



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

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**BY HAND**

September 30, 2013

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (Mailcode: ORA18-1)  
Boston, MA 02109-3912

Re: In the Matter of Presstek, Inc., Docket No. RCRA-01-2013-0070

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint, Compliance Order, and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kevin P. Pechulis".

Kevin P. Pechulis  
Enforcement Counsel

Enclosures

cc: Stanley E. Freimuth, Chairman, President & CEO, Presstek, Inc.  
Brian Murphy, Manager of Manufacturing Operations, Presstek, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing was delivered in the following manner to the addresses listed below:

Original and One Copy by  
Hand Delivery to:

Wanda I. Santiago  
Regional Hearing Clerk  
EPA Region 1 – New England  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

One Copy (with Part 22 Rules  
enclosed) by Certified Mail  
Return Receipt Requested to:

Stanley E. Freimuth, Chairman, President & CEO  
Presstek, Inc.  
10 Glenville Street, 3<sup>rd</sup> Floor,  
Greenwich, CT 06831

One Copy (with Part 22 Rules)  
by overnight delivery to:

Brian Murphy, Manager of Manufacturing Operations,  
Presstek, Inc.  
55 Executive Drive  
Hudson, NH 03051

Date : September 30, 2013

Signed: Kevin P. Pechulis

Kevin P. Pechulis  
Enforcement Counsel  
Office of Environmental Stewardship (OES04-3)  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Phone (dir.): 617-918-1612  
E-mail: pechulis.kevin@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

RECEIVED  
2013 SEP 30 A 11:51  
REGIONAL OFFICE OF  
GENERAL HEARING CLERK

In the Matter of: ) EPA Docket No. RCRA-01-2013-0070  
)  
PRESSTEK, INC. ) **COMPLAINT, COMPLIANCE**  
55 Executive Drive ) **ORDER AND NOTICE OF**  
Hudson, NH 03051 ) **OPPORTUNITY FOR HEARING**  
EPA ID No. NHD500021738 )  
)  
Respondent )  
)  
Proceeding under Section 3008(a) of the )  
Resource Conservation and Recovery )  
Act, 42 U.S.C. § 6928(a) )

**COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) issues this Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) 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), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations (“C.F.R.”) Part 22 (“Part 22”).
2. This Complaint alleges that Presstek, Inc. (“Presstek” or “Respondent”) violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, 40 C.F.R. Parts 262 and 265, New Hampshire Statutes, Chapter 147-A, and the New Hampshire Code of Administrative Rules, Sections Env-Hw 502.01, 507.01, 507.03, 509.02, and 511.01.

3. The Notice of Opportunity for Hearing section of this Complaint describes Respondent's opportunity to file an Answer to this Complaint and request a formal hearing to contest any material fact set forth in this Complaint.
4. Notice of commencement of this action has been given to The State of New Hampshire ("New Hampshire") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. The information requested in this Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 et seq.

## **II. NATURE OF ACTION**

6. This is a federal enforcement action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain civil penalties and compliance. Specifically, Complainant seeks civil penalties pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for Respondent's violations of regulations promulgated and authorized pursuant to RCRA. Complainant also seeks compliance pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with RCRA and its implementing regulations.

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

7. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921 et seq., empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270.

8. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are regulated as “hazardous wastes.” These regulations are set forth at 40 C.F.R. Part 261.
9. Section 3002 of RCRA, 42 U.S.C. § 6922, required EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and relate to such matters as determining whether a waste is hazardous, container management, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.
10. In 1984, Congress substantially amended RCRA with the Hazardous and Solid Waste Amendments (“HSWA”) to, among other things: (a) restrict the disposal of hazardous wastes on the land or in landfills; and (b) change the method for determining whether wastes are toxic (and therefore hazardous). See RCRA Sections 3004(c)-(p), 42 U.S.C. §§ 6924(c)-(p). The HSWA enacted new provisions in Section 3004 of RCRA, including Section 3004(n) of RCRA, 42 U.S.C. § 6921(n). Pursuant to RCRA Section 3004(n), EPA has promulgated final rules to establish air emission standards for tanks, containers, and surface impoundments in order to monitor and control air emissions from hazardous waste treatment, storage and disposal facilities. These regulations are codified at 40 C.F.R. Part 265, Subparts BB and Subpart CC. EPA has not authorized New Hampshire to administer these Subpart BB and Subpart CC regulations.
11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

12. In 1984, EPA granted New Hampshire final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program. See 49 Fed. Reg. 49092 (December 18, 1984). Final authorization of the New Hampshire hazardous waste program became effective on January 3, 1985.
13. Effective January 13, 1995 and April 28, 2006, New Hampshire received final authorization for revisions to its hazardous waste management program. See 59 Fed. Reg. 56397 (November 14, 1994), 71 Fed. Reg. 9727 (February 27, 2006), and 62 Fed. Reg. 52951 (October 10, 1997) (correction of effective date).
14. 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 (Sections 3001-3023), 42 U.S.C. §§ 6921-6939e. 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. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirements of Subtitle C of RCRA, including the federally-authorized New Hampshire hazardous waste program and any federal regulations promulgated pursuant to the HSWA for which New Hampshire has not received final authorization, by issuing an order assessing a civil penalty, and/or by issuing an order requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA.
15. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), authorizes EPA to commence a civil action to enforce the requirements of the federally-approved New Hampshire hazardous waste

program. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(2), authorizes EPA to commence a civil action to enforce the requirements of 40 C.F.R. Part 265, Subparts BB and CC.

16. Sections 3008(a)(3) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and 6928(g), provide 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. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and EPA’s regulations implementing the DCIA, promulgated at 40 C.F.R. Part 19, the maximum civil penalty for violations of Subtitle C of RCRA occurring after January 12, 2009 has been raised to \$37,500 per day for each violation.

#### **IV. GENERAL AND FACTUAL ALLEGATIONS**

17. Presstek is a Delaware corporation with its principal office located at 10 Glenville Street, 3Fl, Greenwich, CT 06831.
18. As a corporation, Presstek is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and New Hampshire Code of Administrative Rules, Section Env-Hw (“Env-Hw”) 104.23.
19. At all times relevant to the allegations set forth in this Complaint, Presstek has been and is the “owner,” as defined in 40 C.F.R. § 260.10 and Env-Hw 104.20, of a facility located at 55 Executive Drive, Hudson, New Hampshire 03051 (“Facility”).
20. At all times relevant to the allegations set forth in this Complaint, Presstek has been and is the “operator,” as defined in 40 C.F.R. § 260.10 and Env-Hw 104.19, of the Facility.

