



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

RECEIVED  
2008 SEP 26 P 10:28

REG. CLERK  
RECEIVED

**HAND DELIVERED**

September 26, 2008

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

Re: Administrative Complaint and Notice of Opportunity for Hearing  
In the Matter of U.S. Army Cold Regions Research and Engineering Laboratory  
Docket No. RCRA- 01-2008-0060

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of an Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1

cc: Colonel Gary E. Johnston, Commander  
U.S. Army Cold Regions Research and Engineering Laboratory

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
BEFORE THE ADMINISTRATOR

RECEIVED  
2008 SEP 26 P 10: 28

\_\_\_\_\_  
In the Matter of: )  
)  
)  
)  
**United States Army Cold Regions** )  
**Research and Engineering Laboratory** )  
72 Lyme Road )  
Hanover, New Hampshire 03755 )  
)  
)  
RESPONDENT )  
)  
Proceeding under Section 3008(a) )  
of the Resource Conservation Act, )  
42 U.S.C. § 6928(a) )  
\_\_\_\_\_)

EPA DOCKET NO. )  
RCRA-01-2008-0060 )  
CLERK )  
COMPLAINT )  
AND NOTICE OF )  
OPPORTUNITY FOR HEARING )

**I. STATEMENT OF AUTHORITY**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), 42 U.S.C. § 6928(a), as further amended by the Federal Facility Compliance Act of 1992, 42 U.S.C. § 6961 (“FFCA”) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the Manager of the Enforcement Office, Office of Environmental Stewardship, U.S. Environmental Protection Agency, Region 1 (“EPA”).

2. Complainant hereby notifies the United States Army Cold Regions Research and Engineering Laboratory (“Respondent”) of Complainant’s determination that Respondent has violated Section 3002 of RCRA, 42 U.S.C. § 6922; Chapter 147-A of the New Hampshire Revised Statutes Annotated; the New Hampshire Hazardous Waste Rules promulgated thereunder, codified at the New Hampshire Code of Administrative Rules, Chapters Env-Wm 100 - 1000; and the New Hampshire Requirements for Universal Waste Management, codified at Chapter Env-Wm 1100. Complainant also provides notice of Respondent’s opportunity to request a hearing.

## **II. NATURE OF ACTION**

3. This is an action under RCRA, 42 U.S.C. §§ 6901 et seq., seeking civil penalties and ordering compliance pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for violations of the federal and state hazardous waste regulations promulgated pursuant to RCRA.

4. EPA has given notice of commencement of this action to the State of New Hampshire, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **III. RCRA STATUTORY AND REGULATORY FRAMEWORK**

5. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (“HSWA”). RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 273.

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may authorize a state to administer the RCRA hazardous waste program, in lieu of the federal program, when the Administrator deems the state program to be equivalent to the federal program.

7. On December 18, 1984, EPA granted New Hampshire final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program. 49 Fed. Reg. 49092 (December 18, 1984). Final authorization of the New Hampshire hazardous waste program became effective on January 3, 1985. On May 27, 1991, New Hampshire submitted a draft program revision authorization application for changes to its hazardous waste program. On November 14, 1994, EPA granted final authorization for these revisions, which became effective on January 13, 1995. 59 Fed. Reg. 56397 (November 14, 1994). On August 31, 2005, New Hampshire submitted a final complete program revision application seeking authorization for changes to its hazardous waste program that would allow it to meet most federal requirements through June 30, 2002. On February 27, 2006, EPA granted New Hampshire final authorization for these revisions, including universal waste management requirements, which became effective on April 28, 2006. 71 Fed. Reg. 9727 (February 27, 2006).

8. New Hampshire's federally authorized hazardous waste management regulations, promulgated pursuant to New Hampshire Revised Statutes Annotated, Chapter 147-A, are codified as the New Hampshire Hazardous Waste Rules at the New Hampshire Code of Administrative Rules, Chapters Env-Wm 100 - 1000, and the New Hampshire Requirements for

Universal Waste Management at the New Hampshire Code of Administrative Rules, Chapter Env-Wm 1100.

9. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), EPA may enforce both the federally approved New Hampshire hazardous waste program and the federal regulations promulgated pursuant to HSWA by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA (RCRA Sections 3001-3023), 42 U.S.C. §§ 6921 - 6939e. New Hampshire is not authorized to implement certain hazardous waste regulations promulgated pursuant to HSWA, which are, therefore, enforceable only by EPA. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, inter alia, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

10. Pursuant to Sections 6001 and 6004 of RCRA, 42 U.S.C. §§ 6961 and 6964, as amended by the FFCA, each department, agency, and instrumentality of the executive, legislative and judicial branches of the federal government: (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste, as defined at 40 C.F.R. § 260.10, is subject to and must comply with, all federal, state, interstate, and local requirements, both substantive and procedural (including any requirement for permits, or reporting, or any provisions for injunctive relief and such sanctions that may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such

requirements. The federal, state, interstate, and local substantive and procedural requirements include, but are not limited to, all administrative orders and all civil and administrative penalties and fines.

11. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as amended, provides for the assessment of a civil penalty not to exceed \$25,000 per day of noncompliance for each violation of the requirements of Subtitle C of RCRA by issuing an order assessing a civil penalty for any past or current violation of RCRA and requiring immediate compliance. Pursuant to the Civil Monetary Inflation Adjustment Rule, 69 Fed. Reg. 7121 (February 13, 2004), the maximum civil penalty per day of non-compliance for each violation of the requirements of Subtitle C of RCRA occurring after March 15, 2004 is \$32,500.

#### **IV. GENERAL ALLEGATIONS**

12. Respondent is the United States Army Cold Regions Research and Engineering Laboratory, located in Hanover, New Hampshire (the "Facility").

13. Respondent is a "federal agency" as that term is defined in Section 1004(4) of RCRA, 42 U.S.C. § 6903(4), and 40 C.F.R. § 260.10.

14. Respondent is a "person," as that term is defined at Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), as amended by the FFCA, 40 C.F.R. § 260.10, and Env-Wm 110.01(c)(96).

15. At all times relevant to the allegations set forth in this Complaint, Respondent has been the "owner" and "operator," as those terms are defined by Env-Wm 110.01(c)(93) and (92), of the Facility, which conducts research and develops engineering solutions for technical problems related to cold environments.

16. On May 13, 1989, pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), Respondent notified EPA that it was a “small quantity generator,” as that term is defined by Env-Wm 110.01(c)(115), of hazardous wastes.

17. As a generator of hazardous waste, Respondent is subject to the New Hampshire Hazardous Waste Rules, codified at Env-Wm 100 - 1000, as well as the federal regulations promulgated pursuant to HSWA for which New Hampshire is not authorized.

18. At all times relevant to the allegations set forth in this Complaint, Respondent generated waste fluorescent bulbs.

19. Fluorescent bulbs are “lamps,” as that term is defined by Env-Wm 110.01(c)(74).

20. Lamps are “universal waste,” as that term is defined by Env-Wm 110.01(c)(142).

21. Respondent is a “universal waste handler,” as that term is defined by Env-Wm 110.01(c)(143).

22. As a generator of universal wastes, Respondent is subject to the New Hampshire Requirements for Universal Waste Management, codified at Env-Wm 1100.

23. On April 9 and April 10, 2007, authorized representatives of EPA conducted a RCRA compliance evaluation inspection (the “Inspection”) of the Facility.

24. Based on the Inspection, Complainant has identified the following violations at the Facility.

## **V. VIOLATIONS**

### **COUNT I - Failure to perform hazardous waste determinations.**

25. Complainant incorporates by reference the allegations of paragraph 1-24 above.

26. Pursuant to Env-Wm 502.01, generators of waste must determine if that waste is a hazardous waste.

27. At the time of the Inspection, Respondent stored numerous containers of waste at the Facility for which Respondent had not made hazardous waste determinations.

28. In the Soil Physics Laboratory, Room 145, Respondent did not characterize the following containers of waste:

- a. approximately fifteen miscellaneous containers with epoxies and resins;
- b. one approximately 250-ml bottle marked "ETW waste";
- c. one approximately 500-ml bottle marked "2-propanol waste";
- d. one approximately 500-ml bottle of carbon tetrachloride; and
- e. one small plastic bag labeled "waste didecylamine."

29. In the Main Laboratory Building, Room 167B, Respondent did not characterize approximately sixteen unlabeled bottles in a cardboard box.

30. In the Main Laboratory Building, Soils Microbiology Laboratory, Respondent did not characterize the following containers of waste:

- a. one approximately half-full 250-ml container marked as "copper chloride waste"; and
- b. eight four-liter containers, ranging from one-half to three-quarters full, marked as "TLFA."

