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

DEC 29 2009

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Bruce E. Roberson, President and CEO
PSC, LLC
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

Re: **In the Matter of PSC, LLC**
Docket Number RCRA-02-2010-7101

Dear Mr. Roberson:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources"and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

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

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

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

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

DEC 29

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Chris Dods, President
Chemical Pollution Control, LLC of New York
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

Re: **In the Matter of Chemical Pollution Control, LLC of New York**
Docket Number RCRA-02-2010-7101

Dear Mr. Dods:

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.*

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You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources"and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

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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

In the Matter of PSC, LLC, a/k/a Philip Services Corporation, LLC, and Chemical Pollution Control, LLC of New York, a/k/a CPC, LLC of New York, Respondents. Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended .	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2010-7101

COMPLAINT

This is an administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273, and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("complaint") serves notice of EPA's preliminary determination that Respondents, through the operation of their Bayshore, New York, facility, have violated provisions of RCRA, its federal implementing regulations and/or requirements of the federally authorized New York State regulations concerning the handling and managing of hazardous waste.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), "[a]ny State which seeks to administer and enforce a hazardous waste program pursuant to [Subchapter III, Hazardous Waste Management; 42 U.S.C. §§ 6921-6939e] may develop and...submit to the Administrator [of EPA] an application...for authorization of such program." If EPA then grants a State's request to operate such a hazardous waste program, Section 3006 further provides that "[s]uch State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste...."

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New York received on May 29, 1986 final authorization from EPA to administer its base hazardous waste program. Since 1986, New York State has been authorized to enforce 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 Manifests Amendments issued by EPA on March 4, 2005 and June 16, 2005. 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.

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 on behalf of the Administrator of EPA, hereby alleges as and for her complaint against Respondents:

Predicate Allegations

1. This is an administrative proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess a civil penalty against Respondents for past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements.

2. This Tribunal has jurisdiction over the subject matter of this administrative proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

3. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever any person has violated or is in violation of a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, the Administrator of EPA, *inter alia*, "may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both."

4. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York notice of this administrative proceeding.

5. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), "[a]ny penalty assessed in the order [issued under authority of Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1)] shall not exceed $25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA]."

6. 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 to January 12, 2009, and to $37,500 for any violations occurring after January 12, 2009.

Respondents' Identities

7. Respondents are: **a)** PSC, LLC (hereinafter "PSC") and **b)** Chemical Pollution Control, LLC of New York (hereinafter "CPC").

8. Respondent PSC is sometimes also known as Philip Services Corporation, LLC.

9. Respondent PSC is a limited liability company existing under the laws of the State of Delaware.

10. Respondent PSC maintains its headquarters at 5151 San Felipe, Suite 1600, Houston, Texas 77056.

11. From February 2000 until September 2008, Respondent PSC was known as the Philip Services Corporation, a corporation existing under the laws of the State of Delaware.

12. Philip Services Corporation was also sometimes known as Philip Services Corporation (DE).

13. In September 2008, the Philips Services Corporation became Respondent PSC by converting to a limited liability company.

14. Respondent CPC is a limited liability company organized under, and existing since September 2008 under, the laws of the State of New York.

15. In September 2008, an entity known as Chemical Pollution Control, Inc. of New York (also known as CPC, Inc. of New York; hereinafter, "CPC, Inc.") merged with, and into, an entity known as PSC-Chemical NY, LLC.

16. CPC, Inc., a for-profit New York corporation organized in 1993, was a subsidiary of 21st Century Environmental Management of Rhode Island, which in turn is a subsidiary of Respondent PSC (and had been a subsidiary of Respondent PSC's predecessor(s)-in-interest).

17. PSC-Chemical NY, LLC, a limited liability company organized and existing under the laws of the State of New York, was formed in April 2008.

18. As a consequence of the aforementioned (¶ 15, above) merger, the surviving entity was known as PSC-Chemical NY, LLC.

19. At the time of the aforementioned (¶ 15, above) merger, PSC-Chemical NY, LLC was renamed Chemical Pollution Control, LLC of New York (*i.e.* CPC, a respondent in this proceeding).

