



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

SEP 29 2011

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2011 SEP 30 A 9 44
REGIONAL HEARING
CLERK

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Chancellor Mathew Goldstein
Office of the Chancellor
City University of New York
535 East 80th Street
New York, New York 10075

James L. Muyskens, President
Queens College
CUNY
65-30 Kissena Boulevard
Flushing, New York 11367-1597

Re: **In the Matter of City University of New York**
Docket Number RCRA-02-2011-7109

Dear Messrs. Goldstein and Muyskens:

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.

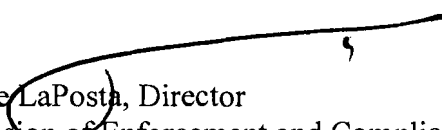
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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)



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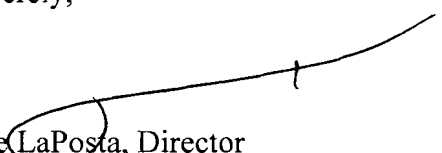
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Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In The Matter of:

City University of New York
(Queens College)

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-02-2011-7109**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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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 the City University of New York ("Respondent") has violated provisions of RCRA and the federally authorized New York regulations concerning the management of hazardous waste at its Queens College campus.

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). 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. EPA is authorized to enforce regulations comprising the authorized State Program.

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 York.

RESPONDENT

3. Respondent is the City University of New York ("CUNY").

4. CUNY is an urban public university serving more than 480,000 students at 23 colleges and institutions in New York City including Queens College.

5. Queens College was founded in 1937. The Queens College campus is located in Flushing, New York. Students at Queens College may obtain Bachelor's and/or Master's degrees in the arts and humanities, education, mathematics, natural sciences and social sciences.

6. The Queens College Department of Chemistry and Biochemistry is housed primarily in Remsen Hall, a four-story laboratory and classroom building and also occupies several research laboratories and offices in the adjacent Science Building.

GENERAL ALLEGATIONS

7. 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 including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.

8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.

9. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a

periodic basis. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

10. New York State's hazardous waste regulations are set forth in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") Parts 370 – 373.

11. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 6 NYCRR § 370.2(b).

12. The Queens College campus constitutes an "existing facility" (hereafter referred to as "facility") as that term is defined in 6 NYCRR § 370.2(b).

13. Respondent is and has been the "owner" of the facility as that term is defined in 6 NYCRR § 370.2(b).

14. Respondent is and has been the "operator" of the facility as that term is defined in 6 NYCRR § 370.2(b).

15. In or about November 1991 Queens College notified EPA of its hazardous waste activities. This notification was made pursuant to Section 3010 of RCRA. In response to the notification, EPA issued Queens College EPA Identification Number NYD089726889.

16. In or about September 2009, Queens College submitted a second notification to EPA indicating that Queens College is a generator of hazardous waste, generating less than 1,000 kilograms per month of (non-acute) hazardous waste at the facility (commonly referred to as a "small quantity generator").

17. Respondent is and has been a "generator" of "hazardous waste" as those terms are defined in NYCRR § 370.2(b) and 6 NYCRR § 371.1(d), respectively. The requirements for generators are set forth in 6 NYCRR Part 372.

18. Respondent stores hazardous waste at its facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. At a minimum, hazardous waste is and has been stored in the facility's hazardous waste container storage area and in numerous accumulation areas located in Remsen Hall and the Science Building.

19. Respondent's facility is and has been a "storage" facility as that term is defined in 6 NYCRR § 370.2(b).

20. Respondent never submitted a Part A or a Part B Permit Application to EPA or the State of New York for its facility and never received "interim status" or a hazardous waste permit to treat, store or dispose of hazardous waste at its facility.

21. Pursuant to 6 NYCRR § 373-3.1(a)(2) facilities in existence on or before November 19, 1980 are subject to the regulatory standards set forth in 6 NYCRR Subpart 373-3.

EPA Investigative and Initial Enforcement Activities

22. On or about February 1-3, 8-9, and 22, 2010, a duly designated representative of EPA conducted inspections of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and New York's authorized hazardous waste regulations ("the Inspection").

23. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about July 20, 2010, EPA issued Respondent an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its facility.

24. On or about November 19, 2010 and December 8, 2010, Respondent submitted responses to EPA's IRL/NOV. Each of these submissions was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

CUNY's Entry into a Self-Audit Agreement with EPA

25. In or about January 2003, CUNY and EPA-Region 2 entered into a Multi-Facility Audit Agreement ("Agreement") in which CUNY agreed to conduct a self audit to determine its compliance with regulations promulgated or authorized by EPA at eighteen (18) CUNY campuses, including Queens College. Except as otherwise specified, the Agreement was governed by the terms of EPA's policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations." See 65 Fed. Reg. 19618 (April 11, 2000). Under the Agreement, CUNY was to identify, disclose and correct violations in exchange for EPA exercising its discretion not to seek gravity based civil penalties for these violations. The Agreement also provided that CUNY would take the steps necessary to prevent the recurrence of each violation identified during the audit.

26. On or about August 1, 2003 and February 2, 2004, CUNY self disclosed to EPA possible violations of RCRA and other federal environmental statutes at various CUNY campuses including Queens College.

27. On or about September 9, 2004, EPA issued CUNY a "Notice of Determination" indicating it would eliminate a penalty of \$190,700 which could have otherwise been assessed using the RCRA Civil Penalty Policy for the disclosed hazardous waste violations at Queens College. These violations included but were not limited to Queens College's failure to: a) make

hazardous waste determinations; and b) minimize the possibility of fire, explosion or releases of hazardous wastes.

COUNTS

Count 1

Failure to Make Hazardous Waste Determinations

28. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
29. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates "solid waste" must determine if the solid waste is a hazardous waste using the procedures set forth therein.
30. Pursuant to 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" which is any material that is "abandoned," "recycled" or "inherently waste-like," as those terms are further defined.
31. Pursuant to 6 NYCRR § 371.1(c)(3), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."
32. On or prior to EPA's Inspection, Respondent generated and abandoned the following waste materials at its facility:
- (a) Orphaned and/or expired chemicals in numerous rooms located in Remsen Hall and the Science Building, including in Remsen Hall Rooms 15, 17, 24A, and 24B and Science Building Room B112. These chemicals included but are not limited to lithium, mercury, sulfuric acid, phosphoric acid, hydrochloric acid, sodium and ammonium hydroxides, bromine, and methanol dichloromethane.
 - (b) Broken fluorescent light bulbs left in the corridor outside of Room 17 of Remsen Hall.
33. On or about February 8 and 9, 2010, Respondent manifested over six thousand and nine hundred (6,900) pounds of hazardous waste off-site for disposal. Most of this waste was generated in the Rooms referenced in Paragraph 32 above.
34. Respondent "abandoned" each of the materials identified in Paragraph 32 by storing or accumulating them before or in lieu of being disposed.

35. Each of the materials identified in Paragraph 32 above was a "discarded material" and "solid waste," as defined in 6 NYCRR § 371.1(c).
36. Prior to at least February 1, 2010, Respondent had not determined if any of the materials identified in Paragraph 32 above constituted a hazardous waste.
37. Respondent's failure to determine if each solid waste generated at its facility constitutes a hazardous waste is a violation of 6 NYCRR § 372.2(a)(2).
38. Respondent's failure to comply with 6 NYCRR § 372.2(a)(2) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

Count 2
Failure To Minimize Potential Releases

39. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
40. Six NYCRR § 373-3.3(b) requires, in part, 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."
41. As of early February 2010, 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 through numerous actions or inactions including but not necessarily limited to the following situations:
- (a) Storing chemicals in Remsen Hall Rooms 17A, 24A and 24B that the City of New York Fire Department had cited as noncompliant with New York City requirements.
 - (b) Storing chemicals and hazardous waste next to each other in numerous locations including but not limited to Remsen Hall Room 25 (acetic and nitric acids; hydrofluoric acid and sodium cyanide; propylene oxide and ammonium hydroxide; and bromine and nitrobenzene), Remsen Hall Room 154 (acetic acid and nitric acid) Remsen Hall Room 24B (acetic acid and acetic anhydride next to hydrogen peroxide) and Remsen Hall Room 15 (nitric acid, hydrochloric acid, potassium permanganate and potassium dichromate).
 - (c) Storing chemicals on the floor or above existing cabinetry thereby potentially increasing the risk of releases of hazardous waste or hazardous constituents from inadvertent spills or accidents. This occurred in various locations including Science Building Room E 111 and Remsen Hall Building Rooms 17 and 24B.