31. In the Main Laboratory Building, Room 178, Respondent did not characterize the following containers of waste:

- a. two one-gallon containers marked as "LSC waste";
- b. one one-gallon container marked as "safe 3 waste only";

c. one half-full, five-gallon container labeled as “wash water low level radioactive waste”; and

d. one one-gallon container, approximately half-full, marked as “RDX & CL-20 waste.”

32. In the Main Laboratory Building, Chemical Storage Room, Corner Storage Area,

Respondent did not characterize the following containers of waste:

a. one five-gallon container marked as “used HPLC eluent, MeOH, 98:1”;

b. one five-gallon container marked as “ethanol: media, 2:1, U.V.”;

c. one five-gallon container marked as “ethanol: media, 2:1, U.V., very full”;

d. one five-gallon container marked as “TPH soil waste”;

e. one five-gallon container marked as “used TLFA extract reagents”;

f. one five-gallon container marked as “TLFA waste, used reagents”; and

g. two one-gallon containers marked as “used methanol, 80:2.”

33. In the Main Laboratory Building, Chemical Storage Room, Flammable Cabinet

Number 2, Respondent did not characterize numerous one-gallon containers holding explosive residuals and labeled as “used aqueous TNT,” “used LAAP waste with expl,” “aque tech grade TNT, used, exposed to soil,” and “used RDX.”

34. In the Main Laboratory Building, Chemical Storage Room, Flammable Cabinet

Number 6, Respondent did not characterize the following containers of waste:

a. one one-gallon container marked as “waste,” with a product label of “tetrachlorethylene”;

b. one one-gallon container marked as “waste,” with a product label of “benzene”;

c. two one-gallon containers marked as “metals waste, Cd, Cu, Pb, Zn, Cr”;

- d. one one-gallon container marked as "waste";
- e. one one-gallon container marked as "petroleum ether waste";
- f. one one-gallon container marked as "waste," with a product label of "toluene";
- g. one one-gallon container marked as "waste methylene chloride";
- h. one one-gallon container marked as "waste alcohol";
- i. one one-gallon container marked as "barium waste, poison";
- j. one one-gallon container marked as "RDX extraction waste, acetonitrile/RDX"; and
- k. one one-gallon container marked as "FAM waste."

35. In the Instrument Laboratory, Respondent did not characterize the following containers of waste:

- a. one one-gallon container, connected with a tube to a high performance liquid chromatography system ("HPLC"), labeled only with the words "IPA/water, extractions, acetonitrile"; and
- b. one wall cabinet with old column packing material.

36. In the Preparatory Laboratory, Room 176, Fume Hood Number One, Respondent did not characterize the following containers of waste:

- a. one one-gallon container, approximately one-fifth full, marked as "waste only";
- b. one one-gallon container, approximately one-fourth full, marked as "mixed VOCs eluen"; and
- c. one one-gallon container marked as "liquid, trit, comp D, oct, and TNT waste only."

37. In Room 177, Respondent did not characterize numerous 100 ml - 250 ml containers of old atomic absorption standards.

38. In Room 177B, Respondent did not characterize numerous 100 ml - 250 ml containers of old titration chemicals.

39. In Room 177A, in a flammable cabinet below a fume hood, Respondent did not characterize the following containers of waste:

- a. one one-gallon container, approximately one-sixth full, marked as "spent eluent, TCE";
  - b. one one-gallon container, approximately one-fourth full, marked as "wash MeOH, PCE, TCE";
  - c. one one-gallon container marked as "contaminated water, TCE, PCE, benzene";
  - d. one one-gallon container, approximately one-fifth full, marked as "explosive waste";
- and
- e. one one-gallon container, approximately one-fourth full, marked as "VOCs in water, waste."

40. In the Department of Public Works Building, Respondent did not characterize one unlabeled, 55-gallon container that contained an aerosol can crusher, equipped with a carbon filter.

41. In the Frost Effects Research Facility, Respondent did not characterize cloth wipers used in applying and removing Brake Kleen, a product containing tetrachlorethylene and a listed hazardous waste solvent.

42. By failing to conduct the aforementioned hazardous waste determinations, Respondent violated Env-Wm 502.01.

**COUNT II – Failure to properly label containers of universal waste lamps.**

43. Complainant incorporates by reference the allegations in paragraphs 1-42 above.

44. Pursuant to Env-Wm 1112.04, a universal waste handler of lamps must clearly label or mark each lamp or container holding universal waste lamps with any one or more of the following: “Universal Waste – Lamp(s)”; “Waste Lamp(s)”; or “Used Lamp(s).”