20. Respondent CPC is a subsidiary of Respondent PSC.

21. Respondent PSC owns, either directly or through an intermediary, 100% of Respondent CPC.

22. Respondents' business operations include providing industrial cleaning and environmental clean-up services.

23. Each Respondent is a "person"as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).[1]

The Bay Shore Facility

24. Since October 2008, Respondent PSC has owned (and continues to own) a facility the address of which is 120 South Fourth Street, Bay Shore, New York 11706 (hereinafter the "Bay Shore facility").

25. The Bay Shore facility began operating in December 1976.

26. Since at least February 2000 until October 2008, Respondent PSC's predecessor-in-interest, Philip Services Corporation owned the Bay Shore facility.

27. Since September/October 2008, the Bay Shore facility has been operated (and continues to be operated) by:

a) Respondent PSC through Respondent CPC; and/or

b) Respondent CPC.

28. The Bay Shore facility has previously been operated:

a) by Respondent PSC's predecessor-in-interest, Philip Services Corporation since at least 2000; and/or

b) by CPC, Inc. since December 1976 through September/October 2008.

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

29. Respondent PSC constitutes the "owner" (within the meaning of 6 NYCRR § 370.2(b)) of the Bay Shore facility.

30. Each of Respondent PSC and Respondent CPC constitutes an "operator" (within the meaning of 6 NYCRR § 370.2(b)) of the Bay Shore facility.

31. Since at least 1980, the Bay Shore facility has operated (and continues to operate) as a storage and treatment facility for "solid waste" (as defined in 6 NYCRR § 371.1(c)) and "hazardous waste"(as defined in 6 NYCRR § 371.1(d)).

32. The Bay Shore facility constitutes:

a) a "facility" (as that word is defined in 6 NYCRR § 370.2(b));

b) a "hazardous waste management facility" (as those words are defined in 6 NYCRR § 370.2(b)); and

c) an "existing hazardous waste management facility" (as those words are defined in 6 NYCRR § 370.2(b)).

33. Sometime prior to July 2006, the Philip Services Corporation was issued a 6 NYCRR Part 373 permit by the New York State Department of Environmental Conservation (hereinafter "DEC"), bearing DEC permit number 1-4728-00086-00002, to operate the Bay Shore facility as a facility at which hazardous wastes are stored and treated (hereinafter said permit referred to as the "Bay Shore DEC permit").

34. The Bay Shore DEC permit was renewed and modified as of September 3, 2008 (hereinafter the "modified Bay Shore DEC permit").

35. The modified Bay Shore DEC permit, set to expire July 9, 2011, was issued to Respondent PSC.

36. Respondent PSC has assumed from the Philip Service Corporation the legal responsibilities and obligations imposed pursuant to, and any liabilities arising from any violation(s) of, the provisions of, the Bay Shore DEC permit and/or the modified Bay Shore DEC permit.

37. Respondent PSC has assumed the obligations and responsibilities for any liabilities arising from the operation of the Bay Shore facility or in connection with the operation of said facility that occurred during calendar years 2006 through 2008 (inclusive) and for which Philip Services Corporation is (was) or may be (may have been) liable.

38. Respondent CPC has assumed the obligations and responsibilities for any liabilities arising from the operation of the Bay Shore facility or in connection with the operation of said facility that occurred during calendar years 2006 through 2008 (inclusive) and for which CPC, Inc. is (was) or may be (may have been) liable.

39. For purposes of operating the Bay Shore facility and for purposes of bearing legal responsibility for any liabilities that arose as a consequence of any activities that occurred on or in connection (including for legally required acts not performed or undertaken) the operation of the Bay Shore facility, Respondent PSC is the successor-in-interest of the Philip Services Corporation.

