

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

2017 SEP 29 09:00 AM

In The Matter of:

Frey's Cleaners Inc.

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-02-2017-7107

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 Frey's Cleaners Inc. 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), 70 Fed. Reg. 1825 (January 11, 2005) and 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

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

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

General Allegations

Jurisdiction

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

Respondent’s background

3. Respondent is Frey’s Cleaners Inc. (hereinafter “Frey’s” and/or “Respondent”).
4. Respondent is a for-profit corporation organized pursuant to the laws of the State of New York in 2008.
5. 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
6. Respondent owns and operates a solvent-based fabric dry cleaning (“dry cleaning”) facility located at 926 Nepperhan Avenue in Yonkers, New York (the “Facility”).
7. Frey’s is the sole occupant located in a one story, 1980 square feet building, built in 1959, at the Facility.

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

Hazardous Waste Generation

8. Upon information and belief, from February 22, 2006, and at times prior thereto, Respondent operated one "Crown" and two "Greentag" dry cleaning machines.
9. The dry cleaning machines described in the previous paragraph utilize tetrachloroethylene, alternatively called Perchloroethylene ("Perc"), as the solvent for dry cleaning at its Facility.
10. Upon information and belief, Respondent, in carrying out its dry-cleaning activities and in the course of conducting normal building maintenance operations has been generating (and continues to generate) "solid waste" (within the meaning of 6 NYCRR § 371.1(c)) at its Facility.
11. The Perc hazardous wastes generated by the Respondent through its dry-cleaning and related activities at its Facility have included, but are not limited to:
 - a. Perc contaminated waste distillation residues ("Perc sludge");
 - b. spent Perc contaminated lint, button trap and spin disk filter wastes ("Perc lint waste");
 - c. spent Perc contaminated separator wastewater ("Perc separator water"); and
 - d. spent Perc contaminated filter cartridges.
12. The Perc sludge identified in paragraph "11", above, is a listed hazardous waste (EPA hazardous waste code F002 - spent halogenated solvent) ("F002") as defined at 6 NYCRR § 371.4(b)(1).
13. The Perc Lint Waste identified in paragraph "11", above, is a listed hazardous waste (F002), as defined at 6 NYCRR § 371.4(b)(1).
14. The Perc Separator Water identified in paragraph "11", above, is both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (EPA hazardous waste code (D039) ("D039") as defined at 6 NYCRR § 371.3(e)(1).
15. The Perc contaminated filter cartridges identified in paragraph "11", above, is both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (D039) as defined at 6 NYCRR § 371.3(e)(1).
16. At the Facility, Perc separator water waste was directly discharged into a red 5-gallon container located behind each dry cleaning machine.

17. Containers of Perc hazardous waste were generally stored around the sides of each of the dry cleaning machines at the Facility.
18. The areas around each of the dry cleaning machines were hazardous waste storage areas.
19. As of March 2006, and at times, both prior and subsequent thereto, Respondent has been a “generator” of “hazardous waste” within the meaning of 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii) at its Facility.
20. During EPA’s 2014 and 2017 inspections (discussed below), Respondent at its Facility generated less than 1000 kilograms (“kg”) of non-acute hazardous waste in a calendar month and stored less than 6,000 kg of this waste at any one time and was considered a “small quantity generator” (“SQG”) as that phrase is defined in 6 NYCRR § 370.2(b).
21. The requirements for generators are set forth in 6 NYCRR § 372.2. A SQG may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with *all* applicable conditions set forth in 6 NYCRR § 372.2(a)(8) including but not limited to 6 NYCRR § 372.2(a)(8)(iii) - (v).
22. Respondent stores hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is sent off-site where it is treated, disposed of or stored elsewhere.

Hazardous Waste Notification

23. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification, dated May 28, 1985, that it was a Large Quantity Generator of hazardous waste at its Facility.
24. In response to the Notification, EPA provided Respondent with EPA Identification Number NYD 048 399 125.
25. Based on Frey’s 2014 and 2017 Inspections as well as review of the company’s bill of lading and manifest records, EPA has concluded that Respondent has been a SQG of hazardous waste at its Facility.

EPA Investigatory Activities

26. On or about March 8, 2006, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of Frey’s Facility (the “2006 Inspection”).
27. During the 2006 Inspection, EPA found several preparedness and prevention violations at the Facility.

