain useful to the lab and do not fall under the definition of "waste" under Chapter 850, Section 3(A) of the Maine Rules, and so are not hazardous wastes.
- (d) Maine HETL admits the first and second sentences of this sub-paragraph but denies that Container #9 contained hazardous waste because Container #9 was empty. See Chapter 850, Section 3(A)(7).
- (e) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #10 contained hazardous waste because Container #10 was empty. See Chapter 850, Section 3(A)(7).
- (f) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #11 contained hazardous waste because Container #11 was empty. See Chapter 850, Section 3(A)(7).
- (g) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #12 contained hazardous waste because Container #12 was empty. See Chapter 850, Section 3(A)(7).
- (h) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #13 contained hazardous waste because Container #13 was empty. See Chapter 850, Section 3(A)(7).
- (i) Maine HETL admits the first sentence of this sub-paragraph but denies that Container #20 contained hazardous waste because Container #20 was empty. See Chapter 850, Section 3(A)(7).
- (j) Maine HETL admits the first and second sentences of this sub-paragraph regarding containers of wastes to be lab-packed in Room 103 of the Forensics Area, but denies that all of these containers contained hazardous waste because only three of these containers (strontium nitrate/hydrochloric acid; yttrium/nitric acid; barium nitrate crystals) contained hazardous waste.

80. Maine HETL denies the allegations in paragraph 80 for most of the containers for the reasons stated in paragraph 79, which is incorporated herein, except that Maine HETL partially admits the violations for Container No. 3 and for three containers in the lab pack bin in Room 103 of the Forensics Area.

## **VI. PROPOSED PENALTY**

81. Maine HETL admits the first and third sentences of paragraph 81. As to the second sentence, Maine HETL denies that EPA has adequately taken into account the particular facts and circumstances of this case in assessing a penalty. As to the fourth sentence, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of this statement and therefore denies it.

82. Maine HETL denies that the penalties proposed by EPA in paragraph 82 and explained in Attachment 1 to the Amended Complaint are appropriate and therefore denies paragraph 82. EPA has not reasonably applied the statutory factors set forth in 42 U.S.C. § 6928(a)(3), the seriousness of the violation and any good-faith efforts to comply with applicable requirements, in its calculation of penalties. In applying EPA's RCRA Civil Penalty Policy (June 2003), EPA has failed to properly assess the potential for harm and the extent of deviation from the requirements in the Maine Rules. The proposed penalties are not consistent with the nature or extent of the alleged violations or the potential for harm to human health and the environment or the RCRA regulatory program. For the counts alleged in the Amended Complaint, Maine HETL requests either no penalty or much reduced penalties from those proposed by EPA based on a lack of factual support for certain alleged violations, Maine HETL's defenses to liability, inappropriate calculation by EPA of gravity components including potential for harm and extent of deviation, Maine HETL's good-faith efforts to comply with the Maine Rules, Maine HETL's cooperation with EPA, and EPA's failure to take mitigating factors into account. Maine HETL incorporates by reference its responses to paragraphs 1 through 81 of the Amended Complaint herein. Maine HETL also reserves its right to amend its response to EPA's proposed penalties as a result of additional investigation and discovery in this case. Without in any way admitting liability, but recognizing the potential for the Presiding Officer to assess some level of penalty, and in order to comply with 40 CFR § 22.15(b), the basis for Maine HETL's opposition to EPA's proposed penalty for each count is summarized below:

1. The proposed penalty of \$38,684 for Count 1, failure to conduct adequate hazardous waste determinations, should be greatly reduced. Maine HETL did perform hazardous waste determinations on reagents and these determinations were provided to Maine DEP. The proposed penalty does not give adequate credit for Maine HETL's hazardous waste determinations, which were acceptable to DEP. In addition, the proposed penalty does not adequately credit the knowledge of the staff of Maine HETL. Lab staff applied their knowledge of the hazard characteristic of the wastes in light of the materials or processes used. *See* Chapter 851, Section 5(C)(2). Lab staff had knowledge of the types of samples tested at the lab and the effect of dilution on those samples. Waste streams that were neutralized were mostly from drinking or environmental water samples. Maine HETL performed chemical analyses on all of its test samples (with the nature of the analysis dependent on the purpose of the laboratory test and the equipment used), and the analytical results are contained in the instruments used and in the LIMS database