40. For purposes of operating the Bay Shore facility and for purposes of bearing legal responsibility for any liabilities that arose as a consequence of any activities that occurred on or in connection with (including for legally required acts not performed or undertaken) the operation of the Bay Shore facility, Respondent CPC is the successor-in-interest of CPC, Inc.

Hazardous Waste Activities at the Bay Shore Facility

41. From time to time, including during the period of calendar years 2006 through the first half of 2009, the Bay Shore facility received and stored hazardous waste from various sources, including:

a) spent fluorescent light bulbs from Home Depot retail establishments; and

b) spent fluorescent light bulbs from the Long Island Jewish Medical Center.

42. In accordance with 40 C.F.R. 261.24, Table 1, the generators of the aforementioned (¶ 41, sub-¶s "a" and "b," above) waste classified such waste as D009 (*i.e.* containing mercury).

43. In conducting the operations of and at the Bay Shore facility, each of Respondents has generated hazardous waste.

44. During each month during the period between (and including) May 2006 through May 2009, the Bay Shore facility generated more than 1,000 kilograms of hazardous waste.

45. Each of the Respondents is a "generator," as that term is defined in 6 NYCRR § 370.2(b), of hazardous waste.

EPA Involvement with the Bay Shore Facility

46. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, CPC, Inc., in July 1980 informed EPA, using the "Notification of Hazardous Waste Activity" form (EPA Form 8700-12),

that hazardous waste was generated at the Bay Shore facility (hereinafter said notification referred to as the "1980 notification").

47. In response to the 1980 notification, EPA informed CPC, Inc., that EPA had assigned it the EPA identification number NYD082785429 for the Bay Shore facility.

48. On or about March 11, 2009, a duly designated representative of EPA conducted a RCRA Compliance Evaluation Inspection of the Bay Shore facility (the "2009 inspection").

49. The purpose of the 2009 inspection was to determine Respondents' compliance with applicable RCRA statutory and regulatory requirements in their ownership and operation of the Bay Shore facility.

50. On or about May 18, 2009, EPA issued to the Philip Services Corporation a combined Notice of Violation (hereinafter "NOV") and RCRA § 3007 Information Request Letter (hereinafter "Section 3007 IRL").

51. On or about June 26, 2009, Respondent CPC submitted a response to the NOV and Section 3007 IRL.

52. The aforementioned (¶ 51, above) response to the NOV and Section 3007 IRL, was prepared and certified to by an official of a subsidiary of Respondent PSC (PSC Environmental Services, LLC) on behalf of Respondent CPC in the course of carrying out his official duties and obligations.

Count 1: Failure to use an authorized hazardous waste transporter

53. Complainant realleges paragraphs 1 through 52, above, with the same force and effect as if fully set forth below.

54. In relevant part, 6 NYCRR § 372.2(b)(5)(ii) prohibits a generator of hazardous waste from delivering a shipment of such waste to a transporter unless such transporter has a valid permit under 6 NYCRR Part 364 for the transport of such waste.

55. On or about at least the following dates in calendar year 2006, Philip Services Corporation and/or CPC, Inc., at and in connection with their operation of the Bay Shore facility, delivered a shipment of hazardous waste to an entity identified as Supreme Recycling for transport off-site (*i.e.* away from the Bay Shore facility):

a) June 29, 2006;
b) July 20, 2006;
c) August 24, 2006; and
d) October 6, 2006 (hereinafter collectively referred to as the "2006 shipments").

56. Each of the 2006 shipments included crushed or broken fluorescent light bulbs characterized as D009 hazardous waste (*i.e.* mercury containing hazardous waste).

57. On or about at least the following dates in calendar year 2007, Philip Services Corporation and/or CPC, Inc., at and in connection with their operation of the Bay Shore facility, delivered a shipment of hazardous waste to an entity identified as Supreme Recycling for transport off-site (*i.e.* away from the Bay Shore facility):

a) February 2, 2007;
b) March 13, 2007;
c) May 18, 2007; and
d) August 2, 2007 (hereinafter, collectively referred to as the "2007 shipments").

