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

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II
2007 APR -4 PM 3:24
REGIONAL HEARING CLERK

MAR 30 2007

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Emily R. Baker
Regional Administrator
U.S. General Services Administration, Region 2
Northeast and Caribbean Region
26 Federal Plaza
New York, New York 10278

Re: **In the Matter of United States General Services Administration, Respondent**
Docket No. RCRA-02-2007-7103

Dear Administrator Baker:

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

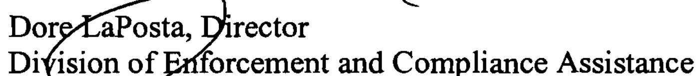
conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

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. As you may know, EPA and GSA have been in discussions concerning this matter for the last year and had tentatively agreed to a SEP and associated penalty that was to be part of the settlement of this case. We encourage GSA to re-energize its efforts to settle this matter.

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)

Lennard S. Lowentritt, Esq.
Acting General Counsel
U.S. General Services Administration
1800 F. Street, N.W.
Washington, D.C. 20045

Carol Letterman, Esq.
Regional Counsel
U.S. General Services Administration, Region 2

Joshua Roth, Esq.
Assistant Regional Counsel
U.S. General Services Administration, Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II
PM 3:24
REGIONAL HEARING CLERK

In The Matter of:	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING**
United States General Services Administration,	
Respondent.	Docket No. RCRA-02-2007-7103
Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	

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*. and the Federal Facilities Compliance Act of 1992, 42 U.S.C. § 6961(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 the UNITED STATES GENERAL SERVICES ADMINISTRATION (hereinafter "Respondent" or "GSA"), has violated requirements of RCRA and regulations concerning the management of hazardous waste.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criterial are met, authorize a state to operate a "hazardous waste program" in lieu of the federal program. The Territory of the Virgin Islands is not authorized by EPA to conduct a hazardous waste or used oil management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 279 are in effect in the Territory of the Virgin Islands and EPA has the authority to implement and enforce these regulations.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this Subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation." Section 6001(b) of RCRA, 42 U.S.C. § 6961(b)

provides, in part, "the Administrator may commence an administrative enforcement action against any department, agency or instrumentality of the executive, legislative or the judicial branch of the Federal Government pursuant to enforcement authorities contained in this chapter."

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:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Sections 3008(a) and 6001(b) of RCRA, 42 U.S.C. §§ 6928(a) and 6961(b), and 40 C.F.R. § 22.1(a)(4).

Respondent's background

2. Respondent is GSA.

3. Respondent is a "federal agency" and a "person" as those terms are defined in Section 1004 of the Act, 42 U.S.C. § 6903, and 40 C.F.R. § 260.10.[1]

4. Respondent owns the Ron de Lugo Federal Building ("de Lugo Building") a three story building situated at 5500 Veterans Drive, in Charlotte Amalie, St. Thomas, United States Virgin Islands.

5. Upon information and belief, since at least 1988, Respondent has conducted (and continues to conduct) facility maintenance, at the de Lugo Building.

6. The de Lugo Building constitutes a "facility," within the meaning of 40 C.F.R. §260.10.

7. Respondent is the "owner" and the "operator" of the de Lugo Building as those terms are defined in 40 C.F.R. §260.10.

Respondent's generation of waste

8. Respondent in the course of conducting normal building maintenance operations at the de Lugo Building has generated "solid waste" (within the meaning of 40 C.F.R. § 261.2).

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

9. Respondent, in the course of conducting normal building maintenance operations at the de Lugo Building, has generated "hazardous waste" (within the meaning of 40 C.F.R. § 261.3).

10. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a "generator," as that term is defined in 40 C.F.R. § 260.10, of hazardous waste at the de Lugo Building.

11. As of April 11, 2005, and at times both prior thereto and subsequent thereto, Respondent has generated, and continues to generate hazardous waste at the de Lugo Building and is considered a "generator" as that phrase is defined in 40 C.F.R. § 260.10.

12. As of April 11, 2005, and at times both prior thereto and subsequent thereto, Respondent has stored hazardous waste at its facility for a finite period, at the end of which the hazardous waste was disposed of or sent for treatment, storage or disposal elsewhere.

13. The Respondent's de Lugo Federal Building is an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.

Past Regulatory Filings

14. On or about February 23, 1988, GSA notified the EPA that it conducted activities involving Hazardous Waste at the de Lugo Building which was then known as the Federal Office Building and Courthouse.

15. In response to the notification, EPA provided GSA with EPA identification number VI7470000004.

EPA's Investigative Activities

16. On or about April 11, 2005, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, an authorized representative of EPA conducted an inspection (hereinafter "Inspection") of the de Lugo Building to determine Respondent's compliance with the Act.