45. At the time of the Inspection, Respondent was storing used fluorescent bulbs in containers, without the appropriate universal waste labels, at the Facility.

46. In the Greenhouse Laboratory and Storage Shed, Respondent failed to properly label five boxes of fluorescent bulbs, one of which was labeled as “used,” and the other four of which were unlabeled.

47. In the Trichloroethylene Treatment Facility, Respondent failed to properly label one full box of used fluorescent bulbs.

48. By failing to label or mark the containers of universal waste lamps with the appropriate universal waste labels, Respondent violated Env-Wm 1112.04.

**COUNT III – Failure to properly label containers of universal waste lamps with the date upon which each period of accumulation began.**

49. Complainant incorporates by reference the allegations in paragraphs 1-48 above.

50. Pursuant to Env-Wm 1102.04(a)(2), a universal waste handler accumulating a universal waste must demonstrate the length of time that the waste has been accumulated from the date it becomes a waste by, among other methods, placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste.

51. At the time of the Inspection, Respondent failed to properly label containers of used fluorescent bulbs, which it was storing at the Facility, with the beginning accumulation dates.

52. In the Greenhouse Laboratory and Storage Shed, Respondent failed to properly label five boxes of fluorescent bulbs, one of which was labeled as “used,” and the other four of which were unlabeled, with the beginning accumulation dates.

53. In the Trichloroethylene Treatment Facility, Respondent failed to properly label one full box of used fluorescent bulbs with the beginning accumulation dates.

54. By failing to label the containers of universal waste lamps with the appropriate accumulation dates, Respondent violated Env-Wm 1102.04(a)(2).

**COUNT IV - Failure to label or mark containers with the words “Hazardous Waste” and other words that identify the contents of the container.**

55. Complainant incorporates by reference the allegations in paragraphs 1-54 above.

56. Pursuant to Env-Wm 507.03(a)(1), generators storing hazardous wastes must clearly label or mark containers and tanks used for the storage of hazardous wastes, at the time they are first used to store wastes, with the following information: (a) the words “hazardous waste,” (b) words that identify the contents of the container, and (c) the EPA or state waste number, as applicable.

57. At the time of the Inspection, Respondent did not properly label all containers used for the storage of hazardous wastes at the Facility.

58. In the Soils Microbiology Laboratory, on the floor next to the fume hood, Respondent did not properly label the following containers used for the storage of hazardous wastes:

a. one four-liter glass container used to accumulate HPLC waste, labeled as “NaOH, 1:1”;

and

b. one four-liter glass container used to accumulate HPLC waste, labeled as “used HPLC, Zn, NH<sub>4</sub>, 4/06.”

59. In the Instrument Laboratory, Respondent did not properly label the following containers used for the storage of hazardous wastes:

a. one one-gallon container connected to a HPLC, labeled as “IPA/water, extractions, acetonitrile”; and

b. one unlabeled, one-gallon container connected to a HPLC, identified as hazardous used eluent.

60. By failing to properly label the aforementioned containers used for the storage of hazardous wastes, Respondent violated Env-Wm 507.03(a)(1).

**COUNT V – Accumulation of hazardous waste in an area with a functional floor drain, without secondary containment.**

61. Complainant incorporates by reference the allegations in paragraphs 1-60 above.

62. Pursuant to Env-Wm 507.01(c), hazardous waste containers must not be stored in areas with functional floor drains, unless secondary containment is provided around all hazardous waste container storage areas capable of containing the volume of the largest capacity hazardous waste container present.

63. At the time of the Inspection, Respondent accumulated containers of hazardous waste in an area with a functional floor drain, without secondary containment, at the Facility.

64. In the Soils Microbiology Laboratory, on the floor next to the fume hood, Respondent accumulated the following containers of hazardous waste approximately fifteen feet from a functional floor drain, without secondary containment:

- a. one approximately five-gallon plastic container, about one-tenth full, with a hazardous waste label and a label that read "FAM waste, NaOH, HCl, Hexane, MeOH, MTBE, Acetic Acid"; and
- b. two HPLCs, each connected to a four-liter glass bottle used to accumulate the HPLC waste, one of which was labeled as "NaOH, 1:1," and the other of which was labeled as "used HPLC, Zn, NH<sub>4</sub>, 4/06."