58. Each of the 2007 shipments included crushed or broken fluorescent light bulbs characterized as D009 hazardous waste (*i.e.* mercury containing hazardous waste).

59. On or about April 28, 2008, Philip Services Corporation and/or CPC, Inc., at and in connection with their operation of the Bay Shore facility, delivered a shipment of hazardous waste to an entity identified as Supreme Recycling for transport off-site (*i.e.* away from the Bay Shore facility) (hereinafter said shipment referred to as the "2008 shipment").

60. The 2008 shipment included crushed or broken fluorescent light bulbs characterized as D009 hazardous waste (*i.e.* mercury containing hazardous waste).

61. At no time in either calendar year 2006, 2007 or 2008 did Supreme Recycling possess a valid permit under 6 NYCRR Part 364 for the transport of hazardous waste or was otherwise authorized to transport such waste within the meaning of 6 NYCRR § 372.2(b)(5)(ii).

62. Each of the aforementioned (¶s 55, 57 and 59, above) instances where Philip Services Corporation and/or CPC, Inc. delivered a shipment of hazardous waste for transport by Supreme Recycling constitutes a separate and distinct violation of 6 NYCRR § 372.2(b)(5)(ii).

63. Six NYCRR § 372.2(b)(5)(ii) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

64. For each of the aforementioned (¶ 62, above) violations, Respondents are jointly and severally liable.

Count 2: Failure to ship hazardous waste to an authorized TSD facility

65. Complainant realleges paragraphs 1 through 52, and paragraphs 55 through 60, above, with the same force and effect as if fully set forth below.

66. Pursuant to 6 NYCRR § 372.2(b)(5)(iii), a generator of hazardous waste is prohibited from offering for shipment or shipping hazardous waste to other than an authorized treatment, storage or disposal facility for hazardous waste.

67. An authorized treatment, storage or disposal facility is defined in 6 NYCRR § 370.2(b) as follows: "with respect to a particular hazardous waste means a treatment, storage or disposal facility which is authorized, under the laws and regulations of both the Federal Government and the state in which it is located, to accept the hazardous waste for treatment, storage or disposal."

68. For each of the four 2006 shipments, Philip Services Corporation and/or CPC, Inc. shipped hazardous waste to the Supreme Recycling facility in Lakewood, New Jersey.

69. For each of the four 2007 shipments, Philip Services Corporation and/or CPC, Inc. shipped hazardous waste to the Supreme Recycling facility in Lakewood, New Jersey.

70. Philip Services Corporation and/or CPC, Inc. shipped the 2008 shipment of hazardous waste to the Supreme Recycling facility in Lakewood, New Jersey.

71. At no time in either calendar year 2006, 2007 or 2008 was the Supreme Recycling facility in Lakewood, New Jersey authorized to accept crushed fluorescent bulbs.

72. At no time in either calendar year 2006, 2007 or 2008 was the Supreme Recycling facility in Lakewood, New Jersey an authorized treatment, storage or disposal facility for hazardous waste characterized as D009 waste.

73. At no time in either calendar year 2006, 2007 or 2008 was the Supreme Recycling facility in Lakewood, New Jersey an authorized treatment, storage or disposal facility within the meaning of 6 NYCRR § 370.2(b).

74. Each of the aforementioned (¶s 68, 69 and 70, above) instances where Philip Services Corporation and/or CPC, Inc. shipped hazardous waste to the Supreme Recycling facility in Lakewood, New Jersey constitutes a separate and distinct violation of 6 NYCRR § 372.2(b)(5)(iii).

75. Six NYCRR § 372.2(b)(5)(iii) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

76. For each of the aforementioned (¶ 74, above) violations, Respondents are jointly and severally liable.

Count 3: Failure to supply the name of a designated TSD facility

77. Complainant realleges paragraphs 1 through 52, and paragraphs 55 through 60, above, with the same force and effect as if fully set forth below.

78. Pursuant to 6 NYCRR § 372.2(b)(1), a generator of hazardous waste who offers such waste for off-site transport must "prepare a manifest according to the instructions included in Appendix 30 of this Title."

