



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

SEP 30 2014

U.S. Environmental
Protection Agency-Reg 2
2014 OCT -8 AM 7:44
REGIONAL HEARING
CLERK

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article number: 7005 3110 0000 5966 6159

Mr. Gary Wnorowski
President
Eurofins Product Safety Labs Inc
2394 US Highway 130
Dayton, NJ 08810

Re: **In the Matter of Eurofins Product Safety Labs Inc**
Docket Number RCRA-02-2014-7106

Dear Mr. Wnorowski:

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 II

U.S. Environmental
Protection Agency-Reg 2
2011 Oct - 8 AM 7:44
REGIONAL HEARING
CLERK

In The Matter of:

Eurofins Product Safety Labs Inc,
Dayton, New Jersey

Respondent.

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

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

Docket No.: **RCRA-02-2014-7106**

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 Eurofins Product Safety Labs Inc (hereinafter "PSL" or "Respondent") has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its Dayton, New Jersey facility.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's

authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, 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), 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 State of New Jersey.

RESPONDENT

3. Respondent is Eurofins Product Safety Labs Inc.
4. PSL provides research and testing services to the agricultural, chemical, pharmaceutical, dietary supplement/functional foods, personal care, animal health, biotechnology and household product industries; some test services offered include analytical testing for product discovery and development, pre-clinical safety evaluations, product registration, product stewardship, regulatory compliance and risk assessment.
5. PSL is located on 2394 US Highway 130, Dayton, New Jersey.
6. PSL's business location, described in the previous sentence, constitutes a "Facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
7. PSL is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
8. PSL is the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
9. Respondent's Facility is a "new hazardous waste management Facility" within the meaning of 40 C.F.R. § 260.10, as incorporated by reference by the N.J.A.C. 7:26G-4.1(a).

GENERAL ALLEGATIONS

10. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.* The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting 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.
11. 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.
12. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between March 15, 2004 and January 12, 2009 is \$32,500 per day of violation. 40 C.F.R. Part 19. 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. 40 C.F.R. Part 19.
13. New Jersey's authorized hazardous waste program incorporates by reference, with minor modifications, the federal program set forth in 40 C.F.R. Parts 124, 260-266, 268 and 270. Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference.
14. In or about February 2002, PSL notified EPA, pursuant to Section 3010 of RCRA, that it was a conditionally exempt small quantity generator of hazardous waste at its Facility. EPA issued to PSL EPA Identification Number NJR000041293 for its Facility.
15. PSL is a "generator" of "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
16. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

EPA Investigative and Initial Enforcement Activities

17. On or about March 27, 2014, a duly designated representative of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine

PSL's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations (the "Inspection").

18. At the time of the Inspection, Respondent stored two open 2-gallon glass containers containing unknown hazardous waste (one was only labeled with the words "HPLC waste" and the other was only labeled with the words "test substance hazardous waste") with open funnels inserted in the necks stored under the lab hood in Chem Lab 1.

19. At the time of the Inspection, Respondent stored one small unlabeled open beaker filled with vials of hazardous waste in Chem Lab 4.

20. At the time of the Inspection, Respondent stored containers of hazardous waste in the following manner in the Solvent Room in the Hazardous Waste Storage Area:

a. Two 55-gallon drums of hazardous waste were only labeled with the words "acetonitrile, methanol, trace pesticides" and dated 3/12/14 and 1/29/14; and

b. One 55-gallon drum containing hazardous waste had no label and no date written on the container.

21. At the time of the Inspection, Respondent stored two carts holding various sized containers with hazardous waste (collected from the labs), with no dates written on them, outside the Solvent Room in the Hazardous Waste Storage Area.

22. At the time of the Inspection, Respondent stated that it did not conduct weekly inspections of the hazardous waste storage area.

23. At the time of the Inspection, PSL stated that only safety inspections had been conducted at the Facility by the health and safety specialist.

24. At the time of the Inspection and at times prior, there was no spill control equipment in the loading bay in the hazardous waste storage area.