17. On or about May 20, 2005, EPA issued to Respondent a combined Notice of Violation ("NOV") and Information Request Letter ("IRL").

18. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified a number of potential violations relating to the generation and management of hazardous waste, including universal waste, at the de Lugo Building.

19. In that NOV, EPA alleged:

> Prior to the Inspection, GSA Ron de Lugo Federal Building had been generating and, in some cases, disposing of wastestreams without making a hazardous waste determination. Some of the wastestreams and generating locations identified by EPA and/or GSA as potential hazardous waste include: (a) Fluorescent light bulbs used at the facility were disposed of as solid waste. . . .

20. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to the generation and management of hazardous waste, including universal waste, that was handled by GSA and other documentation that would assist the EPA in evaluating GSA's compliance with RCRA at the buildings that it owns in the United States Virgin Islands.

21. On or about January 23, 2006, the Respondent submitted its response to the combined NOV and IRL ("Response").

22. In its Response, GSA admitted over a three year period (May 2002 - April 2005), it used approximately 1,301 fluorescent light bulbs at the de Lugo Building.

23. In its Response, GSA admitted that "from prior to May 1, 2002 through the present [Response signed January 17, 2006]," it was responsible for the management and maintenance of the de Lugo Federal Building.

24. In its Response, GSA stated that, between February 1, 1999 and February 1, 2006, Gates Engineering Corporation ("Gates") had been awarded a contract "to provide certain maintenance services, including but not limited to . . . disposing of fluorescent light bulbs at the de Lugo FOB."

25. In its Response, GSA admitted that "prior to the issuance of the NOV, GSA personnel were not aware that Gates was disposing of used fluorescent bulbs at the St. Thomas FOB in the manner described in the NOV."

COUNT 1 - Failure to Make Hazardous Waste Determinations at the de Lugo Building

26. Complainant realleges each allegation contained in paragraphs "1" through "25," inclusive, as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste must determine whether that solid waste is a hazardous waste, using the procedures specified in that provision (hereinafter a "hazardous waste determination").

28. Pursuant to 40 C.F.R. § 261.2, subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.

29. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated," or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

30. The main means of lighting at the de Lugo Building is through the use of fluorescent and incandescent bulbs.

31. At the time of the Inspection, spent fluorescent bulbs were being (and had been) collected for disposal in a trash can in the electrical shop at the de Lugo Building as regular garbage destined for the Bovoni Landfill on St. Thomas.

32. At the time of the Inspection, broken fluorescent bulb glass was on the floor adjacent to the trash can mentioned in the previous paragraph.

33. Each of the materials identified in paragraphs "31" and "32" above, is a "discarded material" and a "solid waste," as defined in 40 C.F.R. § 261.2.

34. At and prior to the Inspection, Respondent failed to determine, or have a third party determine for it, whether the spent fluorescent light bulbs generated at the de Lugo Building constituted a hazardous waste.

35. Respondent's failures to have made, or to have a third-party make on its behalf, a hazardous waste determination for the spent fluorescent light bulbs generated at the de Lugo Building constitute violations of 40 C.F.R. § 262.11.

COUNT 2 - Failure to Prevent and/or Minimize Releases

36. Complainant realleges each allegation contained in paragraphs "1" through "25" (inclusive), "31" and "32," as if fully set forth herein.

37. Pursuant to 40 C.F.R. § 261.5, a generator that generates 100 kgs or less of non-acute hazardous waste in a calendar month may accumulate hazardous waste on site without being subject to full regulations under 40 C.F.R. Parts 262 through 266, 268, and 270 and 124, and the notification requirements of § 3010 of RCRA, 42 U.S.C. § 6930, provided that it, *inter alia,* determines whether each solid waste generated at its facility constitutes a hazardous waste as required by 40 C.F.R. § 261.5(g)(1)and handles any hazardous waste as required by 40 C.F.R. § 261.5(g)(3).

38. Even if Respondent qualified as a "conditionally exempt small quantity generator" as that term is defined at 40 C.F.R. § 261.5(a), Respondent's failure to determine if the

fluorescent light bulbs disposed of in the trash can in the electrical shop at the de Lugo Building constituted a hazardous waste subjected the Respondent to full regulation under 40 C.F.R. Parts 262 through 266, 268, and 270 and 124, and the notification requirements of § 3010 of RCRA, 42 U.S.C. § 6930. 40 C.F.R Part 262 includes requirements for generators that generate more than 100 kg but less than 1000 kg of hazardous waste in a calendar month.

39. As of April 11, 2005, and at times both prior thereto and subsequent thereto, Respondent was not managing the spent fluorescent light bulbs at the de Lugo Building under 40 C.F.R. Part 273.