maintained by Maine HETL. EPA considered Count 1 to be a major/major violation with an additional multi-day assessment. Given the testing that Maine HETL performed and given lab staff's knowledge of the nature of samples, this is not a case of a substantial or even significant risk of exposure of humans or other environmental receptors to hazardous waste, but rather at worst a relatively low risk. Given the circumstances, this also is not a case of a substantial or significant adverse effect on the purposes and procedures of RCRA. Similarly, this is not a case of substantial noncompliance that would justify finding a major deviation from Chapter 851. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, and if Count 1 is not eliminated altogether, Maine HETL requests that this count be considered at most a minor/minor to moderate violation. In addition, even if a penalty is assessed for Count 1, a multi-day assessment is inappropriate. With a reduction in the potential for harm and extent of deviation from that proposed by EPA, a multi-day assessment is discretionary under EPA's RCRA Civil Penalty Policy. Maine HETL requests that the Presiding Officer not assess a multi-day penalty. If a penalty is assessed for Count 1, Maine HETL requests that both waste streams referred to by EPA (in Attachment 1 to EPA's Amended Complaint) be considered as a single alleged violation. The facts and circumstances as set forth in this Answer support such an approach.

2. The proposed penalty of \$46,191 for Count 2, treatment of hazardous waste in an on-site neutralization unit without a license, should be greatly reduced. Maine HETL was neutralizing waste under an appropriate and adequate plan pursuant to Chapter 856, Section 6I. This plan had been filed with DEP. None of the waste streams that Maine HETL was neutralizing contained amounts of any metal or other items at levels prohibited by RCRA. Therefore the potential for harm to humans or other receptors from neutralizing and disposing of these waste streams was negligible. The potential impact on the integrity of the RCRA program is also low because any deviations from the license exemption requirements in Chapter 856, Section 6I were relatively minor. At worst, Maine HETL may not have adequately documented its inspections of the elementary neutralization units. The lab provided to EPA inspection reports for the SAAs for 3 of the 4 areas containing the elementary neutralization units. Visual inspections of the elementary neutralization units were performed when lab staff used the units. Neutralization was completed daily so corrosive waste was not left in neutralization units overnight. Also, due to the low concentration of corrosives being neutralized, the potential for unit failure was minimal. Maine HETL asserts that it substantially complied with the license exemption requirements of Chapter 856, Section 6I. In addition, at least one of the elementary neutralization units may qualify for a license exemption under Chapter 856, Section 6G. EPA considered Count 2 to be a major/major violation with an upward adjustment for economic benefit. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven for failure to qualify for a license

exemption and therefore for a violation of Maine Rule Chapter 856, Section 5.A, Maine HETL requests Count 2 be considered at most a minor/minor to moderate violation. Moreover, Maine HETL asserts that the economic benefit component proposed by EPA is not reasonable under the circumstances of this case given that any deviations from the requirements in Chapter 856, Section 6.I were minor to moderate, and Maine HETL also challenges the basis for EPA's calculation.

3. The proposed penalty of \$11,101 for Count 3, failure to provide waste training to employees managing hazardous waste, should be eliminated or reduced. All then-employees at Maine HETL underwent formal RCRA training in the 2002 timeframe. In addition, some Maine HETL employees have had yearly formal training outside of Maine HETL on RCRA. All employees have attended in-house annual safety training at the lab, including in 2007, a more comprehensive training on RCRA. All Maine HETL employees receive on-the-job training specific to their processes and testing procedures. Given that extensive training did occur, the potential for exposure of humans and other environmental receptors due to any possible failure of documentation for each component of the training requirement was minimal, and the adverse effect on the purposes and procedures related to training under RCRA was slight. At most, the extent of deviation was minor due to issues with documentation. Moreover, starting in 2008, Maine HETL believed it fell under Small Quantity Generator Plus (SQG+) status because it believed that its neutralized wastes did not need to be included in the total for hazardous waste generated per month to qualify for SQG+ status under the Maine Rules. Maine HETL therefore would not be subject to the training requirements in Chapter 851, Section 8B(5) of the Maine Rules as that section does not apply to an SQG+. *See* Chapter 850, § 3(A)(5)(d); State of Maine Handbook for Hazardous Waste Generators (June 2008). Maine HETL's good-faith belief that it was an SQG+ should be taken into account in determining any penalty for this count (as well as for Counts 4 and 5). EPA considered Count 3 to be moderate/moderate with an upward adjustment for economic benefit. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 3 be considered at most a minor/minor violation with no economic benefit adjustment.
4. The proposed penalty of \$9,210 for Count 4, failure to maintain a complete personnel training plan, should be eliminated or reduced. Maine HETL developed a training program in 2003 that was accepted by the DEP. Moreover, as explained under Count 3 above, starting in 2008, Maine HETL believed it fell under SQG+ status and so was not subject to the all of the requirements in Chapter 851, Section 8B(5) of the Maine Rules. Maine HETL's good-faith belief that it was an SQG+ should be taken into account in determining any penalty for this count. While Maine HETL's personnel training plan may not have been set up exactly as contemplated under 40 CFR § 264.16(d) (as