25. At the time of the Inspection and at times prior, there were no internal communication devices in the hazardous waste storage area.

26. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§6927 and 6928, on or about May 13, 2014, EPA issued PSL an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its Facility.

27. The IRL which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.

28. On or about June 18, 2014, PSL submitted its response to the IRL (the "Response").
29. The Response was prepared by an employee or agent of PSL in the course of carrying out his/her employment or duties.

Respondent's Generation of Hazardous Waste

30. In conducting its business, including research and testing services and in the course of normal building maintenance, Respondent has generated and continues to generate, hazardous waste, as defined in 40 CFR §261.3 as incorporated by reference by NJAC 7:26G-5.1, at its Facility.
31. In conducting its business, including research and testing services, Respondent has generated and continues to generate, acute hazardous waste as set forth in 40 CFR §261.30(a) as incorporated by reference by NJAC 7:26G-5.1 at its Facility.
32. A generator who generates between 100 kilograms ("kgs") and 1,000 kilograms of hazardous waste in a calendar month at a facility is a small quantity generator ("SQG") as that term is defined at 40 CFR §260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
33. Based on the hazardous waste manifest records, Respondent has been a SQG of hazardous waste for most of the past three years.
34. Based on hazardous waste manifest records, Respondent was a large quantity generator for the months of August and September 2013 because it generated more than 1 kg per month of acute hazardous waste identified in 40 C.F.R. § 261.33, as incorporated by reference by NJAC 7:26G-5.1(a).
35. A SQG may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 40 CFR §262.34(d), as incorporated by reference by NJAC 7:26G-6.1(a).

II. COUNTS

Count 1

Failure to Ensure Employees Have Hazardous Waste Training

36. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
37. Pursuant to 40 CFR § 264.16 as incorporated by reference by NJAC 7:26G-8.1(a):

(a) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. 264.

(b) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems.

(c) Facility personnel must successfully complete the program required in paragraph (a) above six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later.

(d) Facility personnel must take part in an annual review of the initial training required in paragraph (a) above.

38. During the Inspection, PSL stated that one employee received hazardous shipment training every two years through the US Department of Transportation (DOT).

39. During the Inspection, PSL stated that the only other training received by the staff was safety training conducted by the Facility's health and safety specialist.

40. PSL's Response stated that two PSL employees completed hazardous waste management training on May 14, 2014, after the Inspection.

41. PSL's Response stated that on June 20 and 23, 2014, the employees described in the previous paragraph conducted a training class on the handling of hazardous waste and emergency procedures for all relevant lab personnel at the Facility.

42. At the time of the Inspection and at times prior thereto, no training classes on the handling of hazardous waste and emergency procedures were given to the relevant PSL employees working at the Facility.

43. At the time of the Inspection and at times prior thereto, no hazardous waste management training had been taken by the relevant PSL employees working at the Facility.

44. At the time of the Inspection and at times prior to, Respondent did not ensure that Facility employees were familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal Facility operations and emergencies.

45. PSL's failure to have Facility personnel complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the Facility's compliance with the requirements of 40 C.F.R. 264 is a violation of 40 CFR § 264.16, as incorporated by reference by NJAC 7:26G-8.1(a).

46. PSL's failure to have a training program to ensure that Facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems is a violation of 40 CFR § 264.16, as incorporated by reference by NJAC 7:26G-8.1(a).

47. PSL's failure to have Facility personnel complete the program required in paragraph 37 above six months after the date of their employment or assignment to the Facility, or to a new position at the Facility, whichever is later, is a violation of 40 CFR § 264.16, as incorporated by reference by NJAC 7:26G-8.1(a).

48. PSL's failure to have Facility personnel take part in an annual review of the initial training required in paragraph 37 above is a violation of 40 CFR § 264.16, as incorporated by reference by NJAC 7:26G-8.1(a).