21. At all times relevant to the allegations set forth in this Complaint, Presstek has been and is manufacturing imaging equipment and printing plates for the graphics arts industry at the Facility.
22. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), on June 10, 1997, Presstek filed notification that it was a generator of hazardous waste. The Facility bears the EPA ID No. NHD500021738. Presstek submitted its most recent amended notification on February 3, 2012.
23. At all times relevant to this Complaint, Presstek generated and continues to generate “hazardous waste,” as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and Env-Hw 103.62, at the Facility, including solvent-containing wastes that are ignitable, and acidic and caustic wastes that are corrosive.
24. At all times relevant to the allegations set forth in this Complaint, Presstek has been and is: (1) a “generator,” as that term is defined in 40 C.F.R. § 260.10 and Env-Hw 103.58; and (2) a “full quantity generator,” as that term is defined in Env-Hw 103.57, of hazardous waste.
25. Accordingly, as a full quantity generator of hazardous waste, Presstek is subject to the requirements set forth at Env-Hw 500-514, as well as the federal regulations applicable to generators promulgated pursuant to the HSWA at 40 C.F.R. Parts 260-271, 273 and 279. Further, Presstek is subject to the federal hazardous waste regulations set forth in 40 C.F.R. Part 265, Subparts BB and CC, as referenced by 40 C.F.R. § 262.34(a).
26. On August 23, 2012, two authorized representatives of EPA Region 1 (“EPA Inspectors”) conducted a RCRA compliance evaluation inspection of the Facility (the “Inspection”), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to examine Presstek’s compliance with



federal and federally-authorized state hazardous waste regulations. Based on the Inspection, the review of documents and other information provided by Presstek, and the review of other documents and information, Complainant has determined that Respondent has violated RCRA and its implementing federal and federally-authorized state regulations.

27. On February 19, 2013, EPA sent Presstek a notice of potential violation letter that described the issues that the EPA Inspectors observed during the Inspection.
28. After the Inspection, Presstek retained ESS Group, Inc. ("ESS") to assist with addressing the issues described by EPA in the February 19, 2013 notice of potential violation letter.
29. In a letter dated May 28, 2013, ESS provided a letter to EPA to inform EPA of the actions Presstek had taken to address the issues described by EPA in the February 19, 2013 notice of potential violation letter (the "May 28, 2013 ESS Letter").

## **V. VIOLATIONS**

### **COUNT I: Failure to Conduct Adequate Hazardous Waste Determinations**

30. The allegations of Paragraphs 1-29 are re-alleged as if fully set forth herein.
31. Pursuant to Env-Hw 502.01, all generators of waste, as set forth in Env-Hw 104.80, shall determine if that waste is a hazardous waste as set forth in Env-Hw 401.01.
32. Pursuant to Env-Hw 502.01(c), if a waste is not listed in Env-Hw 402, a generator shall determine whether the waste is identified in Env-Hw 403 or constitutes a hazardous waste mixture or other material regulated under Env-Hw 404 by testing the waste according to the hazardous waste determination methods set forth in Env-Hw 401.04 and Env-Hw 403 or applying knowledge of the hazardous nature or characteristics of the waste based on the materials or processes used to generate the waste.

33. At the time of the Inspection, Presstek was storing the following containers of wastes in the chemistry laboratory at the Facility, which were not being managed as hazardous waste:
- (A) under a laboratory bench were three cardboard boxes labeled "A", "B", and "C" that contained containers of chemicals; (B) across from the laboratory bench was a fourth box labeled "D", which had containers of chemicals inside and around it. During the Inspection, a compliance manager for the Facility provided the EPA Inspectors with lists of the chemicals contained in and around each box. The list for the box labeled "A" indicated that it contained six chemicals that had flash points of less than 74 degrees Fahrenheit. The chemicals surrounding the box labeled "D" included Silcolase 7420, which has a flash point of 32 degrees Fahrenheit. At the time of the Inspection, the Facility's laboratory chemist stated that the chemicals located in and around the boxes labeled "A", "B", "C", and "D" were wastes. At the time of the Inspection, the EPA Inspectors asked Presstek staff to provide waste determination documentation for the wastes described in this Paragraph, but Presstek did not provide any such documentation.
34. Pursuant to Env-Hw 403.03, a waste is classified as an ignitable hazardous waste under the New Hampshire hazardous waste rules if a representative sample of the waste is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees Centigrade (140 degrees Fahrenheit) as determined by one of the methods described in Env-Hw 403.03(b)(1). Accordingly, chemicals contained in and around the boxes labeled "A" and "D" in the laboratory were hazardous waste because they exhibited the characteristic of ignitability.

35. At the time of the Inspection, Presstek stored numerous aerosol cans throughout the Facility, including aerosol cans that contained chlorinated solvents and flammable materials such as trichloroethylene, tetrachloroethylene, petroleum naphtha, isopropyl alcohol ("IPA"), heptane, propanol and methyl propane. At the time of the Inspection, an operations supervisor for the Facility stated that the Facility has never disposed of aerosol cans as hazardous waste and the Facility does not have a waste profile for aerosol cans. Rather, the operations supervisor for the Facility stated that the Facility disposes of the aerosol cans as non-hazardous waste. Aerosol cans that contain the materials described above in this Paragraph may be hazardous because they contain hazardous wastes or because they exhibit the hazardous waste characteristic of reactivity. See Env-Hw 403.05 and 403.06.
36. At the time of the Inspection, Presstek stored one 55-gallon drum in the Facility's hazardous waste storage area that was full, but its label stated that it was an empty drum last containing a non-hazardous waste. At the time of the Inspection, the compliance manager for the Facility stated that the contents of the 55-gallon drum were unknown, and that the drum contained waste.
37. Presstek failed to determine whether the following wastes at the Facility were hazardous wastes: (a) the laboratory wastes contained in the boxes labeled "A" and "D" described in Paragraph 33 above; (b) aerosol cans, as described above in Paragraph 35; and (c) the waste stored in the 55-gallon drum described in Paragraph 36 above.
38. Presstek's failure to determine whether the wastes at the Facility described in Paragraphs 33 - 36 above were hazardous waste constitutes violations of Env-Hw 502.01.

**COUNT II: Failure to Comply with Subpart CC Air Emission Regulations**

39. The allegations of Paragraphs 1-38 are re-alleged as if fully set forth herein.
40. As a generator that stores hazardous waste in tanks and containers for 90 days or less at its Facility, Presstek is required to comply with the requirements of 40 C.F.R. Part 265, Subpart CC—Air Emission Standards for Tanks, Surface Impoundments and Containers (“Subpart CC”), as referenced by 40 C.F.R. § 264.34(a). See 40 C.F.R. § 265.1080(a). The Subpart CC requirements are set out at 40 C.F.R. §§ 265.1080 - 265.1091.
41. Subpart CC requires, among other things, that owners and operators of hazardous waste storage tanks subject to the Subpart CC regulations must: comply with waste determination procedures to determine average volatile organic concentration; control air pollutant emissions from each tank in accordance with applicable Subpart CC standards; implement a plan and schedule to perform the inspections and monitoring required by the applicable Subpart CC standards; and prepare and maintain various records related to air emission controls for subject tanks, including tank identification numbers, Subpart CC inspection dates, and descriptions of any detected defects and corrective actions regarding them. See 40 C.F.R. §§ 265.1080(a), 265.1083, 265.1084, 265.1085, 265.1089(b), and 265.1090(b)(1).
42. At the time of the Inspection, there were two tanks that were used to store hazardous waste at the Facility. The first tank, which Presstek numbered as Tank 1720, is an approximately 50-gallon tank located inside an enclosure adjacent to the coating head at the Facility. Tank 1720, which was not affixed with a label at the time of the Inspection, is a “day” tank that receives heptane-containing waste from the manufacturing process at the Facility; specifically, from the coating head and the lines that feed the coating head. At the end of each working day, the

heptane-containing waste stored in Tank 1720 is pumped directly to the main hazardous waste tank at the Facility, which Presstek numbered as Tank 2120. The pipes, pumps and valves that connect Tank 1720 to Tank 2120 are located in the Valve/Mix Room at the Facility, which is located adjacent to the coating line enclosure. The pipe that is used to convey hazardous waste from Tank 1720 to Tank 2120 is labeled “waste solvent”; the pump for this pipe was not labeled with a number at the time of the Inspection, but the three valves connected to the pump were numbered. At the time of the Inspection, Tank 2120, which was located in the hazardous waste storage area for the Facility, was labeled with a hazardous waste label that lists “waste heptane, ignitable, D001, solvent coater waste with a profile #CH113136.” Tank 2120 has a volume of approximately 990-gallons, and is equipped with a pressure relief valve that is set for over-pressure release only. The pressure relief valve vents to a pipe that connects to Relief Tank 2400, which in turn vents directly to the atmosphere without any treatment. At the time of the Inspection, the heptane-containing waste that was stored in Tank 2120 was periodically transferred into containers, and then shipped off-site as hazardous waste with the D001 hazardous waste code.

