



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 30 2013

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 OCT 24 P 3:05  
REGIONAL HEARING  
CLERK

Mark Rea, Jr., Chief Executive Officer  
Advanced Recovery, Inc.  
41 Mechanic Street  
Port Jervis, NY 12771

Re: **In the Matter of Advanced Recovery, Inc.**  
**Docket Number RCRA-02-2013-7106**

Dear Mr. Rea:

Enclosed are 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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

-----X  
In The Matter of :  
 :  
Advanced Recovery, Inc. : **COMPLAINT, COMPLIANCE ORDER,  
 : AND NOTICE OF OPPORTUNITY  
 : FOR HEARING**  
 :  
 : **Docket Number RCRA-02-2013-7106**  
Respondent :  
 :  
 :  
Proceeding under Section 3008 of the :  
Solid Waste Disposal Act, as amended. :  
-----X

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 OCT 24 P 3:05  
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CLERK

**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 U.S.C. §§ 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”). The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) serves notice of EPA's preliminary determination that Advanced Recovery Inc. (hereinafter “Respondent” or “AR”) has violated requirements of the authorized New York State hazardous waste program concerning the management of hazardous wastes at its facility in Port Jervis, New York.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 74 Fed. Reg. 31380 (July 1, 2009), and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002, and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized State program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

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

### **General Allegations**

#### **Jurisdiction**

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a) (4).
2. In accordance with Section 3008(a) (2) of RCRA, 42 U.S.C. § 6928(a) (2), EPA has given the State of New York prior notice of this action.

#### **Respondent's Background**

3. The Respondent is Advanced Recovery, Inc. ("AR" or "Respondent").
4. Respondent is a business engaged in the recycling of electronic ("e-wastes") and universal wastes since 1991.
5. Respondent's business is located at 41 Mechanic Street, Port Jervis, New York, 12771.
6. Respondent is a person as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations ("NYCRR") § 370.2(b).<sup>1</sup>
7. The Port Jervis, New York location where Respondent conducts its business constitutes a "facility," as that term is defined in 6 NYCRR §370.2(b) (hereinafter the "facility").
8. Upon information and belief, Respondent is and has been the "owner" and "operator" of the facility, as those terms are defined in 6 NYCRR §370.2(b).

#### **Respondent's Generation of Waste**

9. Respondent, in carrying out its recycling activities generated solid waste, as defined in 6 NYCRR § 371.1(c).

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<sup>1</sup> All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

10. In carrying out its recycling activities, Respondent generated “hazardous waste”, as defined in 6 NYCRR § 371.1(d).
11. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a “generator”, as that term is defined in 6 NYCRR § 370.2(b), of hazardous waste.
12. The AR facility constitutes a new hazardous waste management facility (“new facility”) within the meaning of 6 NYCRR § 370.2(b).
13. As of July 2012, for at least one month, Respondent generated 1,000 kilograms (“kg”) or more of hazardous waste in a calendar month. A generator who generates at least 1,000 kg in a calendar month is often referred to as a “Large Quantity Generator” (hereinafter “LQG”).

#### Notification of Hazardous Waste Generation

14. On or about May 28, 2008, AR submitted a Section 3010 Notification of Regulated Waste Activity to EPA informing EPA of its hazardous waste activities at the facility which is owned and operated by Respondent and located at 41 Mechanic Street, Port Jervis, New York 12771. In response, EPA assigned Respondent with EPA Identification Number NYR000157636.

#### EPA Investigative Activities

15. On or about July 25, 2012, a duly designated representative of EPA conducted an inspection, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with RCRA and its implementing regulations (the “Inspection”).
16. During the Inspection, the facility was using a drum top bulb crusher to crush fluorescent light bulbs.
17. During the Inspection, the facility representative told the EPA Inspector that the facility had not taken certain actions which are required to be able to store hazardous waste on a short-term basis without a permit.
18. During the Inspection, there were shards of glass and phosphor dust from the crushed light bulbs on the bulb crusher and on the floor surrounding the bulb crusher.
19. During the Inspection, there were two open cartons containing broken fluorescent light bulbs near the bulb crusher.
20. Fluorescent light bulbs contain mercury vapor which can be released into the surrounding air when the bulbs are broken or crushed.

