



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

MAR 31 2009

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2009 APR -1 PM 2:11
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article number: 7003 2260 0000 3242 7769

The Honorable Philip A. Amicone
Mayor of Yonkers
City Hall
40 South Broadway
Yonkers, NY 10701

Re: **In the Matter of the City of Yonkers**
Docket No. RCRA-02-2009-7103

Dear Mayor Amicone:

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 or 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.

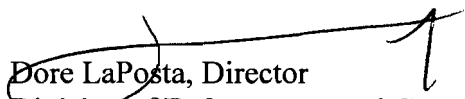
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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.)

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 APR -7 PM 2:14
REGIONAL HEARING
OFFICE

In The Matter of:

City of Yonkers

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-02-2009-7103

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6901 *et seq.* (referred to collectively as the "Act" or "RCRA").

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the **City of Yonkers** has violated certain requirements of the authorized New York State hazardous waste program and the federal hazardous waste program.

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), and 70 Fed. Reg. 1825 (January 11, 2005). This includes most EPA regulations issued as of July 1, 1999.

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 [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation.” Section 3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2) provides, in part, that “[i]n the case of a violation of any requirement of [Subtitle C of RCRA] where such violation occurs in a State which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order.”

Section 3008(a)(2) of the Act, 42 U.S.C. 6928(a)(2), authorizes EPA to enforce the regulations constituting the authorized State program and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA for which the State has not yet been authorized.

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), “any penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA].”

Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) to \$32,500 for any violation occurring after March 15, 2004 and before January 12, 2009.

Prior to the issuance of this Complaint, notice in accordance with the requirements of Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), has been given to the State of New York.

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:

Background Allegations

1. Respondent is the City of Yonkers (hereinafter “City of Yonkers”, “Yonkers” and/or “Respondent”). Yonkers’ main administrative offices are located at 40 South Broadway (“City Hall”), Yonkers, New York 10701.
2. Respondent is a city that occupies about 20.3 square miles in Westchester County in the State of New York.

3. Respondent owns and/or operates approximately 37 buildings including but not limited to those utilized by the General Services Building, Department of Public Works, Vehicle Maintenance Building, Recycling Center, Yonkers Police Precincts (including its Forensics Science Laboratory and shooting range), Department of Parks, Recreation, and Conservation (including the vehicle maintenance area, skating rink, animal care center, and the Coyne Park Rifle and Pistol Range), public libraries, and Fire Departments, located at various sites throughout the City; these buildings do not include those buildings operated and utilized by the Yonkers Board of Education.
4. Respondent is a "person," as defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).

Hazardous Waste Generation

5. In the course of normal operations, Yonkers generates "solid waste," as that term is defined at 6 NYCRR § 371.1(c) through its various departmental entities.
6. In the course of normal operations, Yonkers generates "hazardous waste," as that term is defined at 6 NYCRR § 371.1(d) through its various departmental entities.
7. Yonkers generates spent lamps, a solid and potentially hazardous waste stream, at all or most of its municipal buildings, and from street lighting.
8. Spent lamps may constitute "hazardous waste" as that term is defined in 42 U.S.C. § 6903. The Universal Waste Rules (part of the federal hazardous waste regulatory program) were initially published in 60 Federal Register ("Fed. Reg.") 25492, on May 11, 1995, and were amended at 64 Fed. Reg. 36466, on July 6, 1999, to include spent lamps.
9. Some of the spent lamps generated by buildings owned and/or operated by Yonkers and those generated from street lighting, may exhibit the toxicity characteristic under the Toxic Characteristic Leaching Procedure (TCLP) for metals, in particular mercury or lead.
10. Spent lamps may be handled under the less stringent standards provided under the Universal Waste Rules, codified in federal regulations at 40 C.F.R. Part 273 and in New York State regulations at 6 NYCRR Part 374-3.

Hazardous Waste Notification

- 11. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, all persons conducting activities that generate or otherwise cause hazardous waste to be handled in other ways are required to notify EPA of their hazardous waste activities.
- 12. Approximately 32 of the 37 sites or buildings owned and/or operated by Yonkers notified EPA that they generated hazardous waste at these locations. As a result of these notifications, EPA assigned hazardous waste identification numbers to many of these sites/buildings.
- 13. Respondent, at its Department of Public Works (DPW) site located at 40 South Broadway, Yonkers, New York notified EPA that it was a Small Quantity Generator for the generation of lead (“D008”) and mercury (“D009”) hazardous waste on August 24, 1998. As a result of this notification, EPA assigned this Yonkers DPW site the hazardous waste identification number NYR000059584.