43. At the time of the Inspection, Presstek used two tanks to store hazardous wastes. These two tanks (identified by Presstek-assigned tank numbers), their size (in gallons), and the types of hazardous wastes stored within them were as follows:

	<u>Tank No.</u>	<u>Size (gallons)</u>	<u>Stored Hazardous Waste</u>
1.	1720	50 gallons	Heptane-containing waste
2.	2120	990 gallons	Heptane-containing waste

44. According to the Facility's waste profile for the heptane-containing waste that is stored in Tanks 1720 and 2120, the heptane-containing waste is a hazardous waste that contains approximately 98% heptane. The heptane-containing waste has an average volatile organic concentration in excess of 500 parts per million by weight (ppmw) and an organic concentration in excess of 10% by weight.
45. The Facility's two hazardous waste storage tanks described in Paragraph 42 above are used to store hazardous waste with an average volatile organic concentration in excess of 500 parts per million by weight (ppmw) and are subject to the air emission control standards contained in 40 C.F.R. § 265.1085, and Presstek is required to comply with the above-described requirements for the tanks.
46. At the time of the Inspection, Presstek did not comply with the the waste determination procedures to determine average volatile organic concentration of the wastes stored in each tank described in Paragraph 42 above. Accordingly, Presstek violated the Subpart CC waste determination procedure requirements at 40 C.F.R. § 265.1084.
47. At the time of the Inspection, Presstek did not control air pollutant emissions from each tank described in Paragraph 42 above in accordance with the applicable Subpart CC standards specified in 40 C.F.R. § 265.1085. Accordingly, Presstek violated the applicable Subpart CC air pollutant emission requirements for tanks at 40 C.F.R. § 265.1085.
48. During the Inspection, the EPA Inspectors reviewed Presstek's RCRA compliance records and found that Presstek had no written plan or schedule for performing Subpart CC inspections and monitoring for either of the Facility's two hazardous waste storage tanks. Accordingly, Presstek violated Subpart CC requirements at 40 C.F.R. § 265.1089(b).

49. At the time of the Inspection, Presstek's compliance records contained no records of tank identification numbers, Subpart CC inspection dates, or descriptions of defects or corrective actions, for either of the Facility's two hazardous waste tanks. Accordingly, Presstek violated Subpart CC requirements at 40 C.F.R. § 265.1090(b)(1).

**COUNT III: Failure to Comply with Subpart BB Leak Detection and Repair Standards for Equipment Associated with Hazardous Waste Tanks**

50. The allegations of Paragraphs 1-49 are re-alleged as if fully set forth herein.
51. As a generator that routinely accumulates hazardous wastes with an organic concentration in excess of 10% by weight in tanks and containers for 90 days or less at its Facility, Presstek is required to comply with the requirements set out in 40 C.F.R. Part 265, Subpart BB—Air Emissions Standards for Equipment Leaks (“Subpart BB”), as referenced by 40 C.F.R. § 264.34(a). The Subpart BB requirements are set out at 40 C.F.R. §§ 265.1050 - 265.1079.
52. Subpart BB requirements apply to equipment associated with hazardous waste storage tanks if the equipment contains or contacts hazardous wastes with organic concentrations of at least 10% by weight and the wastes are being stored for 90 days or less. See 40 C.F.R. § 264.1050(b)(3). The “equipment” subject to Subpart BB is defined at 40 C.F.R. § 264.1031 as including valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges and other connectors. See 40 C.F.R. § 264.1051.
53. The waste listed in Paragraph 44 above has an organic concentration of at least 10% by weight, and is stored in tanks for 90 days or less. Accordingly, Presstek is subject to Subpart BB for the above-listed equipment associated with each of the Facility's two hazardous waste storage tanks.

54. Subpart BB requires that each piece of equipment to which Subpart BB applies must be marked in such a manner that it can be readily distinguished from other pieces of equipment. See 40 C.F.R. § 265.1050(c). Without such markings, facility personnel and emergency responders would not know whether particular pipes, valves or flanges carried hazardous wastes.
55. At the time of the Inspection, as described in Paragraph 42 above only certain equipment associated with Tanks 1720 and 2120 was marked in such a manner that it could be readily distinguished from other pieces of equipment. In particular, equipment that included pipes, pumps and pressure relief devices associated with Tanks 1720 and 2120 was not marked in such a manner that it could be readily distinguished from other pieces of equipment. Accordingly, Presstek violated Subpart BB requirements at 40 C.F.R. § 265.1050(c).
56. Subpart BB also requires owners and operators to create, for each piece of Subpart BB equipment, an equipment identification number. This identification number, together with the approximate location and type of equipment, the percent-by-weight total organics in the hazardous waste stream at the equipment, the hazardous waste state (gas/vapor or liquid), and method of compliance with Subpart BB, must be recorded in the facility operating log. See 40 C.F.R. § 265.1064(b).
57. At the time of the Inspection, Presstek's RCRA compliance records showed that Presstek had not recorded any of the above-listed information required by 40 C.F.R. § 265.1064(b) in the facility operating log. Accordingly, Presstek violated Subpart BB requirements at 40 C.F.R. § 265.1064(b).



**COUNT IV: Failure to Have an Adequate Contingency Plan**

58. The allegations of Paragraphs 1-57 are re-alleged as if fully set forth herein.
59. Pursuant to Env-Hw 509.01, all full quantity generators, as set forth in Env-Hw 503.02, shall comply with the accumulation and storage requirements in Env-Hw 509.02 and Env-Hw 509.03. Pursuant to Env-Hw 509.02(a)(5), a full quantity generator must comply with the Contingency Plan and Emergency Procedure requirements of 40 C.F.R. Part 265, Subpart D.
60. Pursuant to 40 C.F.R. § 265.51(a), which is included within 40 C.F.R. Part 265, Subpart D, a full quantity generator must have a contingency plan for its facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil or surface water.
61. Pursuant to 40 C.F.R. § 265.52(a), the contingency plan must describe the actions facility personnel must take to comply with 40 C.F.R. §§ 265.51 and 265.56 (requirements for emergency procedures) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil or surface water at the facility.
62. Pursuant to 40 C.F.R. § 265.52(c), the contingency plan must describe arrangements agreed to by local police and fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.
63. Pursuant to 40 C.F.R. § 265.52(d), the contingency plan must list names, addresses, and office and home phone numbers of all persons qualified to act as emergency coordinator and the list must be kept up to date. If more than one person is listed, one person must be named as a

primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates.