28. On or about February 27, 2014, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of Frey's Facility (the "2014 Inspection").
29. On May 5, 2014, EPA issued to Frey's a combined Notice of Violation ("2014 NOV") and Information Request Letter ("2014 IRL") regarding its Facility and its operations.
30. The 2014 NOV which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Frey's that EPA had identified the potential RCRA violations set forth in following paragraph, at its Facility and asked Frey's to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
31. The 2014 NOV identified the following potential RCRA violations at the Facility:
 - a. Failure to use manifests to accompany off-site shipments of hazardous waste;
 - b. Failure to ship or offer for shipment hazardous waste to an authorized facility;
 - c. Failure to label containers at or near any point of generation where wastes initially accumulate with the words "Hazardous Waste" and with other words that identify the contents of the containers;
 - d. Failure to keep containers holding hazardous waste closed except when necessary to add or remove waste;
 - e. Failure to inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors;
 - f. Failure to have a device, such as a telephone, located near a hazardous waste storage area capable of summoning emergency assistance;
 - g. Failure to make arrangements where appropriate to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; and
 - h. Failure to attempt to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.
32. The 2014 IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the

Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.

33. On or about June 12, 2014, a duly authorized representative of Frey's submitted its certified Response to the combined NOV/IRL attesting that the information provided in the Response was true and accurate ("2014 Response").
34. On or about January 12, 2017, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of Frey's Facility ("2017 Inspection").
35. On February 7, 2017, EPA issued to Respondent a combined Notice of Violation ("2017 NOV") and Information Request letter ("2017 IRL") regarding its Facility and its operations.
36. The 2017 NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified the potential RCRA violations set forth in the following paragraph at its Facility, and asked Frey's to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
37. The 2017 NOV identified the following potential RCRA violations at the Facility:
 - a. Failure to maintain and operate the facility to minimize the possibility of a fire, exposure, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents;
 - b. Failure to keep containers holding hazardous waste closed except when necessary to add or remove waste;
 - c. Failure to mark containers holding hazardous waste with the words "Hazardous Waste" and with other words identifying their contents;
 - d. Failure to clearly mark on each container the date upon which each period of accumulation began;
 - e. Failure to inspect, at least weekly, area where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors;
 - f. Failure to post the names and telephone numbers of the emergency coordinators next to the telephone;
 - g. Failure to post location of fire extinguishers and spill control material next to the telephone;

- h. Failure to attempt to make arrangements where appropriate to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;
 - i. Failure to attempt to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility; and
 - j. Failure to submit to the NYSDEC an exception report in the event the generator does not receive a copy of a hazardous waste manifest within 45 days showing the handwritten signature of the owner or operator of the designated receiving facility.
38. The 2017 IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.
39. On or about April 3, 2017, Respondent submitted its Response to the 2017 IRL (“2017 Response”).
40. In its 2017 Response, Respondent stated that “Since your last visit, we have been maintaining the facility to minimize possibility of a fire, exposure of hazardous waste. The clumps of lint are being properly disposed of, no longer being left on the ground.”
41. In its 2017 Response, Respondent stated that it is “currently conducting proper weekly inspections of hazardous waste storage area.”
42. In its 2017 Response, Respondent stated that it has an “updated name and telephone number of emergency coordinator next to the phone.”
43. In its 2017 Response, Respondent stated that it has “posted location of fire extinguishers and spill control material next to the phone.”

COUNT 1 - Failure to Obtain a Permit or Qualify for Interim Status

44. Complainant re-alleges each allegation contained in paragraphs “1” through “43”, inclusive, as if fully set forth herein.

Legal Requirements for Permits & Exemptions

45. Pursuant to each of the below provisions in this paragraph, the owner or operator of an existing hazardous waste management facility must obtain a permit or qualify for interim status in order to treat, store or dispose of any such waste:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925; and
 - b. 6 NYCRR § 373-1.2(a).
46. To be exempt from the permit requirements of 6 NYCRR Part 373, a SQG that generates more than 100 kg but less than 1,000 kg of non-acute hazardous waste must comply with all of the provisions of 6 NYCRR § 372.2(a)(8)(iii).
47. At the time of the 2014 Inspection, and at times prior thereto, Respondent generated and stored Perc hazardous waste at its Facility.
48. At the time of the 2017 Inspection, and at times prior thereto, Respondent generated and stored Perc hazardous waste at its Facility.