21. During the Inspection, the facility stored 3 drums (55gal) of crushed fluorescent light bulbs in the boiler room annex and these drums were not covered.
22. During the Inspection, there were shards of glass and phosphor dust in the boiler room annex.
23. During the Inspection, there was a fiber drum cover containing pieces of crushed bulbs in the boiler room annex.
24. During the Inspection, there were 8 drums (55 gal) of crushed fluorescent light bulbs in the area next to the boiler room.
25. The aforesaid drums of crushed fluorescent light bulbs mentioned in paragraphs "21" and "24" were not labeled with the words "hazardous waste" and other words to describe their contents.
26. The 11 drums of crushed fluorescent bulbs mentioned in paragraphs "21" and "24" were not marked with the dates when the crushed bulbs started to be accumulated in the drums.
27. The 8 drums in the area next to the boiler room were shrinked-wrapped and did not have lids.
28. There were eight broken fluorescent bulbs (non-green tipped) in a box next to the boiler and two broken bulbs in the whole unit storage area.
29. At the time of the Inspection, the facility was separating the panel glass from the funnel glass of the cathode ray tube ("CRT") monitors by cutting, thereby generating a release of dust from the separating of the funnel glass from the panel glass.
30. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, on or about February 14, 2013, EPA issued Respondent a Notice of Violation ("NOV") and a Request for Information Letter ("IRL") regarding its management of hazardous waste at its facility.
31. On or about March 18, 2013, Respondent submitted its response (the "Response") to EPA's NOV/IRL.
32. In its Response, AR stated that it had used knowledge and had determined that the crushed fluorescent bulbs in the above-mentioned eleven drums were hazardous waste.
33. In its Response, AR stated that the crushed fluorescent light bulbs had been sent off-site as hazardous waste. (Hazardous Waste Code D009)
34. In its Response, Advanced Recovery sent EPA copies of the manifests that accompanied the offsite shipment of crushed fluorescent light bulbs. The manifests listed the crushed bulbs as being hazardous wastes.

35. In its Response, AR advised EPA that it had stopped crushing fluorescent light bulbs at the facility.

**Count 1 – Failure to Minimize Risks of Fire, Explosion and Releases**

36. Complainant repeats and re-alleges each allegation contained in Paragraphs 1 through 35, inclusive, with the same force and effect as if fully set forth below.

37. Six NYCRR § 373-2.3(b) requires that a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

38. During the Inspection, Respondent failed to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air through its numerous actions or inactions as demonstrated by the following situations:

- (i) Shards of glass and phosphor dust on the top of the bulb crusher and in the surrounding area near the bulb-crusher;
- (ii) Two open cartons of broken fluorescent light bulbs near the bulb crusher;
- (iii) Three open drums containing crushed fluorescent light bulbs in the boiler room annex;
- (iv) Eight drums of crushed fluorescent light bulbs not adequately covered in the area next to the boiler room;
- (v) Shards of glass and phosphor dust in the boiler room annex;
- (vi) One fiber drum cover containing pieces of crushed fluorescent light bulbs in the boiler room annex;
- (vii) Eight broken fluorescent light bulbs in a box next to the boiler and two broken bulbs in the whole unit storage area; and
- (viii) Dust generated from the cutting of the CRT monitors.

39. During the Inspection, the bulb crusher and the two open cartons of broken fluorescent light bulbs were observed to be close to the loading dock area that was open to the outside.

40. Respondent's aforementioned failures to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air, soil or surface water which could threaten human health or the environment, as alleged above in paragraphs 38 and 39 are violations of 6 NYCRR § 373-2.3(b).

41. Respondent's failure to comply with 6 NYCRR § 373-2.3(b) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

### **Count 2- Storage of Hazardous Waste Without a Permit**

42. Complainant re-alleges each allegation contained in the above paragraphs 1 through 35 and 38 through 40 as if fully set forth herein.

43. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(c) a RCRA permit or interim status is required for the storage of hazardous waste.

44. Respondent does not have interim status or a permit authorizing the storage of hazardous waste at the facility.

45. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a generator may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided all applicable requirements referenced therein, including but not limited to, the requirements set forth in 6 NYCRR § 373-1.1(d)(1)(iii), are complied with.

46. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii), to be exempt a generator must comply with, among other things, the container requirements set forth in 373-3.9; the preparedness and prevention requirement set forth in 6 NYCRR 373-3.3 and the contingency plans and emergency procedures set forth in 6 NYCRR § 373-3.4. Additionally, pursuant to 6 NYCRR §§ 373-1.1(d)(1)(iii)(c)(2)-(3), accumulation dates must be clearly marked on containers and each container must be labeled with the words "hazardous waste" and other words that identify its contents.