- (d) Packing an abundance of chemicals on open shelving in Remsen Hall Building 256 such that many of the containers were hanging over the edge of shelves potentially increasing the likelihood that a container would fall off a shelf and potentially release hazardous waste or hazardous waste constituents.
- (e) Creating a potentially explosive site condition by leaving an unsecured gas cylinder near chemicals and a hazardous waste satellite accumulation area in Remsen Hall Room 19.
- (f) Using a hazardous waste container storage area to temporarily store unidentified chemicals during building renovations without determining whether these chemicals were incompatible with the hazardous waste being stored in that area.
- (g) Failing to discard a bottle of ethyl ether opened on November 22, 2008, which was located in Remsen Hall Room 255 or to conduct tests to determine whether peroxide was present. As indicated in Respondent's 1999 Chemical Hygiene Plan, ethers can form explosive peroxide crystals after exposure to air and bottles of ether should be discarded or tested every six months after a container is opened. Failure to properly handle open containers of ethers could result in an explosion.
- (h) A release of a potassium fluoride from a chemical container was found in Remsen Hall Room D 223. Potassium fluoride is a hygroscopic material which absorbs moisture. The contaminated moisture had accumulated in the plastic tray used to hold various chemicals including the potassium fluoride. Potassium fluoride can be toxic if inhaled or ingested. It is also corrosive and can cause burns.

42. Each action or inaction set forth in the Paragraph 41 above constitutes a failure by Respondent to maintain or operate its facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, and each action or inaction constitutes a violation of 6 NYCRR § 373-3.3(b).

43. Respondent's violation of 6 NYCRR § 373-3.3(b) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

Count 3 **Storage of Hazardous Waste Without a Permit**

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

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

46. Respondent's facility does not have interim status or a permit authorizing the storage of hazardous waste at its facility.

47. 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.

48. Pursuant to 6 NYCRR § 372.2(a)(8)(iii), a small quantity generator ("SQG") may accumulate up to 6,000 kilograms of (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 identified therein, including but not limited to the labeling requirements set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii)(c)(2)-(3); the container requirements set forth in 6 NYCRR § 373-3.9 and the preparedness and prevention requirements set forth in 6 NYCRR 373-3.3.

49. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii), storage areas that are exempt 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 as containing "hazardous waste."

Failure to Comply with Accumulation Limits

50. As of at least February 8, 2010, Respondent had accumulated hazardous waste at its facility for more than one hundred eighty (180) days.

Failure to Comply with the Requirements for Preparedness and Prevention

51. Respondent failed to maintain and operate its facility in a manner to minimize threats to human health and the environment as required by 6 NYCRR § 373-3.3(b). See Count 2.

52. Six NYCRR § 373-3.3(d) requires that a facility communications or alarm systems, fire protection equipment, and spill control equipment be tested and maintained as necessary to assure their proper operation in time of emergency.

53. As of at least February 1, 2010, a number of laboratories were equipped with portable fire extinguishers that did not have inspection tags and the facility did not have other records indicating that the extinguishers were tested or inspected.

Failure to Comply with Contingency Plan Requirements

54. Six NYCRR § 373-3.4(c)(3) requires that a facility's contingency plan must contain a description of arrangements agreed to by the local police departments, fire departments, hospitals, contractors and State and local emergency teams.

55. As of at least February 1, 2010, Respondent's contingency plan did not contain a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency response teams to coordinate emergency services.

56. Six NYCRR § 373-3.4(c)(5) requires that a facility's contingency plan contain an up-to-date list of all emergency equipment at the facility (such as fire extinguishers, spill control equipment and communication and alarm systems) where this equipment is required. The plan must include the location of such equipment and a brief description of their capabilities.