Respondent's failure to qualify for an exemption from the permitting requirements

a. Failure to mark containers with the words "hazardous waste"

49. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘b’) and 373-3.9(d)(3) a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that while being accumulated on-site, containers in which hazardous waste are stored at a facility are marked clearly with the words “Hazardous Waste.”
50. At the time of the 2014 Inspection, Respondent failed to mark at least one container of Perc hazardous waste with the words “Hazardous Waste.”
51. At the time of the 2017 Inspection, Respondent failed to mark no fewer than five containers of Perc hazardous waste with the words “Hazardous Waste.”

b. Failure to mark containers with the accumulation start dates

52. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘d’) and 373-1(d)(1)(iii)(‘c’)(‘2’), a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

53. At the time of the 2014 Inspection, Respondent failed to mark at least one container of Perc hazardous waste with the accumulation start date.

54. At the time of the 2017 Inspection, Respondent failed to mark no fewer than eight containers of Perc hazardous waste with the accumulation start date.

c. Failure to keep containers of hazardous waste closed

55. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘b’) and 373-3.9(d)(1) a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that a container holding hazardous waste is always closed during storage except when it is necessary to add or remove hazardous waste from that container.

56. At the time of the 2014 Inspection, Respondent had 2 dry cleaning machines, at the Facility, intermittently releasing Perc separator water waste into two completely open 5 gallon containers which were at least half full of Perc hazardous waste.

57. At the time of the 2014 Inspection, Respondent was using for storage completely open red 5 gallon containers including:

- a. two containers with a clear plastic bag holding Perc lint hazardous waste; and
- b. one container with dark Perc sludge hazardous waste.

58. At the time of the 2014 Inspection, Respondent failed to close no fewer than five containers holding Perc hazardous waste.

59. At the time of the 2017 Inspection, Respondent was using for storage completely open red 5 gallon containers including:

- a. four containers with Perc separator water hazardous waste;
- b. one container with dark Perc sludge hazardous waste;
- c. one container with a clear plastic bag holding Perc lint hazardous waste; and
- d. two containers each holding a spent Perc contaminated filter cartridge.

60. At the time of the 2017 Inspection, and at times prior thereto, Respondent failed to close, no fewer than eight, containers holding Perc hazardous waste.

d. Weekly inspections of containers

61. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘b’) and 373-3.9(e), a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of

180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that at least weekly the owner or operator inspects areas where containers are stored.

62. At the time period of the 2014 Inspection, and at times prior thereto, Respondent failed to conduct weekly inspections of the hazardous waste storage areas.
63. At the time period of the 2017 Inspection, and at times prior thereto, Respondent failed to conduct weekly inspections of the hazardous waste storage areas.

e. Postings

64. Pursuant to 6 NYCRR § 372.2(a)(8)(iii)(‘e’)(‘2’)(‘i’), a generator may store more than 100 kg but less than 1,000 kg of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that the generator posts next to the telephone the name and number of the emergency coordinator.
65. At the time of the 2014 Inspection, Respondent failed to post the names and telephone numbers of the emergency coordinators and the location of fire extinguishers and spill control materials at the Facility.
66. At the time of the 2017 Inspection, and at times prior thereto, Respondent failed to post the location of the fire extinguishers and spill control material at the Facility.
67. At the time of the 2017 Inspection, and at times prior thereto, the name of “Joseph Lee,” who had not been employed at the Facility for approximately two years, was posted as the alternative emergency coordinator on the dry cleaning machines at the Facility.
68. At the time of the 2017 Inspection, and at times prior thereto, Respondent failed to post the names and telephone numbers of the emergency coordinators next to the phone at the Facility.
69. As a result of Respondent’s storage of non-acute hazardous waste and/or the failures and facts alleged in paragraphs “50”, “51”, “53”, “54”, “57”, “58”, “59” “60”, “62”, “63”, “65”, “66”, “67”, and “68”, *above*; Respondent was not eligible for a permit exemption otherwise available to Small Quantity Generators for the storage of hazardous waste.