64. Pursuant to 40 C.F.R. § 265.52(e), the contingency plan must include a list of all emergency equipment at the facility, which must be kept up to date, and must include the location and a physical description of each item on that list and a brief outline of its capabilities.
65. Pursuant to 40 C.F.R. § 265.52(f), the contingency plan must include an evacuation plan for facility personnel. The plan must describe signal(s) to be used to begin an evacuation, evacuation routes, and alternate evacuation routes.
66. Pursuant to 40 C.F.R. § 265.56, the contingency plan must describe the actions that emergency coordinator must take whenever there is an imminent or actual emergency situation, including when there is a release, fire or explosion.
67. At the time of the Inspection, the Facility had a hazardous waste contingency plan dated March 21, 2011, but the contingency plan was missing several required elements and included conflicting information on who to call in case of an emergency and what action should be taken by whom in the event of an emergency. The contingency plan was missing the following required elements: (A) evacuation information and evacuation routes, including alternate evacuation routes, (B) emergency equipment and decontamination equipment locations, where this equipment is required, and the capabilities of such equipment, and (C) emergency procedures that the emergency coordinator will take in the event of an imminent or actual emergency situation, including a release, fire or explosion. The contingency plan also contained conflicting information regarding who to call in the event of an emergency at the Facility. Page 7 of Section VI of the Facility's contingency plan identifies the phone number

to call in an emergency as 7-911, but on page 12 of Section VI, the contingency plan identifies the phone number to call in an emergency as "0". Further, the information contained in the contingency plan regarding who to call in the event of an emergency was inconsistent with signs posted in the Facility's hazardous waste storage area, which specified that a local emergency clean-up company, Clean Harbors, should be called in the event of a spill.

68. Accordingly, Presstek's failure to maintain a hazardous waste contingency plan that complies with all requirements of 40 C.F.R. §§ 265.51, 265.52 and 265.56, as described in Paragraph 67 above, constitutes violations of Env-Hw 509.02(a)(5), which incorporates by reference 40 C.F.R. §§ 265.51, 265.52 and 265.56.

**COUNT V: Failure to Have an Adequate Personnel Training Program**

69. The allegations of Paragraphs 1-68 are re-alleged as if fully set forth herein.
70. Pursuant to Env-Hw 509.01, all full quantity generators, as set forth in Env-Hw 503.02, shall comply with the accumulation and storage requirements in Env-Hw 509.02 and Env-Hw 509.03. Pursuant to Env-Hw 509.02(a)(2), a full quantity generator must comply with the personnel training requirements of 40 C.F.R. § 265.16.
71. Pursuant to 40 C.F.R. § 265.16(a)(1), employees who manage hazardous wastes must complete a hazardous waste management training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA.
72. Pursuant to 40 C.F.R. § 265.16(a)(2), the training program must be directed by a person trained in hazardous waste management procedures and must include instruction that teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed.

73. Pursuant to 40 C.F.R. § 265.16(a)(3), the training program must, at a minimum, be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems.
74. At the time of the Inspection, Presstek had a training matrix for various personnel that require training at the Facility. Since 2010, Presstek has used an on-line hazardous waste training course, and a training supplement that includes three slides that pertain to accumulation of hazardous wastes in satellite accumulation areas. Neither the on-line hazardous waste training course nor the training supplement covers the specifics of the New Hampshire hazardous waste regulations, or the specific circumstances of the emergency procedures, equipment and systems for the Facility.
75. At the time of the Inspection, the Facility did not possess records that documented personnel training on the Facility's hazardous waste contingency plan.
76. Accordingly, Presstek's failure to maintain an adequate hazardous waste training program for its Facility personnel during calendar years 2010 - 2012, as described above in Paragraphs 74 - 75, violates Env-Hw 509.02(a)(2), which incorporates by reference 40 C.F.R. § 265.16.

**COUNT VI: Failure to Provide Adequate Personnel Training**

77. The allegations of Paragraphs 1-76 are re-alleged as if fully set forth herein.
78. Pursuant to Env-Hw 509.01, all full quantity generators, as set forth in Env-Hw 503.02, shall comply with the accumulation and storage requirements in Env-Hw 509.02 and Env-Hw 509.03. Pursuant to Env-Hw 509.02(a)(2), a full quantity generator must comply with the personnel training requirements of 40 C.F.R. § 265.16.

79. Pursuant to 40 C.F.R. § 265.16(a)(1), employees who manage hazardous wastes must complete a hazardous waste management training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA.
80. Pursuant to 40 C.F.R. § 265.16(c), employees who manage hazardous waste must complete an annual review of the hazardous waste management training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA.
81. Pursuant to 40 C.F.R. §§ 265.16(d)(3) and (4), a full quantity generator must maintain records at its facility that describe the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job, describe the type and amount of both introductory and continuing annual training that will be given to each person listed, and document that the training required has been given to, and completed by, such facility personnel.
82. At the time of the Inspection, Presstek's training records indicated that the following Facility personnel did not complete the required annual hazardous waste training in 2011: Jerry Langlois and Glenn Solomon, both of whom sign hazardous waste manifests as a part of their duties, and both of whom completed the required training in 2010.
83. Accordingly, Presstek's failure to provide hazardous waste training to the employees at the Facility, as described above in Paragraph 82, violates Env-Hw 509.02(a)(2), which incorporates by reference 40 C.F.R. § 265.16.

**COUNT VII: Failure to Segregate Incompatible Wastes**

84. The allegations of Paragraphs 1-83 are re-alleged as if fully set forth herein.
85. Pursuant to Env-Hw 509.01, full quantity generators must comply with the accumulation and storage requirements in Env-Hw 509.02 and 509.03.
86. Pursuant to Env-Hw 509.02(a)(6), full quantity generators must comply with the container standards in 40 C.F.R. Part 265, Subpart I.
87. Pursuant to 40 C.F.R. § 265.177(c), which is contained within 40 C.F.R. Part 265, Subpart I, a container storing a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
88. At the time of the Inspection, Presstek stored three containers that were used to store hazardous waste in satellite accumulation area number 1, which was located in the Digital Imaging Press Manufacturing ("DPM") Assembly Area of the Facility. The first container was a 55-gallon drum that was labeled "caustic, developer, D002." The second container was a 55-gallon drum that was labeled "waste fixer, acidic, D002, D011." The third container was a five-gallon container that was labeled "press wash, D001." There was no means of segregating or protecting the hazardous waste containers stored in satellite accumulation area number 1 of the Facility.
89. Pursuant to Env-Hw 403.03(a), a waste that exhibits the characteristic of ignitability but is not listed as a hazardous waste in Env-Hw 402.04(b), Env-Hw 402.05(b), Env-Hw 402.06(a) or Env-Hw 402.07(a) and is not a mixture under Env-Hw 404.01(a) shall be assigned the EPA hazardous waste number of D001.

90. Pursuant to Env-Hw 403.04(a), a waste that exhibits the characteristic of corrosivity but is not listed as a hazardous waste in Env-Hw 402.04(b), Env-Hw 402.05(b), Env-Hw 402.06(a) or Env-Hw 402.07(a) and is not a mixture under Env-Hw 404.01(a) shall be assigned the EPA hazardous waste number of D002 if it meets the criteria set forth in (b)(1) or (2) of Env-Hw 403.04, and the NH hazardous waste number of NH02 if it meets the criteria set forth in (b)(3) of Env-Hw 403.04.
91. Pursuant to 40 C.F.R. Part 265, Appendix V, acidic and caustic D002 corrosive hazardous wastes are incompatible because they have the potential to create heat generation and violent reaction; and D002 corrosive hazardous wastes and D001 ignitable hazardous wastes are incompatible because they have the potential to create heat and fire.
92. Accordingly, Presstek's failure to separate or protect containers storing hazardous waste from containers storing incompatible waste or other materials, as described above in Paragraph 88, constitutes a violation of Env-Hw 509.02(a)(6), which incorporates by reference 40 C.F.R. § 265.177(c).