EPA Investigatory Activities

- 14. On or about May 5, 6, and 22, 2008, a duly authorized representative of EPA conducted RCRA compliance evaluation inspections (“Inspections”) of various departments and facilities owned and/or operated by the City of Yonkers, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. Sites inspected included the following:

| SITE NAME | EPA ID No. | SITE LOCATION |
|--|--------------|-----------------------------|
| Department of Public Works | NYR000059584 | 40 South Broadway |
| General Services Building (“Dellwood”) | None | 170 Saw Mill River Road |
| Vehicle Maintenance | NYD000334342 | 1130 Nepperhan Avenue |
| Yonkers Recycling Center | None | 735 Saw Mill River Road |
| Forensic Science Laboratory | NYR000143990 | 103 South Broadway |
| Yonkers Police Firing Range | None | 730 East Grassy Sprain Road |
| Dept. Of Parks, Recreation & Conserv. | NYD986952000 | 285 Nepperhan Avenue |
| Coyne Park Rifle and Pistol Range | NYR000086306 | 777 McLean Avenue |
| Yonkers Public Library | NYD002014181 | 38 Wells Avenue |

- 15. During the Inspections, Mr. August Cambria, Commissioner of the Yonkers Department of Parks, Recreation, and Conservation, stated to the duly authorized representative of EPA that

spent lamps are crushed and disposed of as regular trash at its 285 Nepperhan Avenue location.

16. At the time of the Inspections, the City of Yonkers was not able to provide documentation, such as purchase records, hazardous and non-hazardous waste manifests, Bills of Ladings, recycling certificates, etc. which would provide information on the types, quantities, and final disposition of spent lamps.
17. During the Inspection on May 6, 2008, Mr. Kenneth J. Murphy, Director of the Department of Public Works stated to the duly authorized representative of EPA: "Until three, four years ago, we threw the bulbs in the trash."

Notices Of Violation (NOVs), Information Request Letters (IRLs) and Respondent's Responses

18. On or about June 6, 2008, EPA issued to Respondent a Notice of Violation and RCRA Section 3007 Information Request Letter ("First NOV-IRL").
19. The NOV portion of the First NOV-IRL was based on the observations made during the Inspections and statements made during the Inspections by public officials that spent lamps were crushed and disposed of as regular trash (see paragraphs 15 and 17 above).
20. The IRL portion of the First NOV-IRL requested, among other things, information and documentation regarding the types and quantities of lamps purchased by the City of Yonkers, including copies of the Material Safety Data Sheet, for each type of bulb purchased during the period January 2003 through May 2008 (inclusive) and all analytical results or specific knowledge used in determining whether or not any of these lamps were hazardous waste when disposed of.
21. The IRL portion of the First NOV-IRL also requested a narrative which details the manner in which spent lamps were managed and disposed of for the period January 2003 through May 2008 (inclusive).
22. In a letter dated June 19, 2008, the City of Yonkers requested a 30 calendar day extension to respond to the NOV-IRL indicating that "the breadth" of the information being requested required additional time; in a letter dated July 1, 2008, EPA informed Respondent that it was granted a 30 day extension to respond.
23. In its response, dated July 11, 2008 ("First Response"), to the First NOV-IRL, Yonkers did not provide the requested information and documentation regarding the types and quantities of lamps purchased by the City of Yonkers during the period January 2003 through May 2008, nor did Yonkers provide the requested copies of the Material Safety Data Sheets. Furthermore, Yonkers did not provide the requested narrative detailing the manner in which spent lamps were managed and disposed of for the period January 2003 through May 2008 (inclusive).