Respondent’s Violations of Hazardous Waste Permitting Rules

70. The aforementioned (paragraphs “47”, “48”, “57”, and “59”, *above*) instances of storage at the Facility constitutes “storage” within the meaning of:

- a. Section 1004(33) of RCRA, 42 U.S.C. § 6903(33); and
 - b. Six NYCRR § 370.2(b).
71. Upon information and belief, at the time of the 2014 Inspection and the 2017 Inspection and at times prior thereto:
- a. Respondent had been operating its Facility as an existing hazardous waste management facility or alternatively, as a new hazardous waste management facility;
 - b. Respondent had been operating its Facility without having obtained a RCRA permit for its Facility; and
 - c. Respondent had been operating its Facility without having qualified for interim status at the Facility.
72. Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2 at its Facility.
73. Up through the completion of both Inspections (although not necessarily limited to that time period), Respondent was required to obtain a permit for the storage of hazardous waste at the Facility.
74. Respondent's storage of hazardous waste and operation of its Facility, an existing hazardous waste management facility or, alternatively, a new hazardous waste management facility, without having obtained a permit or qualifying for interim status constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2.
75. Respondent's aforementioned operations of a hazardous waste management facility without having obtained a permit or qualifying for interim status constitutes a violation of each of the following:
- a. Section 3005 of the Act, 42 U.S.C. § 6925; and
 - b. Six NYCRR § 373-1.2.
76. Respondent's failure to comply with Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2 subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 2 - Failure to Minimize Releases

77. Complainant re-alleges each allegation contained in Paragraphs “1” through “43”, inclusive, with the same force and effect as if fully set forth herein.
78. Pursuant to 6 NYCRR §§ 373-3.3(b) or 373-2.3(b), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
79. At the time of the 2014 Inspection, and at times prior thereto, Respondent stored completely open, no fewer than five, containers holding Perc hazardous waste which likely released Perc vapors to the air and could have easily been knocked over, thereby spilling Perc hazardous waste.
80. At the time of the 2017 Inspection, and at times prior thereto, Respondent stored completely open, no fewer than eight, containers holding Perc hazardous waste which likely released Perc vapors in the air and could have easily been knocked over, thereby spilling Perc hazardous waste.
81. At the time of the 2017 Inspection, and at times prior thereto, there was Perc lint waste lying on the floor behind and around the dry cleaning machines.
82. At the time of the 2017 Inspection, the EPA inspector used a halogen leak detector which is commonly used in the dry cleaning industry to detect Perc vapors, to test air above the Perc waste described in the previous paragraph.
83. The halogen leak detector gave off a positive halogen reading.
84. The Perc lint waste described in Paragraph “81” was releasing vapors into the air at the Facility.
85. Respondent failed to properly handle, containerize and store its Perc hazardous waste, thereby releasing Perc hazardous waste vapors into the air at the Facility.
86. The actions or inactions set forth in the Paragraphs “79”, “80”, “81”, “84” and “85” above constitute failures by Respondent to maintain or operate its Facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, and each action or inaction constitutes a violation of 6 NYCRR §§ 373-3.3(b) or alternatively, 373-2.3(b).
87. Respondent’s violation of 6 NYCRR §§ 373-3.3(b) or alternatively, 373-2.3(b) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 3 - Failure to Properly Manifest Hazardous Waste

88. Complainant re-alleges each allegation contained in Paragraphs “1” through “43”, inclusive, with the same force and effect as if fully set forth herein.
89. Pursuant to 6 NYCRR § 372.2(b)(5)(i), a generator must use manifests to accompany off-site shipments of hazardous waste.
90. During the 2014 Inspection, and at times prior thereto, Respondent used bills of lading for the off-site shipment of hazardous waste from the Facility to National Waste Clean, Inc. (“NWC”), Plainfield, NJ.
91. During the 2014 Inspection, and at times prior thereto, Respondent failed to use manifests when it offered hazardous waste for transport off site from the Facility.
92. Respondent’s failure set forth in the previous Paragraph, constitute Respondent’s violation of 6 NYCRR § 372.2(b)(5)(i).
93. Respondent’s violation of 6 NYCRR § 372.2(b)(5)(i) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 4 - Failure to File Exception Reports

94. Complainant re-alleges each allegation contained in Paragraphs “1” through “43”, inclusive, with the same force and effect as if fully set forth herein.
95. Pursuant to 6 NYCRR § 372.2(c)(3), a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date of shipment, must immediately contact the transporter and/or disposal facility to determine the status of the shipment. If, within 45 days of the date of shipment, the generator has not received a signed copy of the manifest, an exception report must be submitted to the New York State Department of Environmental Conservation (“NYSDEC”).
96. Up until the date of 2017 Inspection, and at times thereafter, Respondent did not receive a copy of manifests with the signature of the owner or operator of the designated (receiving) facility indicating that the hazardous waste was received by such facility.
97. Up until the date of 2017 Inspection, Respondent failed to submit exception reports, within 45 days to NYSDEC, when the Facility did not receive a signed copy of the manifest from the designated facility.
98. Respondent’s failure set forth in the previous paragraph constitutes a violation of 6 NYCRR § 372.2(c)(3).