incorporated into Chapter 851, Section 8B(5)), the plan substantially meets the intent and purposes of the rule, and any risk of exposure of humans or other environmental receptors to hazardous waste was essentially zero. Also, any adverse effect on the purposes and procedures of RCRA was small since this is not a situation where a generator has significantly deviated from the Maine Rule requirement. EPA considered Count 4 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 4 be considered at most a minor/minor violation.

5. The proposed penalty of \$9,210 for Count 5, failure to maintain a complete hazardous waste contingency plan, should be eliminated or reduced. Maine HETL's contingency plan was updated in February 2008 and appropriately distributed and provided to DEP. Moreover, as explained under Count 3 above, starting in 2008, Maine HETL believed it fell under SQG+ status. Thus HETL would not be subject to the hazardous waste contingency plan requirement in Chapter 851, Section 8B(5) of the Maine Rules. Therefore the plan was not updated between 2008 and the date of inspection. Maine HETL's good-faith belief that it was an SQG+ should be taken into account in determining any penalty for this count. In any case, Maine HETL's 2008 hazardous waste contingency plan complied with the requirements in 40 CFR § 264.52 (as incorporated into Chapter 851, Section 8B(5)), with an exception that one of the two named emergency coordinators is for a person who no longer worked at the lab as of the date of inspection. Any risk to human or other environmental receptors from failure to update the plan after 2008 was minimal. Also, any adverse effect on the purposes and procedures of RCRA was small given that Maine HETL's hazardous waste contingency plan complies with most of the Rule's requirements. Moreover, there was no significant deviation from the Maine Rule requirement. EPA considered Count 5 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 5 be considered at most a minor/minor violation.
6. The proposed penalty of \$9,201 for Count 6, failure to conduct and/or document daily inspections at SAAs and failure to conduct adequate inspections at the HWSA, should be reduced. Maine HETL admits that some daily log entries for Lab 118 were missing, but the majority of daily inspections were conducted. As to Lab 121, Maine HETL notes that this lab was not in use during the time period cited in paragraph 56 except for about one day. Maine's rule requiring daily inspections was amended to require only weekly inspections, effective as of September 3, 2013. *See* Chapter 851, Section 13D(1) (eff. Sept. 3, 2013). The Basis Statement for that amendment makes clear that the purpose was to align inspection requirements for wastes stored in central accumulation areas with those contained in federal regulations and to reduce the required inspection frequency for

SAAAs to once per week. Given that Maine's rule changed to weekly inspections less than one month after the inspection occurred on August 7-8, 2013, Maine HETL asks that the penalty for Count 6 be significantly reduced as there is virtually no potential for harm to the procedures for implementing RCRA where DEP recognized by amending its rule that weekly inspections were adequate. There also was no potential for risk to humans or other environmental receptors posed by the missing log entries given that inspections occurred each week and often more regularly. Moreover, the number of missing log entries supports at most a minor deviation from the then-existing requirement for daily inspections. Also, Maine HETL's use of an inspection checklist for an SAA, instead of one for an HWSA, did not result in violation of Maine Rule Chapter 851, Section 13D. Moreover, a number of the containers in the HWSA were empty or did not contain hazardous waste and so were not subject to the requirement in Chapter 851, Section 13D. EPA considered Count 6 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 6 be considered at most a minor/minor violation.