65. By accumulating hazardous waste in an area with a functional floor drain without secondary containment, Respondent violated Env-Wm 507.01(c).

## **VI. ORDER**

Based on the foregoing findings, Respondent is hereby **ORDERED** to comply with the following requirements:

1. Immediately upon receipt of this Complaint, Respondent shall perform hazardous waste determinations for all wastes generated at the Facility, in accordance with Env-Wm 502.01.
2. Immediately upon receipt of this Complaint, Respondent shall properly label all containers of universal waste lamps, in accordance with Env-Wm 1112.04.
3. Immediately upon receipt of this Complaint, Respondent shall properly label all containers of universal waste lamps with the beginning accumulation dates, in accordance with Env-Wm 1102.04(a)(2).
4. Immediately upon receipt of this Complaint, Respondent shall label all containers used for the storage of hazardous wastes in the Facility, in accordance with the requirements of Env-Wm 507.03(a)(1).

5. Immediately upon receipt of this Complaint, Respondent shall provide secondary containment for the hazardous wastes stored in areas with functional floor drains, in accordance with Env-Wm 507.01(c).

6. Within 30 days of receipt of this Complaint, Respondent shall submit to EPA written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements of this Order. The written confirmation also shall contain information regarding the pounds of hazardous waste removed from the Facility and the cost of coming into compliance with the requirements of this Order. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

7. The information requested in this Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

8. Respondent shall submit the above required information and notices to:

Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (SAA)  
Boston, Massachusetts 02114-2023  
ATTN: Andrew Meyer (SER)

9. If Respondent fails to comply with the RCRA requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$32,500 for each day of continued noncompliance.

10. This Complaint shall become effective immediately upon receipt by Respondent.

## **VII. PROPOSED PENALTY**

Based on the nature, circumstances, extent and gravity of the above-cited violations, a civil penalty in the amount of one hundred twelve thousand, nine hundred sixty-seven dollars (\$112,967) is hereby proposed to be assessed against Respondent (see Attachment I to this Complaint explaining the reasoning for this penalty). The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3).

For purposes of determining the amount of any penalty to be assessed, RCRA 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 with specific reference to the RCRA Civil Penalty Policy, dated June 2003. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

<u>COUNT</u>	<u>PENALTY</u>
<u>Generator Violations</u>	
1. Failure to conduct hazardous waste determinations	\$103,428
2. Failure to properly label containers of universal waste lamps	\$386
3. Failure to properly label containers of universal waste lamps with the beginning accumulation date	\$386
4. Failure to properly label or mark containers of hazardous waste	\$386
5. Accumulation of hazardous waste in an area with a floor drain, without secondary containment	\$8,381
<b>TOTAL PROPOSED PENALTY</b>	<b>\$112,967</b>

Payment of the penalty may be made by a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (EPA Docket No. RCRA-01-2008-0060). The check should be forwarded to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

and

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

#### **VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

As provided by Section 3008(b) of RCRA, and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with Part 22. **A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint.** In its answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual

allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure by Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

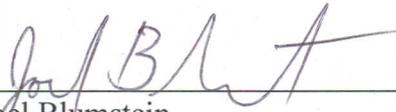
#### **IX. DEFAULT ORDER**

If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

#### **X. SETTLEMENT CONFERENCE**

Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order ("CAFO") by the Regional Judicial Officer, EPA Region I. The issuance of a CAFO shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the CAFO.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To request such a conference in this matter, Respondent should contact Amanda J. Helwig, Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, who is hereby also designated to receive service for Complainant at the above address, at (617) 918-1180.

  
\_\_\_\_\_  
Joel Blumstein  
Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

9/25/08  
\_\_\_\_\_  
Date

## ATTACHMENT I

### **In the Matter of U.S. Army Cold Regions Research and Engineering Laboratory Docket No. RCRA-01-2008-0060 Explanation of Proposed Penalty**

The following represents the penalty calculation and justification for U.S. Army Cold Regions Research and Engineering Laboratory ("Cold Regions" or "the Facility") located in Hanover, New Hampshire addressing violations of certain requirements under the New Hampshire Hazardous Waste Rules, codified at Env-Wm 100-1000, as well as the New Hampshire Requirements for Universal Waste Management, codified at Env-Wm 1100.