79. Appendix 30 referenced in 6 NYCRR § 372.2(b)(1) requires that the generator indicate the designated treatment, storage or disposal facility (hereinafter, "TSD facility") to which the hazardous waste is to be transported.

80. Pursuant to 6 NYCRR § 370.2(b), a designated TSD facility is defined, *inter alia*, to "mean[] a hazardous treatment, storage or disposal facility which has received an EPA or Part 373 permit (or interim status), from an approved State...."

81. On the manifests that accompanied each of the four 2006 shipments, Philip Services Corporation and/or CPC, Inc. failed to supply the name of a designated TSD facility to which the hazardous waste described on the respective manifests was to be transported.

82. On the manifests that accompanied each of the four 2007 shipments, Philip Services Corporation and/or CPC, Inc. failed to supply the name of a designated TSD facility to which the hazardous waste described on the respective manifests was to be transported.

83. On the manifest that accompanied the 2008 shipment, Philip Services Corporation and/or CPC, Inc. failed to supply the name of a designated TSD facility to which the hazardous waste described on the manifest was to be transported.

84. At no time in either calendar year 2006, 2007 or 2008 (and at no time time subsequent) had the Supreme Recycling facility in Lakewood, New Jersey, received:

a) a permit from EPA to operate a TSD facility; and/or

b) a permit from any agency of the State of New Jersey that is equivalent to a permit issued by the NYSDEC under authority of 6 NYCRR Part 373.

85. At no time in either calendar year 2006, 2007 or 2008 was the Supreme Recycling facility in Lakewood, New Jersey, a designated TSD facility within the meaning of 6 NYCRR § 370.2(b).

86. Each of the aforementioned (¶s 81, 82 and 83, above) instances where Philip Services Corporation and/or CPC, Inc. failed to supply the name of a designated TSD facility to which the hazardous waste was to be transported constitutes a separate and distinct violation of 6 NYCRR § 372.2(b)(1).

87. Six NYCRR § 372.2(b)(1) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

88. For each of the aforementioned (¶ 86, above) violations, Respondents are jointly and severally liable.

Count 4 (alternate pleading to count 3): Failure to obtain written confirmation

89. Complainant realleges paragraphs 1 through 52, and paragraphs 55 through 60, above, with the same force and effect as if fully set forth below.

90. Pursuant to 6 NYCRR § 372.2(b)(2), a generator must, prior to shipping hazardous waste off the site at which such waste was generated,

> a) confirm by written confirmation from the designated treatment, storage or disposal facility that it (i) is authorized, (ii) has the capacity and (iii) will provide or assure that the ultimate disposal method is followed for the particular hazardous waste(s) on the manifest (hereinafter referred to as the "TSD written confirmation"); and
>
> b) confirm by written communication from the designated transporter(s) that it/they are authorized to deliver manifested waste to the designated treatment, storage or disposal facility (hereinafter referred to as the "transporter written communication").

91. Philip Services Corporation and/or CPC, Inc. failed to obtain for any of the four 2006 shipments:

a) the TSD written confirmation; and

b) the transporter written communication.

92. Philip Services Corporation and/or CPC, Inc. failed to obtain for any of the four 2007 shipments:

a) the TSD written confirmation; and

b) the transporter written communication.

93. Philip Services Corporation and/or CPC, Inc. failed to obtain for the 2008 shipment:

a) the TSD written confirmation; and

b) the transporter written communication.

94. Each of the aforementioned (¶s 91, 92 and 93, above) instances where Philip Services Corporation and/or CPC, Inc. failed to obtain either the TSD written confirmation or the transporter written communication constitutes a separate and distinct violation of 6 NYCRR § 372.2(b)(2).