40. Pursuant to 40 C.F.R. § 262.34(d)(4), a generator who generates more than 100 kgs but less than 1,000 kgs of hazardous waste in a calendar month may accumulate hazardous waste onsite for 180 days or less without a permit or without having interim status provided that the generator complies with all applicable requirements set forth or referenced in 40 C.F.R. §§ 262.34(d) - (f) including, *inter alia*, 40 C.F.R. § 265.31.

41. Pursuant to 40 C.F.R. § 265.31, 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.

42. Pursuant to 40 C.F.R. § 262.11(d), a generator of hazardous waste must refer to 40 C.F.R. Part 273 for alternate waste management standards for universal wastes which include lamps as defined in 40 C.F.R. § 273.9.

43. 40 C.F.R. § 273.13(d) (applicable to a "Small Quantity Handler of Universal Waste") requires that light bulbs be managed in a way that prevents releases of any universal waste or component of universal waste into the environment.

44. Respondent was the owner of an existing facility at which hazardous waste was stored. Respondent was subject to the requirements of either 40 C.F.R. § 273.13(d) or 40 C.F.R. § 265.31.

45. As of the date of the Inspection, spent fluorescent light bulbs were being placed in the trash can in the electrical shop at the de Lugo Building in a manner not adequate to prevent breakage.

46. The spent fluorescent light bulbs at the de Lugo Building were likely to include many bulbs that contained more than .2 milligrams per liter ("mg/l")of mercury and would have been classified as a hazardous waste pursuant to 40 C.F.R. § 261.24.

47. As of the date of the Inspection, and at times prior thereto, Respondent's manner of operation (including the method of handling of spent fluorescent light bulbs) at the de Lugo Building may have resulted in mercury vapor being released to the atmosphere.

48. Respondent's failure to ensure the management of light bulb waste at the de Lugo Building in a way that prevented releases to the environment constitutes a violation of 40 C.F.R. § 273.13(d).

49. In the alternative, Respondent's failure to maintain and operate the de Lugo Building to minimize the possibility of any unplanned or non-sudden release of hazardous waste or hazardous waste constituent to air, soil or surface water which could threaten human health or the environment constitutes a violation of 40 C.F.R. § 265.31.

II. PROPOSED CIVIL PENALTY

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. The penalty amounts were amended for violations occurring after March 15, 2004. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for those violations is $32,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violation 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.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of twenty-nine thousand four hundred and sixty ($29,460.00) dollars against the Respondent .

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Sections 3008 and 6001 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

1. Commencing on the effective date of the Order and thereafter, Respondent shall determine whether solid wastes newly generated at the de Lugo Building are hazardous wastes and handle such wastes in accordance with the requirements of RCRA.

2. Respondent shall, within ten (10) calendar days of the effective date of this Compliance Order, minimize potential releases by managing its spent fluorescent light bulbs as either hazardous waste or universal waste in accordance with applicable regulations.

3. Respondent shall, within thirty (30) calendar days of the effective date of this Compliance Order, comply with all applicable federal regulatory requirements for the accumulation of hazardous waste by generators.

4. Respondent shall, within thirty (30) calendar days of the effective date of this Compliance Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written notice shall contain the following certification:

> I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: ____________________________
Name: ____________________________
Title: ____________________________

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

Carl F. Plössl, CHMM, Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 22nd Floor
New York, 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 affect Respondents' obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or territory) provisions, nor does such compliance release Respondents from liability for any violations at the facilities. 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 Respondents' generation, handling and/or management of hazardous waste at its facilities.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Sections 3008(c) and 6001(b) 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 is liable for a civil penalty of up to $32,500 for each day of continued noncompliance which occurs after March 15, 2004. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator by EPA.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

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

A. Answering The Complaint

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

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 to affirmatively 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 therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). 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 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:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3195

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.

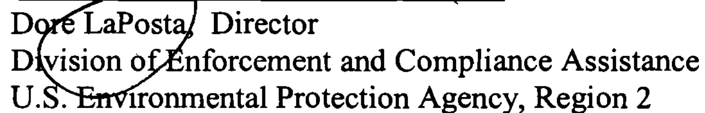
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the 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 such Consent Agreement and its complying with the terms and conditions set forth in such 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 LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date MARCH 30, 2007

To: Emily R. Baker
Regional Administrator
U.S. General Services Administration, Region 2
Northeast and Caribbean Region
26 Federal Plaza - 16th Floor
New York, New York 10278

cc: Lennard S. Lowentritt, Esq.
Acting General Counsel
U.S. General Services Administration
1800 F. Street, N.W.
Washington, D.C. 20045