99. Respondent's violation of 6 NYCRR § 372.2(c)(3) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

II. PROPOSED CIVIL PENALTY

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

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 ("Inflation Adjustment Act"), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the July 27, 2016 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015)."

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$95,284 per day for each violation occurring after November 2, 2015 (where the penalty is assessed on or after January 15, 2017). *See* 40 C.F.R. Part 19 and 82 Fed. Reg. 3633 (January 12, 2017.)

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 also included in Attachment II.

Count 1:	\$14,400
Count 2:	\$17,000
Counts 3 & 4:	\$17,000

Total Proposed Penalty for Counts 1 - 4 is rounded to the nearest hundredth and incorporates the July 2016 inflationary adjustment of the calculated penalty: **\$48,400**

III. COMPLIANCE ORDER

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

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent, to the extent it has not done so, shall:
 - a. comply with all conditions necessary to be exempt from hazardous waste permitting requirements, including paragraphs "2" through "10" below; or
 - b. submit an application to the New York State Department of Environmental Conservation for a hazardous waste permit for its facility, and immediately while the application is pending, comply with all applicable rules and regulations, including paragraphs "2" through "10" below, until it obtains such permit and it has taken effect.
2. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall only store hazardous waste in containers labeled "Hazardous Waste" and with other words that identify the contents of the containers.
3. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall mark all hazardous waste containers in any container storage area with the date that the accumulation of hazardous waste starts in that container.
4. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall only utilize containers that are closed to accumulate and/or store hazardous wastes.
5. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not done so, properly handle, containerize and store all Perc hazardous waste at its Facility.
6. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall conduct weekly inspections of the hazardous waste storage areas and shall document such inspections in the Facility's operating records.
7. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent that it has not done so, post current emergency information including the names and telephone numbers of emergency coordinators and the location of fire extinguishers and spill control materials near a telephone in its hazardous waste storage areas.
8. Starting no later than ten (10) calendar days of the effective date of this Compliance Order, Respondent must use manifests to accompany all off-site shipments of hazardous waste.

9. Starting ten (10) calendar days of the effective date of this Compliance, if Respondent has not received a signed copy of the manifest from the receiving facility, within 45 days of the date of its shipment of hazardous waste from the Facility, an exception report must be submitted to the NYSDEC.

10. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators.

11. Regardless of Respondent's decision with regard to the options in paragraph "1", above, Respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in paragraphs "2" through "9" of this Compliance Order, above. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

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

Ronald Voelkel
Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
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 affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in a compliance order that has

taken effect is liable for a civil penalty of up to \$57,391 for each day of continued noncompliance 82 Fed. Reg. 3633 (January 12, 2017).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. § 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 - 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. § 22.

The rules of procedure governing this civil administrative litigation were originally 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 (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017 and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, 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 is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in “D” below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

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

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

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

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

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

C. Failure To Answer

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

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

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for

the filing of a responsive pleading or document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

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

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

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

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3205

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent’s requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.


Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:



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

Date 9/29/17

To: Mr. Kyung Kwon
Frey's Cleaners Inc.
926 Nepperhan Avenue
Yonkers, New York 10703

Mr. Choi
Frey's Cleaners Inc.
926 Nepperhan Avenue
Yonkers, New York 10703

cc: Kelly Lewandowski, Chief
Site Control Section
Bureau of Technical Support
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

In re: Frey's Cleaners Inc.
Docket Number RCRA-02-2017-7107

CERTIFICATE OF SERVICE

This is to certify that on September 29, 2017, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2017-7107 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 Mr. Kyung Kwon, Frey's Cleaners Inc., 926 Nepperhan Avenue, Yonkers, New York 10703 and Mr. Choi, Frey's Cleaners Inc., 926 Nepperhan Avenue, Yonkers, New York 10703. 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: September 29, 2017
New York, New York