95. Six NYCRR § 372.2(b)(2) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

96. For each of the aforementioned (¶ 94, above) violations, Respondents are jointly and severally liable.

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, Complainant has taken into account the particular facts and circumstances of this case as known to Complainant and has used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found at this Internet address: ***http: //www. epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf***. The penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the 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)"; the January 11, 2005 document entitled, "Revised Penalty Matrices for the RCRA Civil Penalty Policy"; the December 29, 2008 document entitled, "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)"; and the November 16, 2009 document entitled, "Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule." The RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

As set forth in paragraph 6 of the Complaint, above, the statutory penalty amount set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), has been amended, *inter alia*, to

$32,500 per day of violation for any violation occurring after March 15, 2004 and to $37,500 for any violations occurring after January 12, 2009. 40 C.F.R. Part 19.

Complainant proposes, subject to receipt and evaluation of further relevant information from Respondents, that Respondents be assessed the civil penalty set forth 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.

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 in light of the guidance provided by the RCRA Civil Penalty Policy, including consideration of the seriousness of the violations and any good faith efforts by Respondents to comply with applicable requirements, Complainant herewith proposes the assessment of a civil penalty in the total amount of **eighty-four thousand and eighty four (84,084) dollars** as follows:

Counts 1, 2, 3/4 $84,084

Total Proposed Penalty: $84,084

COMPLIANCE ORDER

Respondents shall, to the extent they have not already done so, immediately upon the effective date of this Order correct, to the extent possible, correct the violations alleged in the Complaint and take steps to ensure they remain in compliance with the provisions for which they have been cited as in violation. Respondents shall thereafter maintain compliance at the Bay Shore facility with all requirements.

This Compliance Order shall take effect with respect to Respondents within thirty (30) days of date of service of the Order, unless by that date they have requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Any responses, documentation, and evidence submitted concerning this Compliance Order 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

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 state) provisions, nor does such compliance release Respondents from liability for any violations at the Bay Shore facility. In addition, nothing herein waives prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondents' generation, handling and/or management of hazardous waste at the Bay Shore facility.

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(s) failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $37,500 for each day of continued noncompliance which occurs after January 12, 2009. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator(s) whether issued by EPA or the State of New York.

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 Respondents intend 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 Respondents are entitled to judgment as a matter of law, Respondents 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).[2] The address of the Regional Hearing Clerk of EPA, Region 2, is:

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[2] Respondents may serve answers individually, on behalf of each one or on behalf of both. The use of the term "Respondents" in the plural is not intended to limit how Respondents might answer the Complaint, and its use herein refers to one or both respondent, as made appropriate by the context of such usage.

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondents 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).

Respondents' 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 Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state 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 Respondents dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondents request a hearing. 40 C.F.R. § 22.15(b).

Respondents' failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondents, 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 Respondents, a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondents do not request 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 Respondents request 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 Respondents fail in the 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 Respondents fail 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, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents 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 Respondents 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 Respondents, 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 Respondents fail 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), Respondents waive their right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondents 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.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondents request 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, Respondents may comment on the charges made in the Complaint, and Respondents may also provide whatever additional information that they believes relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this complaint should be directed to:

Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1654
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing does not prevent them 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 Respondents' 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 will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive any right to obtain judicial review of 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).

Respondents' 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. Respondents' 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), Respondents wish not to contest the Compliance Order in the Complaint and wish to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondents should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: December 29, 2009
New York, New York

COMPLAINANT:

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

To: Bruce E. Roberson, Member/President-CEO
PSC, LLC
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

Chris Dods, Member/President
Chemical Pollution Control, LLC of New York
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway, 5th Floor
Albany, New York 12233-7250

CERTIFICATE OF SERVICE

This is to certify that on the day of DEC 30, 2009, 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-02-2010-7101, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following addressees listed below. I hand carried the original and a copy of the Complaint 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.