7. The proposed penalty of \$32,915 for Count 7, failure to separate incompatible hazardous wastes, should be eliminated. Several containers referred to in this count were empty. At least one container did not contain hazardous waste. Several others had additional levels of containment because the containers contained closed vials. Most importantly, Maine HETL asserts that the contents of the hazardous waste containers were not incompatible with each other because of the types of wastes and concentrations/dilution. EPA at the time of the inspection did not test any of the contents of the containers alleged to contain incompatible hazardous wastes. In addition, the containers in actual use were in good sound condition. The potential for exposure or harm to human health or the environment was zero, and there was no deviation from the Maine Rules. Given the circumstances, any adverse effect on the purposes and procedures for implementing RCRA was zero. EPA considered Count 7 to be major/major. For the reasons set forth in this paragraph and elsewhere in this Answer, Maine HETL requests that Count 7 be dismissed.
8. The proposed penalty of \$9,210 for Count 8, failure to have adequate aisle space in the HSWA, should be reduced. Many of the containers referred to in this count were empty or did not contain hazardous waste. The extent of deviation was relatively slight. The containers in actual use that contained hazardous waste were in good sound condition, and so the danger of exposure to humans or other environmental receptors from having inadequate aisle space was low and primarily theoretical. Given the small number of containers that contained hazardous waste, any harm to the RCRA regulatory program from inadequate aisle space was small. EPA considered Count 8 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this

Answer, if liability is proven, Maine HETL requests that Count 8 be considered at most a minor/minor-moderate violation.

9. The proposed penalty of \$9,210 for Count 9, failure to keep containers of hazardous wastes closed, should be reduced. Of the containers alleged as open, a couple appeared closed or partially closed from the photos. A few were containers that waste was draining into. The majority of containers in storage were properly closed. All containers used for hazardous waste collection and storage were sound. Since Maine HETL is a lab, the usual precautions and safety provisions for employees operate to make accidents unlikely, and so there was little likelihood of significant risk of exposure of humans or other environmental receptors from the several containers alleged to be open. Given the small number of containers alleged to be open on the dates of EPA's inspection, there is also only a small adverse effect on the purposes and procedures for implementing RCRA and little deviation from the Maine Rules. EPA considered Count 9 to be moderate/moderate. Neither the potential for harm nor the extent of the deviation, however, was significant. Therefore, if liability is proven, Maine HETL requests that Count 9 be considered at most a minor/minor violation.
  
10. The proposed penalty of \$9,210 for Count 10, failure to label containers with the words "hazardous waste," should be greatly reduced. A majority of the containers identified for this count either were empty and so contained no hazardous waste, or the contents do not qualify as hazardous waste. Given the small number of containers that were lacking hazardous waste labels and that were actually required to have such labels, there was no significant deviation from the rule and there was minimal risk of exposure or harm to human health and the environment and to the integrity of the RCRA program. While Maine HETL recognizes the importance of the hazardous waste labeling requirement in the Maine Rules, Maine HETL is a lab and its employees are trained biologists and chemists. They are therefore familiar with the lab's processes, chemical hygiene and safety practices and so any threat from the lab's failure to label several containers in this case was minimal. EPA considered Count 10 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 10 be considered at most a minor/minor violation.
  
11. The proposed penalty of \$9,201 for Count 11, failure to date containers of hazardous waste, should be greatly reduced. Of the containers in the HWSA that were listed in paragraph 79 of the Amended Complaint, at least 7 were empty and so did not contain hazardous waste, and 1 did not contain hazardous waste. Of the items in the forensics area awaiting a lab pack, most did not contain hazardous waste, and furthermore the containers were segregated, marked for lab pack and in sound containers. Given that only 1 container of hazardous waste in the hazardous waste storage area and 3 containers

of hazardous waste in the forensics area lacked a date and were subject to Chapter 851, Section 8(B)(3), there was no significant deviation from the Maine rule and virtually no risk of exposure or harm to human health and the environment and only a very minimal risk to the integrity of the RCRA program. EPA considered Count 11 to be moderate/moderate. For the reasons set forth in this paragraph and elsewhere in this Answer, if liability is proven, Maine HETL requests that Count 11 be considered at most a minor/minor violation. While Maine HETL recognizes the importance of marking on containers of hazardous waste the date upon which the period of accumulation begins, the facts and circumstances as set forth in this Answer do not support a significant potential for harm or significant deviation.

In addition to the above arguments, Maine HETL requests that any penalties for Counts 3, 4, and 5 be compressed pursuant to the RCRA Civil Penalty Policy, Section VII(A)(2). That section of the policy may be applied “where a company’s failure to satisfy one statutory or regulatory requirement either necessarily or generally leads to the violations of numerous other independent regulatory requirements.” As explained above, Maine HETL’s alleged violations of these three counts stem in large part from Maine HETL’s good-faith belief that it qualified as an SQG+ under Chapter 850 of the Maine Rules and therefore was not subject to the Maine Rules that form the basis for those counts. Assigning a separate penalty to each of these counts results in a total proposed penalty that is disproportionately high given the facts and circumstances. The Penalty Policy provides EPA with discretion to forego separate penalties for such violations, as long as the total penalty for the related violations is appropriate and is a sufficient deterrent. Maine HETL respectfully requests that the Presiding Officer compress the penalties contained in Counts 3, 4, and 5. Maine HETL believes that such an approach will lead to a penalty that satisfies RCRA’s statutory penalty criteria, 42 U.S.C. § 6928(a)(3), that both the seriousness of violations and any good faith efforts to comply with applicable requirements be taken into account.