ATTACHMENT I

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

Respondent: Frey's Cleaners Inc., 926 Nepperhan Avenue, Yonkers, New York 10703

Requirements Violated: 42 U.S.C § 6925, 6 NYCRR §§ 373-1.2: Operating a Hazardous Waste Storage Facility Without a Permit

Respondent operated a hazardous waste management facility without having obtained a permit or qualifying for interim status. Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint. Small and large quantity generators must comply with the hazardous waste container management requirements and the hazardous waste storage area inspection requirements, and must meet certain preparedness and prevention requirements to be exempt from permitting.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$8,800
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by the amount of the gravity based penalty.	N/A
4. Add line 1 and line 3	\$8,800
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. 10% Percent increase for history of noncompliance.	.10
8. Total lines 5 through 7.	.10
9. Multiply line 4 by line 8.	\$880
10. Add lines 4 and 9 for gravity penalty amount	\$9,680
11. Adjustment for inflation - multiply line 10 by a multiplier of 1.48287	\$14,400*

12. Calculate economic benefit.

N/A

13. Penalty figure to be inserted in Complaint

\$14,400

* Penalties have been rounded to the nearest hundred.

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

2. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in these violations was determined to be MODERATE. Operation without a permit is a serious violation and has a substantial adverse effect on the program. The Respondent managed its hazardous waste and hazardous waste containers in a manner that violated many “safe harbor” provisions. Respondent failed to mark containers with words “Hazardous Waste” and accumulation start dates; to close containers of hazardous waste; to conduct weekly inspections; and to post the names and telephone numbers of the emergency coordinators and the location of the fire extinguishers and spill control material at the Facility. However, the potential for harm was reduced because of the relatively small quantities of hazardous waste generated and stored at the Facility.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Many regulations pertaining to small quantity generators with respect to the storage and management of hazardous waste and preparedness and prevention were violated. No hazardous waste permit had been obtained nor had the Facility qualified for interim status.

The applicable cell ranges from \$8,800 to \$12,099. The low-point for the cell matrix was selected in view of the fact that the amount of hazardous waste generated was relatively small and hazardous waste was shipped off-site on a regular basis.

- c. Multiple/Multi-day - The Agency, *at this time*, has used its enforcement discretion and did not assess an additional penalty using this matrix.

3. Adjustment Factors

- a. Good Faith - Based upon Facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA Inspections, no adjustment has been made at this time.
- b. Willfulness/Negligence – N/A
- c. History of Compliance – The proposed penalty was increased by 10% in light of Respondent’s history of non-compliance.
- d. Ability to Pay - N/A
- e. Environmental Project - N/A

f. Other Unique Factors – N/A

4. Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the 2003 RCRA Civil Penalty Policy.

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

Respondent: Frey's Cleaners Inc., 926 Nepperhan Avenue, Yonkers, New York 10703

Requirements Violated: 6 NYCRR §§373-2.3(b) or 373-3.3(b). Respondent failed to maintain and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$10,450
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select the appropriate multiple day matrix.	N/A
3. Multiply line 2 by the amount of the gravity based penalty.	N/A
4. Add line 1 and line 3	\$10,450
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. 10% Percent increase for history of noncompliance.	.10
8. Total lines 5 through 7.	.10
9. Multiply line 4 by line 8.	\$1,045
10. Add lines 4 and 9 for gravity penalty amount	\$11,495
11. Adjustment for inflation - multiply line 10 by a multiplier of 1.48287	\$17,000*
12. Calculate economic benefit.	N/A
13. Penalty figure to be inserted in Complaint	\$17,000

* Penalties have been rounded to the nearest hundred.

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

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in this violation was determined to be MODERATE. During the 2017 Inspection, Respondent stored, no fewer than eight, completely open containers of Perc hazardous waste at the Facility and Perc lint hazardous waste was lying on the floor behind and around the dry cleaning machines. Previously, during the 2014 Inspection, Respondent had stored, no fewer than five, completely open containers holding Perc hazardous waste at the Facility. The conditions found during both Inspections indicated that employees and customers were likely exposed to Perc hazardous waste vapors in the air at the Facility. However, the potential for harm was lessened due to the relatively small quantities of hazardous waste generated by the Facility.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The Respondent showed disregard for conditions that exposed people including workers and customers to Perc hazardous waste.