Bruce E. Roberson, Member/President-CEO
PSC, LLC
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

Chris Dods, Member/President
Chemical Pollution Control, LLC of New York
5151 San Felipe Road
Suite 1600
Houston, Texas 77056

Dated: December 30, 2009
New York, New York

Mildred N. Bay

ATTACHMENT 1

PENALTY COMPUTATION WORKSHEET-COUNTS 1/2/3/4

Respondents' Names: **PSC, LLC and Chemical Pollution Control, LLC of NY**
Facility Address: **120 S. Fourth Street,**
Bay Shore, New York 11706

Violations: 1) Failure to use an authorized HW transporter; 2) Failure to ship HW to an authorized TSD facility; 3) Failure to supply the name of a designated TSD facility; and 4) Failure to obtain written confirmation (alternate pleading to 3).

These violations pertain to nine separate shipments: four in calendar year 2006, four in calendar year 2007 and one in calendar year 2008

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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.....$ 6,448

3. Multiply line 2 by number of days minus 1 .....$51,584

4. Percent increase/decrease for good faith.....N/A

5. Percent increase for willfulness/negligence.....N/A

6. Percent increase for history of noncompliance..... N/A

7. Total lines 5 through 7.....N/A

8. Multiply line 4 by line 8 ..... N/A

9. Calculated economic benefit.....To be determined

10. Total Penalty (rounded off) .....$ 84,084

*** Additional downward adjustments, where substantiated by reliable information, may be accounted for here.**

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

1. Gravity Based Penalty: The gravity-based penalty (GBP) in this proceeding represents a consolidation of the three substantive counts (the last one of which is being pleaded in alternate ways). The GBP constitutes the penalty for nine separate shipments, and, as can be seen from the calculation sheet above, the penalty does not exceed the RCRA statutory cap, as amended, for any one given violation. The GBP for the "initial" violation (*i.e.* initial for purposes of calculating a total penalty for the nine shipments, when each shipment entailed a separate violation) considered is $32,500, the maximum amount permitted for a violation occurring in the 2006-2008 period as per 40 C.F.R. Part 19.

(a) Potential for Harm: The potential for harm has been deemed to be major. The Bay Shore facility, a permitted facility, accepted crushed and broken fluorescent light bulbs that were listed as hazardous waste on the Uniform Hazardous Waste Manifests that accompanied the shipments; the Bay Shore facility proceeded to consolidate such waste and initiated a new Uniform Hazardous Waste Manifests and shipped such waste, using an unauthorized transporter in each instance, to an unauthorized facility for disposal (*i.e.* a facility not authorized under RCRA as a treatment, storage or disposal [TSD] facility to receive crushed fluorescent light bulbs characterized as hazardous waste). The appropriate and correct use of hazardous waste manifests, authorized transporters and permitted TSD hazardous waste disposal facilities is integral to the cradle- to- grave program, and in fact represent fundamental aspects of the RCRA program overseeing such wastes from their generation to their disposal. This facility caused substantial harm to the program when it managed and handled these hazardous wastes in violation of the cited provisions, a harm amplified because these violations were repeated for each of the nine shipments.

(b) Extent of Deviation: The Extent of Deviation was determined to be major because the Respondents, in their operation of the Bay Shore facility, violated separate these provisions across the board for all shipments. None of these shipments was accompanied by any partial effort to meet the regulatory requirements. Based on evidence to date obtained, there was no effort to even minimally comply with the regulations, or at least undertake efforts to attain the objectives underlying these regulations.

The high end of the matrix was used because the Bay Shore facility is a permitted treatment, storage and disposal facility, and ensuring that hazardous wastes shipped from it are sent to facilities permitted to handle such waste is expected of permitted facilities.

2. Multiple counts: EPA is using its discretion in using the multi-day matrix is assessing penalties for the other shipments other than the first shipment. The number of shipments made was nine over 2006, 2007 and 2008.

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

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

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. **Economic Benefit:** EPA is not including an economic benefit calculation at this time but reserves the right to do so in the future.

4. **Recalculation of Penalty Based on New Information:** N/A

ATTACHMENT II

GRAVITY-BASED PENALTY MATRIX

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

MULTI-DAY MATRIX

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM PROTOCOL/METHOD		
	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