A gravity-based penalty is being proposed for the violations in accordance with the RCRA Civil Penalty Policy (the Policy) dated June 2003, as revised on September 21, 2004, and in accordance with the Civil Monetary Inflation Adjustment Rule, which became effective on March 15, 2004. Adjustment factors examined by EPA in determining the amount of the proposed penalty include: economic benefit of non-compliance; history of non-compliance; the degree of willfulness or negligence; good faith efforts; and other unique factors. Adjustments for some of these factors have been deemed appropriate as discussed below.

The alleged violations are based upon observations made by inspectors from the U.S. Environmental Protection Agency ("EPA") during a Compliance Evaluation Inspection conducted at the Facility on April 9 and 10, 2007 ("the Inspection").

The following violations have been documented and included in the complaint issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), against Cold Regions:

#### **1. Failure to perform hazardous waste determinations.**

**Provisions Violated:** Env-Wm 502.01

At the time of the Inspection, Cold Regions stored numerous containers of waste at the Facility for which Cold Regions had not made hazardous waste determinations.

#### **Penalty Assessment**

##### **(a) Potential for Harm - Major**

Justification - The following factors were considered in determining the appropriate level of potential for harm:

Potential for Harm to the Environment – One of the first and most important steps in complying with hazardous waste regulations is conducting adequate hazardous waste determinations. Cold Regions consistently failed to properly conduct adequate hazardous waste determinations, which resulted in avoidance of all the hazardous waste management requirements that flow from determining that a

chemical waste is a hazardous waste. These “flow from” violations are numerous and include basic requirements, such as labeling, dating, and proper disposal. Additionally, Cold Regions’ failure to properly conduct hazardous waste determinations has potentially led to the storage of chemical wastes for a longer period than permitted by the regulations. The longer hazardous wastes are stored on site, the greater the potential for a release of hazardous wastes to the environment.

Potential for Harm to the Regulatory Program – The regulatory program relies on hazardous waste generators to fully evaluate their waste streams before decisions are made about how they should be handled. Cold Regions did not properly evaluate many of the wastes that they were generating to determine if they were hazardous wastes.

(b) Extent of Deviation – Major

Justification – This violation poses a major extent of deviation from the regulatory requirement because the inspection team observed between 80 and 100 containers identified during the inspection as containing waste. The contents in each of these containers were not properly evaluated to determine if they contained hazardous waste.

(c) Penalty Assessment:

(1) Matrix Cell Range (gravity-based penalty): Major/Major  
\$25,791 - \$32,500

Penalty Amount Chosen - \$32,500 (EPA has chosen the high point of the matrix due to the seriousness of the violation)

(2) Multiple/Multi-day Assessment

There were between 80 and 100 containers identified during the inspection as waste that had not been properly evaluated to determine if the contents were hazardous waste. These 80 to 100 containers of waste have been classified into twelve waste categories.<sup>1</sup> Because the violations are so similar in nature, EPA has chosen to assess multi-day penalties for these violations, using the high end of the multi-day matrix for the second through twelfth waste category. The multi-day matrix cell range for a violation that poses a major potential for harm and a major extent of deviation is \$1,290 - \$6,448. The first violation is assessed the full gravity-based penalty.

---

<sup>1</sup> The twelve waste categories are: (1) waste ether, (2) old and/or off-speciation chemical products, (3) high pressure liquid chromatography (HPLC) waste, (4) organic waste, (5) chlorinated waste, (6) unknown waste, (7) metal bearing waste, (8) ignitable waste, (9) reactive waste, (10) mixed organic waste, (11) waste from the crushing of spent aerosol can crusher contents, and (12) total petroleum hydrocarbon (TPH) waste.

First violation	\$ 32,500
Second through 12 <sup>th</sup> violation (11)(\$6,448) =	<u>\$ 70,928</u>
Total Penalty	\$ 103,428

2. **Failure to properly label containers of universal waste lamps.**

**Provisions Violated** – Env-Wm 1112.04

At the time of the Inspection, Cold Regions was storing used fluorescent bulbs in containers, without the appropriate universal waste labels, at the Facility.

**Penalty Assessment**

(a) Potential for Harm - Minor

Justification - The following factors were considered in determining the appropriate level of potential for harm:

Potential for Harm to the Environment – By not properly labeling containers of spent fluorescent bulbs, Cold Regions increased the likelihood that the fluorescent bulbs would not be properly managed as universal waste, potentially leading to breakage and a release of mercury to the environment.