**COUNT VIII: Failure to Ensure Hazardous Waste Containers Remain Closed**

93. The allegations of Paragraphs 1-92 are re-alleged as if fully set forth herein.
94. Pursuant to Env-Hw 507.01(a)(3), all hazardous wastes must be placed in containers or tanks that remain closed at all times except when wastes are being added or removed.
95. At the time of the Inspection, in the chemistry laboratory at the Facility, Presstek stored an open five-gallon container that, according to its label, contained the following hazardous wastes: "MEK/Heptane, Toxic/Ignitable, D001, D035, F001." Presstek's Facility personnel were not adding waste to or removing waste from this container at the time of the Inspection.

96. At the time of the Inspection, in the satellite accumulation area number 2 at the Facility, which is located immediately outside the enclosure at the end of the coating line where the coating head is located, Presstek stored an open five-gallon container that, according to its label, contained hazardous waste with the following waste codes: "D001, D035." Presstek's Facility personnel were not adding waste to or removing waste from this container at the time of the Inspection.
97. Accordingly, Presstek violated Env-Hw 507.01(a)(3) by failing to ensure that the containers of hazardous wastes described above in Paragraphs 95 and 96 were closed except when adding or removing wastes from the containers.

**COUNT IX: Failure to Properly Label Hazardous Waste Tanks**

98. The allegations of Paragraphs 1-97 are re-alleged as if fully set forth herein.
99. Pursuant to Env-Hw 507.03(a)(1)(b), (c) and (d), generators of hazardous waste must clearly label containers or tanks used for the storage of hazardous waste with the words "hazardous waste," words that identify the contents of the tank, and the EPA or state waste number, at the time they are first used to store such wastes.
100. At the time of the Inspection, in the enclosure adjacent to the coating head at the Facility, Presstek stored heptane-containing waste in Tank 1720, which did not have any label. At the time of the Inspection, Presstek's compliance manager stated that the heptane-containing wastes stored in Tank 1720 are pumped to the main hazardous waste tank at the Facility, Tank 2120 which is labeled as a hazardous waste tank, at the end of each working day.



101. At all times relevant to this Complaint, the heptane-containing waste that was stored in Tank 1720, as described in Paragraph 100 above, was “hazardous waste” as defined in Env-Hw 103.62.
102. Accordingly, Presstek violated Env-Hw 507.03(a)(1)(b) by failing to properly label the tank described in Paragraph 100 above, which the Facility uses for the storage of hazardous waste, with the words “hazardous waste,” words that identify the contents of the tank, and the EPA or state waste number.

**COUNT X: Failure to Operate the Facility in a Manner that Minimizes Releases**

103. The allegations of Paragraphs 1-102 are re-alleged as if fully set forth herein.
104. Pursuant to Env-Hw 509.02(a)(4), a full quantity generator must comply with the requirements of 40 C.F.R. Part 265, Subpart D, and pursuant to 40 C.F.R § 265.31, which is included within 40 C.F.R. Part 265, Subpart D, a full quantity generator must maintain and operate its facility in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous wastes or hazardous constituents to air, soil, groundwater or surface water which could threaten human health or the environment.
105. At the time of the Inspection, the Facility’s hazardous waste storage area, which has a floor that slopes from west to east, had a floor sump located along the east wall of the area that contained standing water. At the time of the Inspection, a Facility operation supervisor explained to the EPA Inspectors that the condenser for the Facility’s vacuum system, which is located on the west side of the hazardous waste storage area, needs to be periodically drained of water. The Facility operation supervisor further explained that when the condenser needs to be drained, Facility personnel open the valve on the condenser and let the water flow across the

floor of the hazardous waste storage area to the sump. The path of the water from the condenser to the sump takes the water through the area where hazardous waste containers are stored in the hazardous waste storage area. At the time of the Inspection, the EPA Inspectors observed rust stains in ring patterns on the floor in the vicinity of the containers being stored in the area. The EPA Inspectors also observed that the containers stored in the hazardous waste storage area at the time of the Inspection were rusted on the bottoms of the containers, and there was water under the containers.

106. Accordingly, due to the presence of rusted containers in the hazardous waste storage area, and circumstances that would continue to cause containers stored in the hazardous waste storage area to corrode, Presstek violated Env-Hw 509.02(a)(4) and 40 C.F.R § 265.31, by failing to maintain and operate its facility in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous wastes or hazardous constituents to air, soil, groundwater or surface water which could threaten human health or the environment.

#### **VII. COMPLIANCE ORDER**

107. Based on the foregoing findings, Respondent is hereby ordered to comply with the requirements set out below in this Compliance Order, within the time frames provided.
108. Within 30 days of receipt of this Complaint, Respondent shall conduct a hazardous waste determination regarding the wastes described in Paragraphs 33 - 36 above, in accordance with Env-Hw 502.01.
109. Within 30 days of receipt of this Complaint, Respondent shall review and revise its hazardous waste contingency plan so that the plan complies with the requirements of Env-Hw 509.02(a)(5) and 40 C.F.R. §§ 265.51, 265.52, and 265.56.

110. Within 30 days of receipt of this Complaint, Respondent shall review and revise its hazardous waste personnel training program so that the program complies with all applicable requirements of Env-Hw 509.02(a)(2) and 40 C.F.R. § 265.16.
111. Immediately on receipt of this Complaint, Respondent shall segregate all incompatible hazardous waste containers stored in the Facility's satellite accumulation area number 1, which is located in the DPM Assembly Area, in accordance with Env-Hw 509.02(a)(6) and 40 C.F.R. § 265.177(c).
112. Immediately on receipt of this Complaint, Respondent shall ensure that all hazardous waste containers are closed except when wastes are being added or removed from the containers in accordance with Env-Hw 507.01(a)(3).
113. Immediately on receipt of this Complaint, Respondent shall properly label all hazardous waste tanks in accordance with Env-Hw 507.03(a)(1).
114. Within 60 days of receipt of this Complaint, with regard to hazardous waste tank air emission standards, Respondent shall comply with the waste determination procedures, control air pollutant emissions from subject tanks in accordance with applicable 40 C.F.R. Part 265, Subpart CC standards, establish and maintain all required records for hazardous waste tanks subject to air emission controls, including tank identification numbers, inspection records, and descriptions of detected defects and corrective actions; shall develop and implement a written plan and schedule to perform all required inspections and monitoring; and shall otherwise comply with all applicable requirements of 40 C.F.R. Part 265, Subpart CC.
115. Within 60 days of receipt of this Complaint, with regard to leak detection and repair standards for equipment associated with hazardous waste tanks, Respondent shall mark each piece of

equipment in a such a manner that it can be readily distinguished from other pieces of equipment; shall establish an identification number, together with various other information, in the facility operating log; and shall otherwise comply with all applicable requirements of 40 C.F.R. Part 265, Subpart BB.

116. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any supporting documentation) or noncompliance with the requirements set forth in Paragraphs 108 through 115 above. Any notice of noncompliance with the requirements of Paragraph 108 through 115 shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance shall in no way excuse the noncompliance.

117. Respondent shall submit the copies of any information, reports, and/or notices required by this Compliance Order to:

Richard Piligian  
Environmental Scientist  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES05-1  
Boston, MA 02109-3912

and

Kevin Pechulis, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, MA 02109-3912

118. If Respondent fails to comply with the requirements of this Compliance Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement

action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.

119. This Compliance Order shall become effective immediately upon receipt by Respondent.
120. In accordance with 40 C.F.R. § 22.37(b), this Compliance Order shall automatically become a final order unless, no later than 30 days after the Compliance Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.
121. Upon receipt of a compliance order issued under RCRA Section 3008(a), 42 U.S.C. § 6928(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. 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. Part 22.

#### **VII. PROPOSED PENALTY**

122. The civil penalty proposed below has been determined in accordance with Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). In determining the amount of any RCRA penalty to be assessed, Section 3008(a) requires EPA to take into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. To develop the proposed penalty for the violations cited in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Complaint. The Penalty Policy provides a rational, consistent, equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

123. Based on the nature, circumstances, extent, and gravity of the above-cited violations, a RCRA civil penalty in the amount of \$164,104 is hereby proposed to be assessed against Respondent. Attachment I to this Complaint explains the reasoning for this penalty. The penalties proposed to be assessed for each count pled in Section V above are as follows:

<u>COUNT</u>	<u>PROPOSED PENALTY</u>
1. Failure to Conduct Adequate Hazardous Waste Determinations	\$19,557
2. Failure to Comply with Subpart CC Air Emission Regulations	\$39,909
3. Failure to Comply with Subpart BB Leak Detection and Repair Standards for Equipment Associated with Hazardous Waste Tanks	\$40,448
4. Failure to Have an Adequate Contingency Plan	\$9,210
5. Failure to Have an Adequate Personnel Training Program	\$9,210
6. Failure to Provide Adequate Personnel Training	\$5,670
7. Failure to Segregate Incompatible Wastes	\$9,210
8. Failure to Ensure Hazardous Waste Containers Remain Closed	\$430
9. Failure to Properly Label a Hazardous Waste Tank	\$5,670
10. Failure to Operate the Facility in a Manner that Minimizes Releases	\$24,790
<b>Total Proposed Penalty</b>	<b>\$164,104</b>

#### **VIII. QUICK RESOLUTION**

124. Under Section 22.18(a) of Part 22, Respondent has the option of resolving the penalty portion of this Complaint at any time by paying in full the proposed penalty amount. Payment of the penalty may be made by a bank, cashier's, or certified check, payable to the Treasurer, United States of America. The check should note the docket number of this Complaint (EPA Docket No. RCRA-01-2013-0070) and 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 penalty and a copy of the check should also be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

and

Kevin Pechulis, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, MA 02109-3912

**IX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

125. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with Part 22. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, Respondent's request for a hearing must be incorporated into a written Answer filed by Respondent with the Regional Hearing Clerk at the address provided below in Paragraph 126 **within thirty (30) days of Respondent's receipt of this Complaint.**
126. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. See 40 C.F.R.

§ 22.15(b). Where Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Id. Any failure to admit, deny, or explain an allegation constitutes an admission of that allegation. See 40 C.F.R. § 22.15(d). Respondent's Answer must also state all arguments or circumstances that are alleged to constitute grounds for a defense; the facts that Respondent intends to place at issue; and must specifically request an administrative hearing if such a hearing is desired. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

127. 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 penalty and compliance action only, default by Respondent will constitute an admission of all the facts alleged in the Complaint and a waiver of Respondent's right to a hearing to contest such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. See 40 C.F.R. § 22.17(a). In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Complaint and Compliance Order.

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

128. Whether or not Respondent files an Answer requesting a hearing, Respondent may confer informally with Complainant concerning the alleged violations, the amount of the penalty, and/or the possibility of settlement. Any informal settlement conference would provide Respondent with an opportunity to provide new information regarding the alleged violations or



other issues relevant to this matter. Complainant has the authority to adjust penalties, where appropriate, to reflect any settlement reached through information settlement conferences. The terms of such a settlement would be embodied in a Consent Agreement and Final Order signed by both parties, and made final by the signing of the Regional Judicial Officer, EPA Region I.

129. 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 an informal settlement conference, Respondent or its representative should contact Kevin Pechulis, Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, who is also designated to receive service on behalf of Complainant, at the above address, at (617) 918-1612.

**SO ISSUED**



Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

9/26/13  
Date

**Attachment I**  
**Explanation of Penalty Calculation**  
**In the Matter of Presstek, Inc.**  
**Hudson, New Hampshire**

**Administrative Complaint**  
**EPA Docket No. RCRA-01-2013-0070**

The following discussion provides a justification for the proposed penalty against Presstek, Inc. (“Presstek”) for violations of certain requirements of the Resource Conservation and Recovery Act (“RCRA”), the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and the State of New Hampshire Hazardous Waste Regulations. Presstek operates a facility at 55 Executive Drive, Hudson, NH (the “Facility”).

Gravity-based penalties and multiple or multi-day penalties were calculated in accordance with the RCRA Civil Penalty Policy, dated June 23, 2003, (“RCPP”), the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19.

The following RCRA violations were documented during an EPA Compliance Evaluation Inspection (the “Inspection”) conducted at the Facility on August 23, 2012, and information that has been provided to EPA after the Inspection:

**A. Summary of Violations**

1. Failure to conduct adequate hazardous waste determinations

At the time of the Inspection, Presstek had not conducted adequate hazardous waste determinations for the following categories of waste:

- a. containers of waste chemicals stored in and around boxes that were stored in the chemistry laboratory at the Facility;
- b. waste aerosol cans that contained chlorinated solvents and flammable materials stored at the Facility; and
- c. a 55-gallon drum stored in the hazardous waste storage area of the Facility that was full, but which was labeled as being empty.

**Penalty Assessment**

- (a) Potential for Harm – Major

Potential for Harm to the Environment

The failure to adequately characterize the waste streams listed above poses a substantial risk of harm to the environment. By not making a determination as to whether a waste is hazardous at the point of generation, hazardous waste may not be managed in accordance with the regulations designed to ensure proper

## USEPA

### Penalty summary – Presstek, Inc., Hudson, NH

management from cradle to grave, thus leading to an increased risk of release of hazardous wastes into the environment. In Presstek's case, these categories of waste were not evaluated to determine if they were hazardous and therefore the containers storing them were not labeled, inspected or otherwise managed as hazardous waste.

#### Potential for Harm to the Regulatory Program

The potential for harm to the regulatory program caused by Presstek's failure to conduct waste determinations is substantial. The inspection team was not able to determine how long many of these wastes had been in storage, and was not able to determine if wastes were being stored compatibly with surrounding containers of waste. In addition, without hazardous waste identification, such wastes could be stored in uncontrolled areas where emergency responders and facility personnel might not recognize associated hazards, increasing the likelihood for mismanagement, improper disposal, release or other events (such a fire or explosion). Therefore, the potential for harm is major.

#### (b) Extent of Deviation – Minor

Presstek failed to make a proper hazardous waste determination for three waste streams, which collectively constitute a small volume of waste at the Facility. Therefore, the extent of deviation is minor.