57. As of at least February 1, 2010, Respondent's contingency plan did not contain an up-to-date list of all emergency equipment at the facility and the location of such equipment and their capabilities.

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

58. As of at least February 1, 2010, Respondent 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 without interim status or a permit for up to ninety (90) days.

59. As of at least February 1, 2010, Respondent failed to satisfy all the conditions referenced in 6 NYCRR § 372.2(a)(8)(iii) including applicable conditions referenced above which, if complied with, would have allowed Respondent to store limited amounts of hazardous waste (up to 6000 kilograms) without interim status or a permit for up to one hundred eighty (180) days.

Storage of Hazardous Waste Without a Permit

60. Respondent's storage of hazardous waste at its facility 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.

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

II. PROPOSED CIVIL PENALTY

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

Count 1: \$32,900

Count 2: \$32,900

Count 3: \$15,600

Total Proposed Penalty for Counts 1, 2 and 3 is **\$81,400**

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

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule (with a further revision not relevant to this action on April 6, 2010).

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

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

penalties are included as Attachments II, and III, below.

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues Respondent 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. make hazardous waste determinations for each solid waste generated at its facility pursuant to 6 NYCRR § 372.2(a)(2),
 - b. maintain and operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 6 NYCRR § 373-3.3(b).
 - c. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including:
 - i. the provisions for small quantity generators set forth or referenced in 6 NYCRR § 372.2(a)(8)(iii) 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 one hundred eighty (180) days (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or
 - ii. the provisions for generators set forth or referenced in 6 NYCRR § 372.2(a)(8)(ii) provided hazardous waste is accumulated on site for ninety (90) days or less;
 - d. as an alternative to compliance with the generator provisions identified in Paragraph 1.c.i. – ii. of this Compliance Order, obtain and comply with a hazardous waste storage permit from the New York State Department of Environmental Conservation. However, Respondent must comply with the appropriate requirements cited in Paragraph 1.c. 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) a written statement indicating if it intends to continue its

operations at Queens College as a small quantity generator, a generator generating more than 1000 kilograms of hazardous waste in a calendar month (often referred to as a "large quantity generator"), or a permitted facility; and b) a statement indicating its compliance with this Compliance Order, and all documentation necessary to demonstrate such compliance. Respondent's submission may reference information already submitted to EPA. If earlier submitted information is referenced, Respondent shall indicate dates, and other identifying aspects, of these prior submissions. 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:

**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**

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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations at the facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding the activities at the Queens College campus.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

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

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR

SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent are entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within thirty (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**

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 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 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 thirty (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 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. 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 thirty (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 forty five (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.

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:

Amy R. Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, N.Y. 10007-1866

Telephone (212) 637-3213

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).

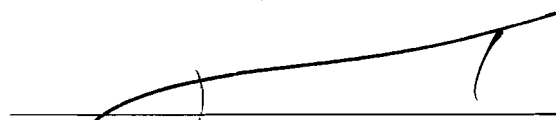
Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent 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.

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.

Dated: 51.07.03.22 23, 2011
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: Chancellor Mathew Goldstein
Office of the Chancellor
CUNY
535 East 80th Street
New York, New York 10075.

James L. Muyskens, President
Queens College
CUNY
65-30 Kissena Boulevard
Flushing, New York 11367-1597

cc: Russ Brauksiek, Chief
Facility Compliance Section
Bureau of Technical Support
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7250

In re: City University of New York
Docket Number RCRA-02-2011-7109

CERTIFICATE OF SERVICE

This is to certify that on SEP 30, 2011, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2011-7109 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 Chancellor Mathew Goldstein, Office of the Chancellor, CUNY, 535 East 80th Street, New York, New York 10075, and to James L. Muyskens, President, Queens College, CUNY, 65-30 Kissena Boulevard, Flushing, New York 11367-1597. 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: Mildred Baez
Mildred Baez

ATTACHMENT 1

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

Respondent: City University of New York

Address: Queens College Campus
65-30 Kissena Boulevard
Flushing, New York

Requirement Violated: 6 NYCRR § 372.2(a)(2)

Respondent failed to make hazardous waste determinations for each solid waste stream generated at its Facility.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$32,915
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of distinct wastes types minus 1.	Not applicable
4. Add line 1 and line 3.	\$32,915
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.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$32,900*

* Penalties have been rounded to the nearest hundred.