Maine HETL also requests that, in setting penalties, the Presiding Officer take into account EPA’s failure to provide Maine HETL with a timely trip report and failure to provide Maine HETL with a timely and specific Notice of Potential Violation (NOPV). Maine HETL has been unfairly treated by EPA in that after the August 7-8, 2013 inspection, Maine HETL was led to believe by EPA inspectors that there would be a trip report to better explain the issues within several weeks of the inspection. Maine HETL did not receive the trip report until April 2015, after the complaint was filed. In addition, Maine HETL received a very short NOPV dated July 9, 2014 approximately 11 months after EPA’s inspection. The NOPV did not even mention all of the counts. Maine HETL responded to this NOPV, but there was little follow-up with Maine HETL by EPA until the complaint was initially filed in March 2015. A meaningful and timely trip report and NOPV is extremely important in such cases because EPA can decide not to go forward with seeking penalties at all, or to settle a case without filing a complaint. While acknowledging that this is not a defense to liability, Maine HETL believes it is relevant to

determining penalties given that EPA has alleged three counts with proposed major potential for harm and major extent of deviation and eight counts with proposed moderate potential for harm and moderate extent of deviation. If EPA believed the alleged violations were of the level of seriousness as has been alleged, it is difficult to understand the delay in providing the trip report and NOPV to Maine HETL.

The above discussion regarding penalty largely responds to EPA's use of the civil penalty matrix contained in EPA's RCRA Civil Penalty Policy. While a Presiding Officer is required to consider these guidelines, they are not binding. The statutory criteria under 42 U.S.C. § 6928(a)(3) are the seriousness of the violation and any good faith efforts to comply with applicable requirements. If liability is found for some counts, the discussion above shows that any such violations were not serious, and indeed were mostly minor in nature. Also, as shown above, Maine HETL has made efforts in good faith to comply with the applicable Maine Rules. Moreover, Maine HETL has cooperated in good faith with EPA during the inspection and follow-up to the inspection, including since EPA filed the Complaint.

For these reasons and for the reasons set forth elsewhere in this Answer, the penalty requested by EPA of \$193,361 is unwarranted and excessive. Maine HETL respectfully requests that the Presiding Officer, following a hearing, consider Maine HETL's responses to EPA's proposed penalties in setting a penalty amount appropriate to the nature of the alleged violations and taking Maine HETL's good faith efforts to comply into account.

83. Paragraph 83 is informational and does not require a response.

## **VII. COMPLIANCE ORDER**

84. Maine HETL has cooperated with EPA in order to comply with the requirements of the compliance order set forth in paragraph 84. Maine HETL requests or will be requesting relief from several aspects of the compliance order. These are specified below by the appropriate subparagraph designation.

(a) Maine HETL is continuing to work with EPA in order to maintain compliance with all applicable requirements of the Maine Rules on RCRA. Specifically:

(b) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint). While Maine HETL believes its hazardous waste determinations were adequate, Maine HETL is continuing to refine its hazardous waste determinations and working on SOPs for the waste streams it wants to neutralize in the future.

(c) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint). Paragraph 84(c) requires Maine HETL to cease the unauthorized treatment and disposal of hazardous waste and comply with all applicable sections of Section 6(I) of Chapter

856 of Maine Rules. Maine HETL however, believes it was appropriately neutralizing wastes which were hazardous for corrosivity only under the Spill and Clean-up Plan and agreement with Augusta Sanitary District in January of 2004. Nonetheless, Maine HETL has stopped neutralizing waste and is updating its plan and agreement. When Maine HETL wants to resume neutralization it will move for relief from this provision of the order.

(d) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(e) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(f) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(g) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(h) Although Maine HETL asserts its wastes are not incompatible, Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(j) (There is no sub-paragraph (i) in the Compliance Order) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(k) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(l) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(m) Maine HETL has responded to this requirement and submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(n) Maine HETL has submitted written confirmation of its compliance and appropriate documentation on June 3 or 4, 2015 (in response to the original complaint).

(o) This sub-paragraph contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or legal conclusions and therefore denies them.