24. In its First Response, Yonkers did not provide any of the requested analytical results or specific knowledge used in determining whether or not any of these spent lamps would constitute hazardous waste when disposed.
25. In another response, dated August 5, 2008 ("Second Response"), to the First NOV-IRL, Yonkers stated: "Since the EPA inspections, the City of Yonkers has dedicated resources to addressing the issues raised. In addition, we acknowledge that we must be more diligent in creating and executing policies and procedures in compliance with all applicable waste management regulations."
26. In its Second Response, Yonkers did not provide the requested information and documentation regarding the types and quantities of lamps purchased by the City of Yonkers, including copies of the Material Safety Data Sheets. Furthermore, Yonkers did not provide the requested narrative detailing the manner in which spent lamps were managed and disposed of for the period January 2003 through May 2008 (inclusive).
27. In its Second Response, Respondent did not provide any of the requested analytical results or specific knowledge used in determining whether or not any of these spent lamps would constitute hazardous waste when disposed of.
28. On or about September 4, 2008, EPA issued to Respondent a second Notice of Violation and RCRA Section 3007 Information Request Letter ("Second NOV-IRL") notifying the Respondent that it was in violation of RCRA 3007 for inadequately responding to a 3007 Information Request Letter, and specifying that a full response to the IRL portion of the Second NOV-IRL be submitted within fifteen (15) calendar days from receipt of that letter.
29. In another response, dated September 23, 2008 ("Third Response"), to the NOV-IRLs Yonkers provided purchase records which indicated that Yonkers purchased at least several thousand lamps during 2007.
30. In its Third Response, Respondent submitted Material Safety Data Sheets for some of the lamps purchased by the City of Yonkers in 2007 through 2009, most of which contained statements which indicated that the lamps contained mercury and/or lead and instructing that the Toxicity Characteristic Leaching Procedure (TCLP) should be conducted on the spent lamps to ensure proper classification and disposal.
31. In its Third Response, Respondent did not provide any of the requested records of any kind regarding the disposition of its spent lamps.
32. In its Third Response, Respondent did not provide any of the requested analytical results or specific knowledge used in determining whether or not any of these spent lamps would constitute hazardous waste when disposed of.

COUNT 1 - Failure to Make Hazardous Waste Determinations

33. Complainant realleges each allegation contained above in paragraphs 1 through 32, with the same force and effect as if fully set forth below.
34. Pursuant to 6 NYCRR § 372.2(a)(2), 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").
35. In accordance with 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a solid waste is defined as any discarded, abandoned, recycled, or inherently waste-like material. In accordance with the same provision, materials are solid wastes if they are abandoned by being disposed of, burned or incinerated.
36. Prior to, on the date of, and subsequent to EPA's inspections, the City of Yonkers used incandescent, fluorescent, high pressure sodium vapor, mercury and metal halide lamps to illuminate the interior and exterior of approximately 37 buildings owned and/or operated by the City of Yonkers, and for street lighting purposes.
37. At various times prior to the Inspections, Respondent had taken out of service and disposed of spent incandescent, fluorescent, high pressure sodium vapor, mercury and metal halide lamps as non-hazardous solid waste.
38. Each of the spent lamps listed in paragraph 37 above is a "discarded material" and, as such, meets the definition of a "solid waste", as that term is defined at 6 NYCRR § 371.1(c).
39. Prior to EPA's inspections of multiple Yonkers buildings, Respondent had not determined, and did not have a third-party determine on its behalf, whether its spent incandescent, fluorescent, high pressure sodium vapor, mercury and metal halide lamps were hazardous wastes.
40. During the Inspections, at least two city officials stated that spent lamps were disposed of in the regular trash as described in paragraphs 15 and 17 above.
41. In its responses to EPA's IRLs, Respondent failed to provide any of the requested analytical results or specific knowledge used in determining whether or not any of these spent lamps would constitute hazardous waste when disposed of as set forth in paragraphs 24, 27 and 32 above.
42. Respondent's failures to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent incandescent, fluorescent, high pressure sodium vapor, and mercury and metal halide lamps constitute violations of 6 NYCRR § 372.2(a)(2).

43. 6 NYCRR 372.2(a)(2) constitutes a requirement of Subtitle C of RCRA for purposes of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

COUNT 2 – Failure to Comply with Information Requests, RCRA § 3007

44. Complainant realleges each allegation contained above in paragraphs 33 through 43, with the same force and effect as if fully set forth below.

45. RCRA § 3007, 42 U.S.C. § 6927(a) provides, in relevant part, that “any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall, upon request of an officer, employee or representative of the Environmental Protection Agency...furnish information relating to such wastes....”

46. EPA sent to Respondent two RCRA § 3007 Information Request Letters dated June 6, 2008, and September 4, 2008, requiring the submission to EPA of information which, among other things, would include a narrative detailing the manner in which spent lamps were managed and disposed of for the period January 2003 through May 2008 (inclusive) and analytical results or specific knowledge used in determining whether or not any of these spent lamps would constitute hazardous waste when disposed of.

47. Respondent has not provided to EPA the information described in paragraph 46 above.

48. In violation of RCRA § 3007, 42. U.S.C. § 6927(a), Respondent did not adequately respond and still has not provided the requested information to the EPA.