Carol Letterman, Esq.
Regional Counsel
U.S. General Services Administration, Region 2

Joshua Roth, Esq.
Assistant Regional Counsel
U.S. General Services Administration, Region 2

Nadine Noorhasan, Director
Division of Environmental Protection
U.S. Virgin Islands Department of Planning and Natural Resources
45 Mars Hill
Frederiksted, St. Croix 00840-4474

CERTIFICATE OF SERVICE

This is to certify that on the day of APR - 4, 2007, 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-02-2007-7103, 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 Emily R. Baker, Regional Administrator, U.S. General Services Administration, 26 Federal Plaza, New York, New York 10278. 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, 16th floor, New York, New York 10007-1866.

Dated: APR - 4, 2007
New York, New York

Mildred Baez

ATTACHMENT 1

PENALTY COMPUTATION WORKSHEET

Respondent: U.S. General Services Administration

Facility Address: Ron de Lugo Federal Building
5500 Veterans Drive
Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00801

Requirement Violated: 40 C.F.R. § 262.11
Failure to Make Hazardous Waste Determinations

40 C.F.R. § 273.13(d), 40 C.F.R. § 265.31
Failure to Minimize Releases

Penalty Amount for Complaint

1. Gravity based penalty from matrix (a) Potential for harm. MAJOR (b) Extent of Deviation. MAJOR		$29,460.00
2. Select an amount from the appropriate multi-day matrix cell		N/A
3. Multiply line 2 by number of distinct wastestreams minus 1	0	$0.00
4. Add line 1 and line 3		$29,460.00
5. Percent increase/decrease for good faith		N/A
6. Percent increase for willfulness/negligence		N/A
7. Percent increase for history of noncompliance		Not Assessed
8. Total lines 5 through 7		$0.00
9. Multiply line 4 by line 8		$0.00
10. Calculate economic benefit		N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint		**$29,460.00**

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. **Gravity Based Penalty**

   a. **Potential for Harm** - The potential for harm is Major. Generally, where an owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is likely heightened. This follows because if the owner/operator is unaware that the facility is generating a hazardous waste, there is a much greater likelihood that the owner/operator will not comply with the applicable provisions of the regulatory scheme. In this case the potential for harm from an adverse impact of the noncompliance on the regulatory scheme is exacerbated by Respondent's visible status as the federal property manager for the U.S. Virgin Islands.

   In regards to the risk of human or environmental exposure, most current and past manufactured fluorescent bulbs, when taken out of service for disposal, are "toxicity characteristic hazardous wastes" because of mercury content. The nervous system is very sensitive to all forms of mercury as mercury is a neurotoxin. Methylmercury and metallic mercury vapors (as in fluorescent bulbs) are more harmful than other forms, because more mercury in these forms may reach the brain. Exposure to high levels of metallic, inorganic, or organic mercury can permanently damage the brain, kidneys, and developing fetus.

   At the de Lugo Building, Respondent, over a three year period, utilized and disposed of a moderately large number of fluorescent bulbs (approximately 1,300 bulbs) in the trash and evidence of bulb breakage was noted. Disposal in the regular trash may have potentially exposed people to metallic mercury vapor and may have led to the release of mercury into the environment.

   Given these facts concerning Respondents' failure to adhere to the requirement, the potential for harm was deemed to be MAJOR.

   b. **Extent of Deviation** - The extent of deviation present in this violation was determined to be MAJOR. Respondent had failed to determine whether its spent fluorescent lamps were hazardous wastes over an extended period of time. Hazardous waste lamps constituted the predominant potentially hazardous wastestream for the facility.

   The applicable cell ranges from $32,500 to $25,791. The midpoint for the cell matrix was selected to reflect the relatively moderate size of the facility.

   c. **Multiple/Multi-day** - A multi-day penalty is not being sought at this time.

2. Adjustment Factors

a. **Good Faith** - Based upon facility specific factors and available information, and the fact that GSA did not identify the violation and take corrective action prior to the Inspection, 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 or not assessed.

g. **Economic Benefit** - At this time, EPA is not seeking to recover the economic benefit.

ATTACHMENT II

GRAVITY MATRIX
(Applicable after March 15, 2004)

POTENTIAL for HARM		EXTENT OF DEVIATION FROM REQUIREMENT		
		MAJOR	**MODERATE**	**MINOR**
	MAJOR	**$32,500 to 25,791**	**$25,790 to 19,343**	**$19,342 to 14,185**
	MODERATE	**$14,184 to 10,316**	**$10,315 to 6,448**	**$6,447 to 3,869**
	MINOR	**$3,868 to 1,934**	**$1,933 TO 645**	**$644 TO 129**