#### (c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Major/Minor.

(1) Matrix Cell Range (gravity-based penalty): \$15,580 - \$21,250.  
Penalty Amount Chosen: \$18,415 (mid-point)

(2) Adjustment for Economic Benefit

Using EPA's BEN model, the economic benefit derived by Presstek for its failure to make adequate hazardous waste determinations is \$1,142.

**TOTAL PENALTY AMOUNT: \$18,415 + \$1,142 (BEN) = \$19,557**

## 2. Failure to comply with Subpart CC air emission regulations for hazardous waste tanks

At the time of the Inspection, Presstek did not have a Subpart CC air emissions compliance program at its Facility, and did not maintain any records of a Subpart CC program for the Facility. Presstek stored hazardous waste in two tanks that were subject to the Subpart CC air emission regulations: Tank 1720 is the hazardous waste tank inside the enclosure adjacent to the coating head, and Tank 2120 is the main hazardous waste storage tank at the Facility.

**USEPA**

Penalty summary – Presstek, Inc., Hudson, NH

**Penalty Assessment**

(a) Potential for Harm – Major

Tanks containing hazardous wastes with high volatile organic compound (“VOC”) concentrations have the potential to emit pollutants when tank openings are not properly maintained and monitored. The Subpart CC regulations are self-implementing to control air emissions that may not otherwise be regulated. Presstek’s Subpart CC violations therefore pose major harm to the environment and regulatory program.

(b) Extent of Deviation – Major

Presstek’s Subpart CC violations represent a substantial deviation from the regulatory requirements. At the time of the Inspection, Presstek was operating two hazardous waste tanks subject to the Subpart CC regulations, but neither of these tanks was in compliance with the Subpart CC requirements and Presstek had no Subpart CC compliance program. Therefore, the extent of deviation is major.

(c) Penalty Assessment:

EPA has determined that Presstek’s violation of these requirements warrants a classification of Major/Major.

(1) Matrix Cell Range (gravity-based penalty): \$28,330 - \$37,500.  
Penalty Amount Chosen: \$32,915 (mid-point)

(2) Multiple/Multi-day Assessment

EPA is applying multiple penalties for each failure to comply with the Subpart CC regulations. Because the violations are so similar in nature, pursuant to page 22 of the RCPP, EPA is using the multi-day penalty matrix for the second violation. The multi-day matrix cell range for a violation that poses a major potential for harm and a major extent of deviation is \$1,420 to \$7,090. EPA has chosen the mid-point for this violation (\$4,255).

First Violation	\$32,915
Second Violation	\$4,255
Total Penalty	\$37,170

(3) Adjustment for Economic Benefit

Using EPA’s BEN model, the economic benefit derived by Presstek for its failure to have an adequate Subpart CC program is \$2,739.

**TOTAL PENALTY AMOUNT: \$37,170 + \$2,739 (BEN) = \$39,909**

## USEPA

### Penalty summary – Presstek, Inc., Hudson, NH

3. Failure to comply with the Subpart BB air emission standards for equipment associated with hazardous waste tanks storing waste that contains in excess of 10% VOCs

At the time of the Inspection, Presstek did not have a Subpart BB air emissions compliance program at its Facility, and did not maintain any records of a Subpart BB program for the Facility. Presstek stored hazardous waste in two tanks (Tank 1720 and 2120) that contained wastes with greater than 10% by weight of VOCs. Therefore, all pipes, valves, flanges and other related connections to these tanks are subject to operating, labeling and monitoring requirements of Subpart BB. At the time of the Inspection, Presstek had not properly marked all lines, flanges, valves, pumps, and other equipment associated with these tanks as being in Subpart BB service. Presstek had also not identified each piece of equipment with an identification number with the approximate location and type of equipment, the percent-by-weight total organics in the hazardous waste stream at the equipment, the hazardous waste state (gas/vapor or liquid), and method of compliance with Subpart BB.

#### Penalty Assessment

(a) Potential for Harm – Major

Equipment associated with tanks containing hazardous wastes with high VOC content has the potential to release VOCs to the environment when openings are not properly maintained. In Presstek's case, the equipment associated with these two tanks was not properly monitored to ensure that it was not releasing VOCs to the atmosphere. Because of the large amount of hazardous waste entering these tanks and associated connections, the air emissions were potentially substantial. Therefore, the potential for harm is major.

(b) Extent of Deviation – Major

At the time of the Inspection, Presstek was storing hazardous waste in two tanks that had the capacity of storing more than 1,040 gallons of hazardous waste. This is a large volume of waste that has the potential to produce significant releases. Presstek had no Subpart BB compliance plan or program in-place. Therefore, the extent of deviation is major.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Major/Major.

(1) Matrix Cell Range (gravity-based penalty): \$28,330 - \$37,500.  
Penalty Amount Chosen: \$32,915 (mid-point)

(2) Adjustment for Economic Benefit

Using EPA's BEN model, the economic benefit derived by Presstek for its failure to have an adequate Subpart BB program is **\$7,533**.

**TOTAL PENALTY AMOUNT: \$32,915 + \$7,533 (BEN) = \$40,448**

4. Failure to have an adequate contingency plan

At the time of the Inspection, Presstek maintained a hazardous waste contingency plan, but that plan was deficient in several respects. Numerous required elements of a hazardous waste contingency plan were not present in Presstek's contingency plan. Missing items included: evacuation information and routes, emergency equipment and decontamination equipment locations, amounts, and capabilities. Additionally, the Presstek contingency plan had inconsistencies and conflicting information on whom to call in case of an emergency and what action should or should not be taken by whom.

**Penalty Assessment**

(a) Potential for Harm – Moderate

The primary function of a hazardous waste contingency plan is to establish a framework for making management decisions during an emergency. As such, the contingency plan must describe the actions facility personnel must take in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste. Failure to have a compliant contingency plan represents a significant potential risk to human health and the environment, especially considering the hazards posed by the wastes at Presstek's Facility. These violations increased the potential that facility personnel will not effectively recognize, assess and respond to an emergency in a manner that minimizes the potential impact to human health and the environment. These violations also increased the potential that facility personnel will not be able to communicate the potential risks to affected employees and the public. However, by having a contingency plan that satisfied some of the applicable regulations, Presstek mitigated a portion of the harm of not having any plan. Therefore, the potential for harm to human health and the environment is moderate.

(b) Extent of Deviation – Moderate

Although Presstek did not have a compliant contingency plan, its plan did satisfy a number of the applicable regulations. Therefore, the extent of deviation is moderate.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Moderate/Moderate.

- (1) Matrix Cell Range (gravity-based penalty): \$7,090 - \$11,330.  
Penalty Amount: \$9,210 (mid-point)

**USEPA**

Penalty summary – Presstek, Inc., Hudson, NH

**TOTAL PENALTY AMOUNT: \$9,210**

5. Failure to have an adequate hazardous waste personnel training program

At the time of the Inspection, Presstek did not implement a hazardous waste training program that satisfied the applicable regulations. More specifically, Presstek utilized an on-line hazardous waste training course that did not address the specifics of the New Hampshire regulations or the specific circumstances and policies of Presstek's facility, including Presstek's hazardous waste contingency plan.