49. Section 3007 constitutes a requirement of Subtitle C of RCRA for purposes of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent a civil penalty in the amount of **seventy thousand nine hundred sixteen dollars (\$ 70,916)** for the violations alleged herein as follows:

| | |
|----------|-----------------|
| Count 1: | \$32,500 |
| Count 2: | <u>\$38,416</u> |
| Total : | \$70,916 |

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

The Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) is \$32,500 for any violation occurring between March 15, 2004 and January 12, 2009. 40 C.F.R. Part 19.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case and has used EPA's 2003 RCRA Civil Penalty Policy. A copy of this penalty policy is available upon request or can be found on the Internet at "www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf." The penalty amounts in the 2003 RCRA Civil Penalty Policy were amended later to reflect inflation adjustments. These adjustments were made pursuant to a September 21, 2004 document entitled, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004)" and a January 11, 2005 document entitled "Revised Penalty Matrices for the RCRA Civil Penalty Policy." This RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

A penalty calculation worksheet and narrative explanation to support the penalty figure for the RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues Respondent the following Compliance Order. To the extent it has not already done so, the City of Yonkers shall:

- a. commencing on the effective date of this Compliance Order, determine whether solid wastes (including spent lamps) generated at any of the buildings it owns and/or operates are hazardous wastes.
- b. commencing on the effective date of this Compliance Order, the City of Yonkers shall provide complete and accurate responses to EPA's requests for information concerning management of spent lamps at all of the buildings owned and/or operated by the City of Yonkers.
- c. within thirty (30) calendar days of the effective date of this Compliance Order, the City of Yonkers shall comply with all applicable RCRA requirements for the management of hazardous spent lamps at all of the buildings owned and/or operated by the City of Yonkers or from street lighting.

- d. within thirty (30) calendar days of the effective date of this Compliance Order, the City of Yonkers shall 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 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.
- e. submit the above required information and notices to:

Leonard Voo
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st 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 release Respondent from liability for any violations occurring or existing at facilities owned and/or operated by the City of Yonkers. Further, nothing herein waives, prejudices or otherwise affects the EPA's right (or the right of the United States on behalf of the EPA) to enforce any applicable provisions of law regarding Respondent.

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). Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the EPA or the State of New York.

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 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 dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondent request a hearing. 40 C.F.R. § 22.15(b).

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

B. Opportunity To Request A Hearing

If requested by Respondent(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

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

C. Failure To Answer

If Respondent fails in their Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer(s) to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer(s) to the Complaint, any order issued 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(s) without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent(s), and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent(s) 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 30 days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

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, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the financial or economic impact the proposed penalty would have on Respondent 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:

Stuart N. Keith, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
Phone: 212-637-3217

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).

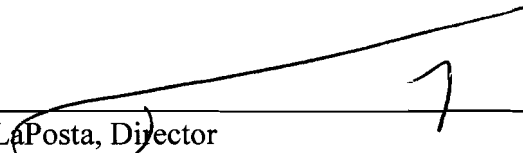
Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent 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(s), Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: MARCH 31, 2009
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: The Honorable Philip A. Amicone
Mayor of Yonkers
City Hall
40 South Broadway
Yonkers, NY 10701-6240

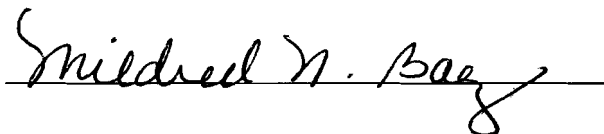
cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7251

In re: the City of Yonkers
Docket Number RCRA-02-2009-7103

CERTIFICATE OF SERVICE

This is to certify that on APR - 2, 2009, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2009-7103 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 The Honorable Philip A. Amicone, Mayor of Yonkers at the address set forth on the prior page . 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.

Dated: APR - 2, 2009
New York, New York


Mildred N. Baer

ATTACHMENT I

PENALTY CALCULATION WORKSHEET - COUNT 1

Requirement Violated:

Failure to determine whether solid wastes (incandescent, fluorescent, mercury, high pressure sodium vapor, and metal halide lamps) are hazardous wastes, 6 NYCRR § 372.2(a)(2).

| | |
|---|----------------|
| 1. Gravity based penalty from matrix | \$ 32,500 |
| (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 | \$ 32,500 |
| 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. | \$ 32,500 |