85. This paragraph contains legal statements and/or conclusions that do not require a response. To the extent that a response is required, Maine HETL lacks knowledge or information sufficient to form a belief as to the truth of the statements and/or legal conclusions and therefore denies them. In response to paragraph 85 of the Amended Complaint, Maine HETL seeks administrative review of the compliance order including a public hearing, as set forth in the response in paragraph 86 below.

#### **VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

86. In response to paragraph 86 and pursuant to 42 U.S.C. § 6928(b) and 40 CFR § 22.14(a)(5) & 22.15(c), Maine HETL hereby requests a public hearing in this matter including on all facts denied or explained above and on the appropriateness of the proposed penalties and compliance order. Maine HETL also respectfully requests, pursuant to 40 CFR § 22.19(d) & 22.21(d), that the hearing be held in Augusta, Maine because the Maine HETL facility is located in Augusta and most of the persons expected to be witnesses in this matter are State employees who work in Augusta.

87. Paragraph 87 is informational and does not require a response.

88. Paragraph 88 is informational and does not require a response.

89. Paragraph 89 is informational and does not require a response.

90. Paragraph 90 is informational and does not require a response.

#### **IX. SETTLEMENT CONFERENCE**

91. Paragraph 91 is informational and does not require a response.

92. Paragraph 92 is informational and does not require a response.

#### **X. EFFECTIVE DATE**

93. Paragraph 93 is informational and does not require a response.

#### **XI. ADDITIONAL DEFENSES**

In addition to the defenses to liability and proposed penalty contained in the responses above, Maine HETL intends to present the following defense to the counts alleged in the complaint and the corresponding penalties sought by EPA:

Failure to state a claim. The complaint, in part, fails to state a claim upon which relief can be granted. Maine HETL's defense for failure to state a claim includes, but is not limited to, Count 7. The circumstances and arguments that constitute the grounds for this

defense are presented in Maine HETL's responses to the counts in Section V and in the responses to the proposed penalties in Section VI.

Maine HETL reserves its right to amend its Answer and to raise other defenses, including affirmative defenses, which arise as a result of additional investigation and discovery in this case.

## **XII. REQUEST FOR A HEARING**

As set forth above in the response to paragraph 86 of the Amended Complaint, Maine HETL respectfully requests a hearing in this matter and requests that the hearing be held in Augusta, Maine.

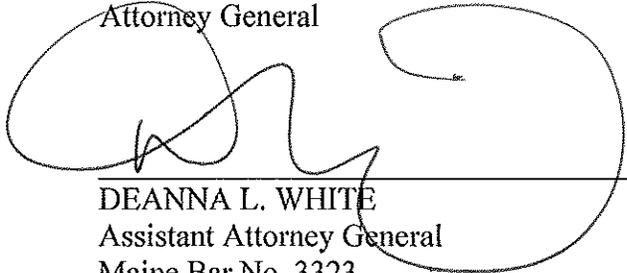
Respectfully submitted,

Health and Environmental Testing Laboratory  
Division of Public Health Systems  
Maine Center for Disease Control and Prevention  
Department of Health and Human Services  
State of Maine

Date: September 28, 2015

By its attorneys,

JANET T. MILLS  
Attorney General

A large, stylized handwritten signature in black ink, appearing to read 'D. White', is written over a horizontal line. The signature is positioned to the left of the typed name and contact information for Deanna L. White.

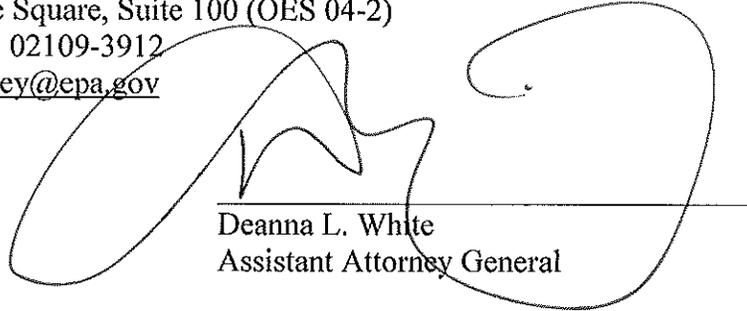
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Certificate of Service

I, Deanna L. White, Assistant Attorney General, hereby certify that on September 28, 2015, I have caused a true copy of the foregoing to be served by scan and e-mail, to:

Audrey Zucker, Esq.,  
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Deanna L. White  
Assistant Attorney General