The applicable cell ranges from \$8,800 to \$12,099. The mid-point for the cell matrix was selected consistent with the above.

- c. Multiple/Multi-day - The Agency, *at this time*, has used its enforcement discretion and did not assess an additional penalty using the multi-day matrix.

2. Adjustment Factors

- a. Good Faith - Based upon Facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA Inspections, no adjustment has been made at this time.
- b. Willfulness/Negligence - N/A
- c. History of Compliance – The proposed penalty was increased by 10% in light of Respondent’s history of non-compliance.
- d. Ability to Pay - N/A
- e. Environmental Project - N/A
- f. Other Unique Factors – N/A

3. Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the 2003 RCRA Civil Penalty Policy.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 3 & 4)

Respondent: Frey's Cleaners, 926 Nepperhan Avenue, Yonkers, New York 10703

Requirements Violated:

6 NYCRR § 372.2(b)(5)(i): Respondent failed to use manifests to accompany off-site shipments of hazardous waste.

6 NYCRR § 372.2(c)(3): Respondent failed to submit an exception report within 45 days of the date of shipment the generator has not received a signed copy of the manifest.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$10,450
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select the appropriate multiple day matrix.	N/A
3. Multiply line 2 by the amount of the gravity based penalty.	N/A
4. Add line 1 and line 3	\$10,450
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. 10% Percent increase for history of noncompliance.	.10
8. Total lines 5 through 7.	.10
9. Multiply line 4 by line 8.	\$1,045
10. Add lines 4 and 9 for gravity penalty amount	\$11,495
11. Adjustment for inflation - multiply line 10 by a multiplier of 1.48287	\$17,000*
12. Calculate economic benefit.	N/A
13. Penalty figure to be inserted in Complaint	\$17,000

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 3 & 4)

2. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in these violations was determined to be MODERATE. Up until the 2014 Inspection, Respondent used bills of lading, rather than manifests to ship hazardous waste off the Facility. By using bills of lading rather than manifests. Respondent created a situation in which regulatory agencies would be unaware that the Respondent generated hazardous waste and shipments of the waste were not tracked. The Facility would not have been subject to RCRA inspections designed to monitor its compliance with hazardous waste regulations. Furthermore, even after it started using manifests, Respondent failed to file an exception report when it did not receive a confirmatory signed manifest from the receiving facility which is evidence of the receipt of hazardous waste by such facility. This failure to use manifests and to file exception reports meant that Respondent violated the basic RCRA Subtitle C tenets of the "cradle-to-grave" system set up to ensure that hazardous waste is disposed in a way that protects both the environment and human health by making a generator responsible for its waste from generation to ultimate disposal. However, moderate potential for harm is chosen due to the relatively small quantities of hazardous waste generated and shipped offsite by the Facility.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. During EPA's Inspections, Respondent has been negligent in its responsibility to monitor the proper transport of its shipments of hazardous waste. The applicable cell ranges from \$8,800 to \$12,099. The mid-point for the cell matrix was selected consistent with the above.
- c. Multiple/Multi-day - The Agency, *at this time*, has used its enforcement discretion and has limited the penalty for the violations alleged in these counts to one day.

3. Adjustment Factors

- a. Good Faith - Based upon Facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA Inspections, no adjustment has been made at this time.
- b. Willfulness/Negligence - N/A
- c. History of Compliance - N/A
- d. Ability to Pay - N/A

e. Environmental Project - N/A

f. Other Unique Factors – N/A

4. Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the 2003 RCRA Civil Penalty Policy.

ATTACHMENT II

2003 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	\$27,500 to \$22,000	\$21,999 to \$16,500	\$16,499 to \$12,100
	MODERATE	\$12,099 to \$8,800	\$8,799 to \$5,500	\$5,499 to \$3,300
	MINOR	\$3,299 to \$1,650	\$1,649 to \$550	\$549 to \$110

2003 Multi-Day Matrix of Minimum Daily Penalties

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	\$5,500 to \$1,100	\$4,400 to \$825	\$3,300 to \$605
	Moderate	\$2,420 to \$440	\$1,760 to \$275	\$1,100 to \$165
	Minor	\$660 to \$110	\$330 to \$110	\$110