NARRATIVE EXPLANATION IN SUPPORT OF PENALTY FIGURE - COUNT 1

1. Gravity Based Penalty

1. Potential for Harm - The potential for harm for a failure to conduct a hazardous waste determination is deemed to be Major. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility generating solid waste fails to determine whether each of the generated waste streams is hazardous. Failure to make hazardous waste determinations increases the likelihood that the hazardous waste is managed as non-hazardous waste, outside of the RCRA regulatory universe. This type of violation can result in multiple sequential violations involving each hazardous waste stream that is not identified. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this particular case, the potential existed that Respondent improperly handled and disposed of thousands of spent lamps.
2. Extent of Deviation - The extent of deviation present in these violations was determined to be Major. Respondent failed to determine whether or not the spent lamps it generated were hazardous wastes. Yonkers is one of the largest cities in the State of New York and discarded significant quantities of spent lamps without making a hazardous waste determination. This amounts to a significant deviation from the RCRA program.
3. The applicable cell ranges from \$ 25,791 to \$ 32,500. The high point of the cell matrix was selected because of the significant quantities of spent lamps for which the City of Yonkers did not make a hazardous waste determination.
4. Multiple/Multi-day - EPA is exercising its discretion in proposing a single penalty for the approximately 37 buildings owned and/or operated by the City of Yonkers.

2. Adjustment Factors

1. Good Faith – Based upon available information that Respondent did not identify and take action to correct the violation prior to the Inspection, no adjustment for good faith has been made.
2. Willfulness/Negligence Not applicable
3. History of Compliance Not applicable
4. Ability to Pay Not applicable

5. Environmental Project Not applicable

6. Other Unique Factors Not applicable

3. Economic Benefit - No penalty is being sought for economic benefit at this time. The cost to make hazardous waste determinations is nominal. The total economic benefit is currently estimated to be below \$5,000.

PENALTY CALCULATION WORKSHEET - COUNT 2

Requirement Violated:

Respondent failed or refused to provide all information that was requested in Information Request Letters dated June 6, 2008 and September 4, 2008 in violation of Section 3007 of RCRA, 42 U.S.C. § 6927.

| | |
|---|----------------|
| 1. Gravity based penalty from matrix | \$ 3,869 |
| (a) Potential for Harm. | MODERATE |
| (b) Extent of Deviation. | MINOR |
| 2. Select an amount from the appropriate multi-day matrix cell. | \$ 193 |
| 3. Multiply line 2 by number of days (180) of violation minus 1. | \$ 34,547 |
| 4. Add line 1 and line 3 | \$ 38,416 |
| 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. | \$ 38,416 |

NARRATIVE EXPLANATION IN SUPPORT OF PENALTY FIGURE - COUNT 2

1. Gravity Based Penalty

1. Potential for Harm - The potential for harm present in this violation was determined to be Moderate. The use of RCRA § 3007 Information Request Letters is a fundamental statutory right and procedure relied upon by the U.S. EPA to obtain information for implementing the RCRA Program and for collecting factual information necessary to confirm compliance with RCRA rules. The Respondent's failure to fully respond to two RCRA § 3007 Information Request Letters resulted in moderate harm to the Program.
2. Extent of Deviation - The extent of deviation present in these violations was determined to be Minor in that the Respondent did provide a portion of the information requested. However, Respondent did not provide information on the manner in which thousands of spent lamps were managed and disposed of.
3. The applicable cell ranges from \$ 3869 to \$ 6447. The low point of the cell matrix was selected.
4. Multiple/Multi-day – The initial response to EPA's RCRA § 3007 Information Request Letter was due August 5, 2008. As of March 26, 2009, EPA has still not received a response that addresses all of the questions posed by EPA. EPA, in its discretion, will limit the multi-day penalty to 180 days.

4. Adjustment Factors

1. Good Faith – Based upon available information that Respondent did not identify and take action to correct the violation prior to the Inspection, no adjustment for good faith has been made.
2. Willfulness/Negligence Not applicable
3. History of Compliance Not applicable
4. Ability to Pay Not applicable
5. Environmental Project Not applicable
6. Other Unique Factors Not applicable

5. Economic Benefit - No penalty is being sought for economic benefit. The cost of providing a complete response is nominal. The total economic benefit is expected to be below \$5,000.

ATTACHMENT II

GRAVITY-BASED PENALTY MATRIX

| | | EXTENT OF DEVIATION FROM REQUIREMENT | | |
|--|-----------------|---|-----------------------------------|-----------------------------------|
| P O T E N T I A L F O R H A R M | | Major | Moderate | Minor |
| | Major | \$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 |

MULTI-DAY MATRIX

| EXTENT OF DEVIATION FROM REQUIREMENT | | | | |
|--|-----------------|---------------------------------|-------------------------------|-------------------------------|
| P O T E N T I A L F O R H A R M | | Major | Moderate | Minor |
| | Major | \$6,448 To 1,290 | \$5,158 To 967 | \$3,869 To 709 |
| | Moderate | \$2,837 To 516 | \$2,063 To 322 | \$1,290 To 193 |
| | Minor | \$774 To 129 | \$387 To 129 | \$129 |