49. PSL's violation of 40 CFR § 264.16, as incorporated by reference by NJAC 7:26G-8.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

Count 2

Storage of Hazardous Waste Without a Permit

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

51. PSL's Facility is a "storage" Facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

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

53. Respondent does not have interim status or a permit authorizing the storage of hazardous waste at its Facility.

54. Pursuant to 40 C.F.R. § 262.34(d), as incorporated by reference in NJAC 7:26G-6.1(a), a small quantity generator may accumulate limited quantities of hazardous waste on-site for 180 days or less without having a permit or interim status provided it complies with all applicable conditions identified therein, including but not limited to requirements set forth in Subparts C and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with Accumulation and Container Storage Area Requirements

Failure to close hazardous waste containers

55. Pursuant to 40 CFR § 262.34(c)(1)(i) which references 40 C.F.R. § 265.173, which is set forth in Subpart I of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

56. At the time of the Inspection, Respondent failed to close containers holding hazardous waste in the following locations:

- a. Respondent stored two open 2-gallon glass containers of hazardous waste with funnels under the lab hood in Chem Lab 1,
- b. Respondent stored three open containers of small vials containing hazardous waste in Chem Lab 2, and
- c. Respondent stored one small open beaker filled with vials containing hazardous waste in Chem Lab 4.

Failure to mark hazardous waste containers with words "Hazardous Waste" or with other words that identify the contents

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

58. At the time of the Inspection, Respondent stored containers of hazardous wastes that were not marked with the words "Hazardous Waste" or with other words that identified the contents of the containers in the following areas:

- a. In Chem Lab 1: two open 2- gallon glass containers with open funnels inserted in the necks and containing unknown hazardous waste, were stored under the lab hood, and
- b. One small unlabeled open beaker filled with vials of hazardous waste was stored in Chem Lab 4.

59. PSL's Response indicated that now "All containers containing waste are closed and properly labeled as containing "hazardous waste" and are also labeled, where appropriate, with additional descriptions of the nature of the hazardous waste they contain. Funnels with lids were purchased for all bottles collecting waste."

Failure to mark both accumulation start dates and the words "Hazardous Waste" on containers in hazardous waste storage areas

60. Forty CFR § 262.34 (d)(4) which references 40 CFR § 262.34(a)(2), as incorporated by reference by NJAC 7:26G-6.1 (a), requires the date upon which each period of accumulation begins to be clearly marked and visible for inspection on each container.

61. Forty CFR § 262.34 (d)(4) which references 40 CFR § 262.34(a)(3), as incorporated by reference by NJAC 7:26G-6.1(a), requires each container or tank to be labeled or marked clearly with the words "Hazardous Waste".

62. At the time of the Inspection, Respondent stored the following in the Solvent Room in the Hazardous Waste Storage Area:

a. Two 55-gallon drums of hazardous waste, which were not marked with the words "Hazardous Waste", and

b. One 55-gallon drum containing hazardous waste, which had no label, was not marked with the words "Hazardous Waste", and had no date written on the container.

63. At the time of the Inspection, Respondent stored, outside the Solvent Room within the Hazardous Waste Storage Area, two carts holding various sized containers with hazardous waste, without the dates upon which the periods of accumulation in those containers began.

64. At the time of the Inspection, PSL failed to clearly mark on at least one container the date upon which the period of accumulation began in the Hazardous Waste storage room.

65. At the time of the Inspection, PSL failed to clearly mark on each container the words "Hazardous Waste" in the Hazardous Waste Storage Area.

Failure to conduct weekly inspections

66. Forty C.F.R. § 262.34(d)(2) which references 40 C.F.R. § 265.174, which is set forth in Subpart I of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), requires owners or operators to conduct weekly inspections of container storage areas, looking for leaks and for deterioration caused by corrosion and other factors.

67. At the time of the Inspection and at times prior thereto, PSL only conducted safety inspections at the Facility.

68. At the time of the Inspection and at times prior thereto, PSL failed to conduct weekly inspections of the hazardous waste storage area during periods of waste storage.

69. PSL's Response stated that it had "installed a phone in the accumulation area for communication both internal and external. All containers in the accumulation area are clearly labeled as hazardous waste with the appropriate start date of accumulation. A weekly inspection of the accumulation area will prevent these types of oversights from occurring."