#### Failure to label containers with the words hazardous waste and other words to identify their contents

47. At the time of the Inspection, the Respondent had not labeled 13 containers (the eleven 55-gallon drums mentioned in paragraphs 21 and 24, and the two cartons mentioned in paragraph 19) with the words "hazardous waste" and other words to identify their contents.

#### Failure to mark the containers with the accumulation start dates

48. At the time of the Inspection, Respondent had not marked 11 containers with the accumulation start dates, i.e., the dates when the hazardous waste started to be accumulated in the containers.

Failure to comply with 90 day storage requirement

49. Respondent stored hazardous waste for more than 90 days.

Failure to Comply with the Requirements for Preparedness and Prevention

50. Respondent failed to maintain and operate its facility in a manner to minimize threats to human health and the environment. See Count 1.

Failure to Comply with Contingency Plan Requirements

51. Prior to and as of July 25, 2012, Respondent had not prepared a contingency plan for the Port Jervis facility.

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

52. As of at least July 25, 2012, Respondent had failed to satisfy all the conditions referenced in 6 NYCRR § 372.2(a)(8)(ii), including applicable conditions referenced above, which, if complied with, would have allowed Respondent to store hazardous waste at the facility for up to 90 days without interim status or a permit. The Respondent did not comply with these storage conditions for 62 days prior to the inspection.

Storage of Hazardous Waste Without a Permit

53. Respondent's storage of hazardous waste at its facility on July 25, 2012 without interim status or a permit is a violation of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(c).

54. Respondent's failure to comply with Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(c) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

**PROPOSED CIVIL PENALTY**

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

Count 1: \$37,500

Count 2: \$29,050

Total Proposed Penalty for Counts 1- 2 is \$66,550

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." 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 March 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

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-ful.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 EPA's Civil Penalty Policies to Implement the 2008 Civil 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). The RCRA Civil Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

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

### **III. COMPLIANCE ORDER**

The Respondent shall, immediately upon the effective date of this Order, manage spent fluorescent light bulbs in accordance with regulatory requirements in 6 NYCRR Subpart 374-3 for handlers of universal waste. If Respondent handles crushed fluorescent light bulbs, it shall comply with applicable hazardous waste rules.

This Compliance Order shall take effect with respect to the Respondent after thirty (30) days of service of the Order, unless by that date the Respondent has requested a hearing pursuant

to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Any responses, documentation, and evidence submitted concerning this Compliance Order shall be sent to:

**Abdool Jabar  
Environmental Engineer  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York 10007-1866**

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 or universal 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 that has taken effect is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance.

#### **V. PROCEDURES GOVERNING THIS 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 Procedures 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 were promulgated 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." These rules 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 is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer 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 to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

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

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

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

## **B. Opportunity To Request A Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within

thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **C. Failure To Answer**

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

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

### **D. 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 Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) 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 its right to judicial review. 40 C.F.R. § 22.27(d).

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

### **VI. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) 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:

**Melva J. Hayden, Esq.**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, Room 1635**  
**New York, New York 10007-1866**  
**(212) 637-3230**

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 requesting 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 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.

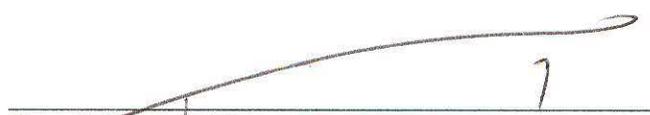
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the 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's entering into a settlement through the signing of the Consent Agreement and its complying with the terms and conditions set forth in the Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **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 thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:

  
\_\_\_\_\_  
Dore La Posta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

Date: SEPTEMBER 30 2013

To: Mark Rea, Jr. Chief Executive Officer  
Advanced Recovery  
41 Mechanic Street  
Port Jervis, NY 12771

cc: Russ Brauksiek, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway – 11<sup>th</sup> Floor  
Albany, New York 12233

## CERTIFICATE OF SERVICE

This is to certify that on the day of October 24, 2013, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2013-7106, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following:

Mark Rea, Jr.  
Chief Executive Officer  
Advanced Recovery  
41 Mechanic Street  
Port Jervis, NY 12771

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: October 24, 2013  
New York, New York