(b) Extent of Deviation - Minor

Justification – This violation poses a minor extent of deviation from the regulatory requirement because the six containers at issue did not contain a large number of spent fluorescent bulbs.

(c) Penalty Assessment:

(1) Matrix Cell Range (gravity-based penalty): Minor/Minor  
 \$129 - \$644  
 Penalty Amount Chosen - \$386

(2) Multiple/Multi-day Assessment  
 This violation is being assessed on a facility-wide basis.

3. **Failure to properly label containers of universal waste lamps with the date upon which each period of accumulation began.**

**Provisions Violated** – Env-Wm 1102.04(a)(2)

At the time of the Inspection, Cold Regions did not properly label all containers of used fluorescent bulbs that it was storing at the Facility with the beginning accumulation dates.

**Penalty Assessment**

- (a) Potential for Harm - Minor

Justification - The following factors were considered in determining the appropriate level of potential for harm:

Potential for Harm to the Environment – By failing to properly date containers of spent fluorescent bulbs, Cold Regions increased the likelihood that the fluorescent bulbs would be stored for greater than the one year limit, which could contribute to unintended releases of mercury.

Potential for Harm to the Regulatory Program – Without proper dating on containers of spent fluorescent bulbs, it is not possible for regulators to determine how long the fluorescent bulbs have been stored at the Facility.

- (b) Extent of Deviation – Minor

Justification – This violation poses a minor extent of deviation from the regulatory requirement because the six containers at issue did not contain a large number of spent fluorescent bulbs.

- (c) Penalty Assessment:

- (1) Matrix Cell Range (gravity-based penalty): Minor/Minor  
\$129 - \$644  
Penalty Amount Chosen - \$386
- (2) Multiple/Multi-day Assessment  
This violation is being assessed on a facility-wide basis.

4. **Failure to label or mark containers with the words “Hazardous Waste” and other words that identify the contents of the container.**

**Provisions Violated – Env-Wm 507.03(a)(1)**

At the time of the Inspection, Cold Regions did not properly label all containers used for the storage of hazardous wastes at the Facility.

**Penalty Assessment**

- (a) Potential for Harm - Minor

Justification - The following factors were considered in determining the appropriate level of potential for harm:

Potential for Harm to the Environment – By failing to properly label containers with the words “Hazardous Waste,” words identifying the contents of the container, and the EPA or state waste number, Cold Regions increased the likelihood that such containers would be improperly managed and that emergency responders would not fully recognize potentially dangerous constituents in these containers. However, the unlabeled containers held less than four gallons of waste.

Potential for Harm to the Regulatory Program – There is regulatory harm associated with the failure to properly label containers of hazardous waste because inspectors are not able to easily determine solely by observation whether container contents are hazardous and what potential hazards they pose.

(b) Extent of Deviation - Minor

Justification – This violation poses a minor extent of deviation from the regulatory requirement because the containers at issue contained less than four gallons in total of hazardous waste.

(c) Penalty Assessment:

(1) Matrix Cell Range (gravity-based penalty): Minor/Minor  
\$129 - \$645  
Penalty Amount Chosen - \$386

(2) Multiple/Multi-day Assessment  
This violation is being assessed on a facility-wide basis.

5. **Accumulation of hazardous waste in an area with a functional floor drain, without secondary containment.**

**Provisions Violated – 507.01(c)**

At the time of the Inspection, Cold Regions accumulated containers of hazardous wastes in an area with a functional floor drain, without secondary containment, at the Facility.

**Penalty Assessment**

(a) Potential for Harm - Moderate

Justification - The following factors were considered in determining the appropriate level of potential for harm:

Potential for Harm to the Environment – In the event that any of the containers at issue had spilled, the contents could flow into the nearby floor drains, which would result in a completely preventable release of hazardous wastes to the environment.

(b) Extent of Deviation - Minor

Justification – This violation poses a minor extent of deviation from the regulatory requirement because, during the Inspection (which covered many laboratories at the Facility), only a small number of containers of hazardous waste were near the floor drain.

(c) Penalty Assessment:

(1) Matrix Cell Range (gravity-based penalty): Moderate/Minor  
\$6,448 - \$10,315  
Penalty Amount Chosen - \$8,381

(2) Multiple/Multi-day Assessment  
This violation is being assessed on a facility-wide basis.