Failure to Comply with Preparedness and Prevention Requirements

Failure to have communication devices

70. Forty C.F.R. § 262.34(d)(4) which references 40 C.F.R. § 265.32(b), which is set forth in Subpart C of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), requires facilities to have a device, such as a telephone (immediately available at the scene of the operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police and fire departments, or State or local emergency response teams.

71. At the time of the Inspection and at times prior thereto, PSL failed to have a two way radio or communication system at the Facility, as required by 40 C.F.R § 265.32(b), as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to make arrangements with local hospital

72. Forty C.F.R. § 262.34(d)(4) which references 40 CFR § 265.37(a)(4), as incorporated by reference NJAC 7:26G-9.1(a), requires that the owner or operator attempt to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

73. PSL stated in its Response that “we have completed our contingency plan and are making local authorities and the local hospital aware and will try to obtain their written agreement if possible.”

74. At the time of the Inspection and at times prior thereto, PSL had failed to make any arrangement to familiarize local hospitals with the properties of hazardous waste handled at the Facility and the types of injuries or illnesses which could result from fires, explosions or releases at the Facility.

Failure to Comply with Emergency Procedures

Failure to have designated emergency coordinator

75. Forty C.F.R. § 262.34(d)(5)(i) , as incorporated by reference by NJAC 7:26G-6.1(a), requires facilities, at all times, to have at least one employee either on the premises or on call with the responsibility for coordinating all emergency response measures. This employee is the emergency coordinator.

76. At the time of the Inspection and at times prior thereto, PSL failed to have a designated emergency coordinator for emergency response at its Facility.

77. According to PSL's Response, the names and cell phone numbers of the designated emergency coordinator and backup are now posted in the accumulation area and around the building.

Failure to have spill control equipment, and decontamination equipment

78. Forty CFR 262.34(d)(4) which references 40 CFR § 265.32(c), as incorporated by reference by NJAC 7:26G-9.1(a), requires that all facilities be equipped with portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

79. At the time of the Inspection, no spill control equipment or decontamination equipment was present in the loading bay where hazardous waste was stored.

80. According to PSL's Response, "a spill kit has been added to the bay."

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

81. At the time of the Inspection and for at least 180 days prior thereto, PSL failed to satisfy the conditions set forth in 40 C.F.R. § 262.34(d), as incorporated by reference in NJAC 7:26G-6.1(a), including applicable conditions set forth in Subparts C and I of 40 C.F.R. Part 265, or the equivalent authorized State Program provisions, which, if complied with, would have allowed Respondent to store limited amounts of hazardous waste without interim status or a permit for up to 180 days. The Respondent did not comply with these storage conditions for at least 180 days prior to the Inspection.

Storage of Hazardous Waste Without a Permit

82. PSL's storage of hazardous waste at its Facility on March 27, 2014 and for at least 180 days prior thereto without interim status or a permit is a violation of 40 C.F.R. § 270.1(c) as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.

83. PSL's failure to comply with 40 C.F.R. § 270.1(c), as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

II. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information that PSL be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices

employed in the determination of individual and multi-day penalties are included as Attachment II, below.

Count 1: the penalty for this count is covered by count 2

Count 2: \$71,500

Total Proposed Penalty is **\$71,500**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. The penalty amounts in the 2003 RCRA Civil Penalty policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the December 29, 2008 document entitled "Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)"; and the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule" (with a further revision not relevant to this action on April 6, 2010.) 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. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a) (3) of RCRA, 42 U.S.C. 6928(a) (3), for violations after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

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 below for the violations alleged in this Complaint.