**Penalty Assessment**

(a) Potential for Harm – Moderate

Applicable regulations require employees who manage hazardous waste as part of their normal job duties to be properly trained. This training is an essential part of proper hazardous waste management. Without proper training, employees will not know how to handle hazardous waste safely, and how to respond in an emergency. Improper handling of hazardous waste increases the likelihood of a release and worker exposure. In Presstek's case, it utilized an on-line hazardous waste training course, but failed to address the specifics of the New Hampshire regulations and the specific circumstances of Presstek's facility, including Presstek's hazardous waste contingency plan. Therefore, the potential for harm is moderate.

(b) Extent of Deviation – Moderate

Although Presstek utilized an on-line hazardous waste training course, its training program was deficient in several respects. Therefore, the extent of deviation is moderate.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Moderate/Moderate.

(1) Matrix Cell Range (gravity-based penalty): \$7,090 - \$11,330.  
Penalty Amount: \$9,210 (mid-point)

**TOTAL PENALTY AMOUNT: \$9,210**

6. Failure to provide adequate hazardous waste training

Presstek did not provide adequate hazardous waste training to all employees with hazardous waste management responsibilities.

**Penalty Assessment**

## USEPA

### Penalty summary – Presstek, Inc., Hudson, NH

(a) Potential for Harm – Moderate

Employees who manage hazardous waste as part of their normal job duties must be properly trained and must receive initial and annual refresher hazardous waste training. The purpose of this annual training is to reinforce both good hazardous waste management practices and safe and effective emergency procedures. This training is necessary to reduce the potential for mismanagement of hazardous waste, which could threaten human health and the environment.

At Presstek, the following individuals did not complete the required annual hazardous waste training in 2011: Jerry Langlois and Glenn Solomon, both of whom sign hazardous waste manifests as a part of their jobs. Richard Landry, a manifest signer did not complete the supplemental training in 2010 but had completed the supplemental training in 2011. Therefore, the potential for harm is moderate.

(b) Extent of Deviation – Minor

Two Presstek employees did not complete the required annual hazardous waste training in 2011, but these individuals both received the annual training in 2010. Therefore, the extent of deviation is minor.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Moderate/Minor.

(1) Matrix Cell Range (gravity-based penalty): \$4,250 - \$7,090.  
Penalty Amount: \$5,670 (mid-point)

**TOTAL PENALTY AMOUNT: \$5,670**

7. Failure to segregate incompatible wastes

At the time of the Inspection, Presstek failed to segregate the following hazardous wastes stored without physical separation in a satellite accumulation area: one 55-gallon drum (developer, caustic, D002); one 55-gallon drum (waste fixer, acidic, D002, D011); one 5-gallon container (press wash, D001).

#### **Penalty Assessment**

(a) Potential for Harm – Moderate

Storage of incompatible hazardous wastes poses a significant risk to human health and the environment. If the incompatible wastes from these containers were released and mixed together, the reaction could include the generation of heat and fire. There was a relatively small amount of waste involved in this violation. Therefore, the potential for harm is moderate.



**USEPA**

Penalty summary – Presstek, Inc., Hudson, NH

(b) Extent of Deviation – Moderate

These hazardous wastes did not have any means of segregation from each other. This storage of incompatible wastes involved approximately one hundred gallons. Therefore, the extent of deviation is moderate.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Moderate/Moderate.

(1) Matrix Cell Range (gravity-based penalty): \$7,090 - \$11,330.

Penalty Amount: \$9,210 (mid-point)

**TOTAL PENALTY AMOUNT: \$9,210**

8. Failure to ensure that hazardous waste containers remain closed and sealed, unless actively adding or removing waste

At the time of the Inspection, Presstek failed to keep hazardous waste containers closed and sealed.

**Penalty Assessment**

(a) Potential for Harm – Minor

Failure to store hazardous waste in closed containers creates a significant potential for harm to the environment because it increases the chances that hazardous waste will be released to the environment. There was a small amount of waste involved in this violation. Overall the potential for harm for these violations is minor.

(b) Extent of Deviation – Minor

At the time of the Inspection, two containers of hazardous waste were found to be open. Therefore, the containers in violation represented a small percentage of the total containers observed (14). Therefore, the extent of deviation is minor.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of these requirements warrants a classification of Minor/Minor.

(1) Matrix Cell Range (gravity-based penalty): \$150- \$710.

Penalty Amount: \$430 (mid-point)

**TOTAL PENALTY AMOUNT: \$430**

**USEPA**

Penalty summary – Presstek, Inc., Hudson, NH

9. Failure to adequately label a tank storing hazardous waste

At the time of the Inspection, EPA Inspectors observed one tank (Tank 1720) of hazardous wastes that were not adequately labeled with the words “hazardous waste,” words that identify the contents of the tank, and the EPA or state waste number, at the time they are first used to store such wastes.

**Penalty Assessment**

(a) Potential for Harm – Moderate

The failure to properly label a tank storing hazardous waste can lead to improper management of this waste and/or can detrimentally impact emergency responders in the case of a fire or chemical emergency because they would not be able to determine the hazards associated with the waste. However, the tank used to store this hazardous waste was marked with some information identifying its contents. Therefore, the potential for harm is moderate.

(b) Extent of Deviation – Minor

One tank holding 50-gallons of hazardous waste was not properly labeled. Therefore, the extent of deviation is minor.

(c) Penalty Assessment:

EPA has determined that Presstek’s violation of these requirements warrants a classification of Moderate/Minor.

(1) Matrix Cell Range (gravity-based penalty): \$4,250 - \$7,090.

Penalty Amount: \$5,670 (mid-point)

**TOTAL PENALTY AMOUNT: \$5,670**

10. Failure to operate the facility in a manner that minimizes the potential for a release

At the time of the Inspection, Presstek failed to operate its facility in a manner that minimized the potential for release.

**Penalty Assessment**

(a) Potential for Harm – Major

Presstek’s practice of allowing water to flow through the hazardous waste storage area increases the likelihood of a fire due to the possible release of waste heptane from rusting containers. The potential for harm to human health or the environment is significant because a large percentage of the hazardous wastes stored in this area were heptane wastes. If corrosion of drums led to a release of

**USEPA**

Penalty summary – Presstek, Inc., Hudson, NH

heptane, there would be a significant risk of fire resulting from the release. Therefore, the potential for harm is major.

(b) Extent of Deviation – Moderate

Although there was a single instance of this violation, it occurred where most of the hazardous waste was stored at the facility. Therefore, the extent of deviation is moderate.

(c) Penalty Assessment:

EPA has determined that Presstek's violation of this requirement warrants a classification of Major/Moderate.

(1) Matrix Cell Range (gravity-based penalty): \$21,250 - \$28,330.  
Penalty Amount: \$24,790 (mid-point)

**TOTAL PENALTY AMOUNT: \$24,790**

**PENALTY SUMMARY**

1.	Failure to conduct adequate hazardous waste determinations	\$19,557
2.	Failure to comply with Subpart CC air emission regulations	\$39,909
3.	Failure to comply with Subpart BB air emission regulations	\$40,448
4.	Failure to have an adequate contingency plan	\$9,210
5.	Failure to have an adequate personnel training program	\$9,210
6.	Failure to provide adequate personnel training	\$5,670
7.	Failure to segregate incompatible wastes	\$9,210
8.	Failure to ensure hazardous waste containers remain closed	\$430
9.	Failure to properly label a hazardous waste tank	\$5,670
10.	Failure to operate the facility in a manner that minimizes releases	\$24,790

**TOTAL PROPOSED PENALTY** **\$164,104**