  
Mildred Baez

**ATTACHMENT I**

**PENALTY CALCULATION WORKSHEET  
WITH NARRATIVE EXPLANATION**

**Advanced Recovery**

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

**Respondent:**        **Advanced Recovery**

**Facility Address:** **41 Mechanic Street  
Port Jervis, NY 12771**

**Requirement Violated:** **6 NYCRR § 373-2.3 (b)**

**Respondent failed to operate its facility to minimize the risk of a fire, explosion or releases.**

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$37,500
(a) Potential for harm.	MAJOR
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3.	\$ 37,500
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A

7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$37,500

## NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

### Penalty Computation Worksheet (Count 1)

#### **1. Gravity Based Penalty**

(a) **Potential for Harm:** The potential for harm is major. Respondent operated its drum top bulb crusher and did not contain the dust and shards of glass that resulted from its operation. At the time of the inspection, phosphor dust and shards of glass were released on the floor surrounding the bulb crusher. Three of the drums that were storing the crushed light bulbs were not covered and were in a room in which there were releases of phosphor dust. There were also 8 drums which were shrinked-wrapped and did not have proper lids. There were also 8 broken bulbs in a box next to the boiler and two broken bulbs in the whole unit storage area. There were also two open cartons containing broken fluorescent light bulbs and one fiber drum cover containing pieces of crushed fluorescent light bulbs.

(b) **Extent of Deviation:** The Extent of Deviation was determined to be major because of the number of ways the facility was not operated in a manner to prevent releases to the environment. There were at least three areas where releases had occurred that were observed during the inspection and the releases had not been cleaned up.

#### **2. Multi-Day:** N/A

**3. Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

**Good faith:** EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

**Willfulness/Negligence:** Not applicable

**History of Compliance:** Not applicable

**Ability to Pay:** Not applicable

**Environmental Project:** Not applicable

**Other Unique Factors:** Not applicable

**4. Economic Benefit** - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the 2003 RCRA Civil Penalty Policy. Minimal economic benefit was gained from failure to contain the glass, phosphor dust, and mercury vapors inside the containers that were already in use.

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

**Respondent:**        **Advanced Recovery**

**Facility Address:** **41 Mechanic Street**  
**Port Jervis, NY 12771**

**Requirement Violated:** **6 NYCRR § 373-1.2(c)**

Respondent failed to have a permit, and failed to meet conditions for temporary storage of hazardous waste without a permit.

**PENALTY AMOUNT FOR COMPLAINT**

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.	\$ 21,960
4. Add line 1 and line 3.	\$29,050
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 29,050

## NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

### Penalty Computation Worksheet (Count 2)

#### **1. Gravity Based Penalty**

(a) **Potential for Harm:** The potential for harm present in this violation is moderate. Storage of hazardous waste without a permit is a serious violation and has substantial adverse effects on the program. The Respondent did not comply with some storage requirements resulting in the following: improper handling and management of hazardous waste at its facility, including storing some hazardous waste in unlabeled, open containers, not having a contingency plan and failing to have training records of facility's personnel. Moderate harm was chosen because at the time of the inspection, the facility had only been a LQG for a short period of time.

(b) **Extent of Deviation:** The extent of deviation present in this violation was determined to be moderate. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with many regulations that must be met by LQGs to be exempt from RCRA permitting. The amount of hazardous waste normally handled by the facility was, however, not large. For this reason, the low end of the penalty matrix was used.

**2. Multi-Day:** The multi-day penalty component was applied because the facility did not comply with the storage provisions for 62 days prior to the Inspection. However, the low end of the penalty matrix was used in view of the relatively small quantities of hazardous waste involved.

**3. Adjustment Factors** (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

**Good faith:** EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

**Willfulness/Negligence:** Not applicable

**History of Compliance:** Not applicable

**Ability to Pay:** Not applicable

**Environmental Project:** Not applicable

**Other Unique Factors:** Not applicable

**4. Economic Benefit** – At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the 2003 RCRA Civil Penalty Policy. Minimal economic benefit was gained from failure to meet the safe harbor provisions (e.g., labeling and dating containers) which would have avoided the need for a permit.

ATTACHMENT II

GRAVITY-BASED PENALTY MATRIX  
TO SUPPLEMENT THE RCRA CIVIL PENALTY POLICY  
FOR VIOLATIONS THAT OCCUR AFTER JANUARY 12, 2009\*

**GRAVITY MATRIX**

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

ATTACHMENT III

**MULTIPLE/MULTI-DAY MATRIX**

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