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

1. Gravity Based Penalty

- a. Potential for Harm – The Potential for Harm was determined to be MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure, and the adverse impact of the noncompliance on the regulatory scheme. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be treated as such. In this instance, Respondent failed to determine if waste streams generated at its facility constituted hazardous waste. Consequently, Respondent was unaware that its waste was subject to regulation and accumulated the waste on site for an extended period of time without instituting mandated managerial requirements intended to protect human health and the environment.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR given the quantity of hazardous waste that was manifested off-site in February 2010.

The applicable cell ranges from \$28,330 to \$37,500. The mid-point of the range was selected.

- c. Multiple Violations/Multi-day – Based on information presently available to EPA, multi-day penalties are not being sought at this time.

2. Adjustment Factors

- a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - In 2003 and 2004, CUNY self-disclosed that certain campuses including Queens College failed to make hazardous waste determinations for solid waste generated at their facilities. While EPA is concerned that the same requirement has been again violated at Queens College, it is not presently adjusting the penalty since the disclosures occurred more than five years ago.
- 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 for this count is *de minimis*.

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

Respondent: City University of New York

Address: Queens College Campus
65-30 Kissena Boulevard
Flushing, New York

Requirement Violated: 6 NYCRR § 373.33(b)

Respondent failed to operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water which could threaten human health or the environment.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$32,915
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1	Not applicable
4. Add line 1 and line 3.	\$32,915
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.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$32,900*

* Penalties have been rounded to the nearest hundred.

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

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm was determined to be MAJOR. Respondent continued to store chemicals in rooms in violation of New York City requirements notwithstanding being cited by the Fire Department, stored incompatible wastes together, placed chemicals and other materials in locations where they could easily be knocked over and inadvertently released, left an unsecured gas cylinder near chemicals and hazardous waste, and used a hazardous waste container storage area for temporary storage during renovations. The potential for harm from these actions is exacerbated because these conditions were on a college campus where students and some faculty are often unaware of the potential hazards posed by various materials.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The Respondent failed to take numerous steps to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the environment.

The applicable cell ranges from \$28,330 to \$37,500. The mid- point of the range was selected.

- c. Multiple Violations/Multi-day – Based on information presently available to EPA, multi-day penalties are not being sought at this time.

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 – In 2003 and 2004, CUNY self-disclosed that certain campuses including Queens College failed maintain and operate the campuses so that hazardous conditions were minimized. While EPA is concerned that the same requirement has been violated at Queens College, it is not presently adjusting the penalty since the disclosures occurred more than five years ago.
- 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 for this count is *de minimis*.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

Respondent: City University of New York

Address: Queens College Campus
65-30 Kissena Boulevard
Flushing, New York

Requirement Violated: Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2

Respondent stored hazardous waste at its facility without interim status or a permit. Additionally, Respondent did not meet all of the conditions set forth in 6 NYCRR § 372.2(a)(8)(ii) or (iii) which, if complied with, would have authorized the facility to accumulate hazardous waste on site for limited periods of time.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$15,580
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1	Not applicable
4. Add line 1 and line 3.	\$ 15,580
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.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 15,600*

* Penalties have been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm present in this violation was determined to be MODERATE. Operating a treatment, storage, or disposal facility without a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Potential for harm was determined to be moderate, however, because the penalty assessed in Count 2 took into account one of the worse manifestations of Respondent's improper storage of hazardous waste.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Hazardous waste was stored at the facility without a permit or interim status.

The applicable cell ranges from \$11,330 to \$15,580. The high-point of the cell matrix was selected because Respondent facility failed to comply with many of the requirements for generators set forth or referenced in 6 NYCRR § 372.2(a)(8), which, if complied with, would have authorized the storage of hazardous waste at the facility without interim status or a permit subject to certain limitations.

- c. Multiple Violations/Multi-day – Based on information presently available to it, multi-day penalties are not being sought at this time.

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

- 2. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit for this count 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
Harr.

	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