III. COMPLIANCE ORDER

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

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

- a. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including those set forth in the provisions for small quantity generators set forth in 40 C.F.R. §262.34 (mainly at 40 C.F.R. §262.34(d)), as incorporated by reference by NJAC 7:26G-6.1(a), during each calendar month in which the Respondent generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste, provided Respondent neither accumulates hazardous waste in quantities exceeding more than 6000 kilograms nor accumulates hazardous waste for more than 180 days (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or
- b. as an alternative to compliance with the generator provisions identified in Paragraph 1(a). of this Compliance Order, obtain and comply with a hazardous waste storage permit from the New Jersey State Department of Environmental Protection pursuant to applicable provisions set forth in 40 C.F.R. Part 270, as incorporated by reference by NJAC. 7:26G-12.1(a). However, Respondent must comply with the appropriate requirements cited in Paragraph 1.a. above until such permit is obtained.

2. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall submit to EPA, a statement indicating its compliance with this Compliance Order, and all documentation demonstrating such compliance. Respondent's submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates, and other identifying aspects, of these prior submissions should be indicated. If Respondent is 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.

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

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

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date PSL has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. §6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

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

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order 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

Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. 701 - 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent 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 Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the 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 the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
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 they believe 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

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, 2014
New York, New York

COMPLAINANT:

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

To: Mr. Gary Wnorowski
President
Eurofins Product Safety Labs Inc
2394 US Highway 130
Dayton, NJ 08810

cc: Mike Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office, New Jersey Department of Environmental Protection
300 Horizon Center
P.O. Box 407
Trenton, New Jersey 08625-0407

ATTACHMENT I

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 1 & 2)**

Respondent: Eurofins Product Safety Labs Inc
Facility Address: Dayton, New Jersey 08810

Requirement Violated:

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

Respondent stored hazardous waste at its Facility without interim status or a permit. Respondent did not meet all of the conditions set forth in 40 C.F.R. §262.34, as incorporated by reference by NJAC 7:26G-6.1(a) which, if complied with, would have authorized the Facility to accumulate hazardous waste on site for limited periods of time without a permit.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$7,090
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$360
3. Multiply line 2 by number of days of violation minus 1 (180 days minus 1).	\$64,440
4. Add line 1 and line 3.	\$71,530
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable

10. Calculate economic benefit. Less than \$5,000

11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint. \$71,500*

* Total penalty has been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 1 & 2)

1. Gravity Based Penalty

Potential for Harm – The Potential for Harm resulting from this violation was determined to be MODERATE. Respondent's operation of the Facility without a permit or interim status posed a significant adverse effect on the purposes and procedures for implementing the RCRA regulatory program. Respondent failed to comply with numerous management standards that govern the labeling and condition of storage containers and emergency preparedness and prevention, among other things. This failure to comply stemmed from Respondent's failure to ensure that its employees received hazardous waste management training. Moderate harm was chosen because the volume of hazardous waste managed by Respondent was not large, and Respondent did make appropriate hazardous waste determinations and ship its hazardous waste to authorized facilities using hazardous waste manifests.

Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent significantly deviated from the regulatory conditions for accumulating hazardous waste without a permit, and thus operated the Facility without a permit or interim status. However, the volume of hazardous waste managed by Respondent was not large, and Respondent did make appropriate hazardous waste determinations and ship its hazardous waste to authorized facilities using hazardous waste manifests.

The applicable cell ranges from \$7,090 to \$11,330. The low point of the penalty cell matrix was selected in view of the relatively small quantities of hazardous waste involved.

Multiple/Multi-day – The multi-day penalty component was applied because the Facility did not comply with the storage requirements for 180 days prior to the Inspection. However, the low point of the Moderate/Moderate penalty cell matrix was used in view of the relatively small quantities of hazardous waste involved.

2. Adjustment Factors

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

3. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit is *de minimis*.

ATTACHMENT II

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

Extent of Deviation from Requirement

Potential for
Harm

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

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

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

Extent of Deviation from Requirement

Potential
for
Harm

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

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

CERTIFICATE OF SERVICE

This is to certify that on 10/6/, 2014, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2014-7106 hereinafter referred to as the "Complaint"), together with Attachments I and II and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to Gary Wnorowski, President, Eurofins Product Safety Labs Inc, 2394 US Highway 130, Dayton, NJ 08810. On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Name: Yone My