

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:)

Maine Health & Environmental)
Testing Laboratory)
221 State Street)
Augusta, ME 04333)
Respondent)

EPA I.D. No. MER2832)

Proceeding under Section 3008(a))
Resource Conservation and Recovery)
Act, 42 U.S.C. § 6928(a))

Docket No.)
RCRA-01-2015-0024)

RECEIVED

MAR 23 2015

EPA ORC
Office of Regional Hearing Clerk

**COMPLAINT,
COMPLIANCE ORDER, 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 (hereafter, “RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22”). Complainant is the Legal Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA” or “Region 1”).

2. Respondent, Maine Health & Environmental Testing Laboratory (“HETL”), is hereby notified of Complainant’s determination that Respondent has violated Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, Chapter 13 of Title 38 of the Maine Revised Statutes (“M.R.S.A.”) and the regulations promulgated thereunder at Chapter 850 et seq. (the

“Maine Rules”). Complainant also provides notice of Respondent’s opportunity to request a hearing concerning these allegations.

II. NATURE OF ACTION

3. This is an action under RCRA, 42 U.S.C. §§ 6901 et seq., seeking civil penalties and ordering compliance with RCRA 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. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928 (a)(2), notice of commencement of this action has been given to the State of Maine.

III. STATUTORY AND REGULATORY FRAMEWORK

5. RCRA, enacted in 1976, was amended by, among other amendments, the Hazardous and Solid Waste Amendments of 1984 (“HSWA”). Subchapter III of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. See 42 U.S.C. §§ 6921-6939e. Pursuant to Subchapter III of RCRA, EPA has promulgated regulations for the management of hazardous waste, which are codified at 40 C.F.R. Parts 260-271.

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

7. The State of Maine received final authorization to implement its hazardous waste management program on May 6, 1988, with an effective date of May 20, 1988. See 53 Fed.

Reg. 16264 (May 6, 1988). The Maine regulations are codified at Chapters 850-860 of the Maine Rules.

8. Between November 1994 and August 1995, Maine submitted a draft program revision application for many of the rules promulgated by the EPA between July 1, 1984, and June 30, 1990, and adopted by Maine in March 1994. Maine submitted its final application for these revisions on February 28, 1997, and received final authorization for the revisions on June 24, 1997, with an effective date of August 25, 1997 (62 Fed. Reg. 34007, June 24, 1997). On September 27, 2004, Maine submitted a final complete program revision application, seeking authorization for changes to its hazardous waste program that would allow it to meet EPA requirements. EPA granted Maine final authorization for the revisions on January 10, 2005, effective immediately (69 Fed. Reg. 64861-64865, November 9, 2004).

9. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA's Administrator may enforce the federally-approved Maine hazardous waste program by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e. 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. Section 3008(a) of RCRA provides that upon finding that any person has violated or is violating any requirement of Subchapter III of RCRA, including violations in an authorized

state, EPA may issue an order requiring compliance immediately or within a specified time and assessing a civil penalty for any past or current violation. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter III of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to \$32,500 per day for each violation which occurred after March 15, 2004 and before January 13, 2009. Violations that occur on or after January 13, 2009 are subject to penalties up to \$37,500 per day per violation.

IV. GENERAL ALLEGATIONS

11. Respondent, an agency, department, or instrumentality of the State of Maine, owns and/or operates a health and environmental testing laboratory at 221 State Street, Augusta, ME. At this laboratory, Respondent performs analyses of human specimens, food, water, wastewater, and hazardous materials to support federal and state regulatory programs, health care providers, public health protection and the general public.

12. Respondent generates various hazardous wastes within its laboratory, including, but not limited to, wastes containing sulfuric acid, nitric acid, hydrochloric acid, phosphoric acid, mercury, acetone, methylene chloride and hexane. Respondent uses its Room B10 as a Hazardous Waste Storage Area ("HWSA"), where Respondent stores raw material as well as hazardous wastes. Respondent also stores hazardous wastes in a variety of Satellite Storage Areas ("SAAs"), including in its Lab B-8D, Lab B-3 (Mass Spectroscopy Laboratory), Lab B-7

(Volatile Organics Laboratory), Lab B-9 (Instrumental Pesticide), Lab B-11 (Wet Chemistry Laboratory), Lab B-11B (Phosphorus Laboratory), Lab 118 (pH Laboratory), Lab 121 (Metals Analysis Laboratory), Lab 122 (Drinking Water Laboratory), Lab 102 (Drinking Water and Environmental Samples Metals Lab), Room 101 (Mass Spectroscopy Laboratory), Room 103, and Labs 157 and 168 (Virology and Mycology Laboratories). In addition, in Respondent's Room 119, known as the Neutralization Area, Respondent neutralizes hazardous wastes and then disposes of the neutralized wastes into a sink drain. The wastes poured into the sink drain are then transported through the sewer to a nearby Publicly Owned Treatment Works facility.

13. Respondent is a "person," as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

14. At all times relevant to this Complaint, Respondent was an "owner" and/or "operator," as defined in 40 C.F.R. § 260.10, of its laboratory in Augusta, ME.

15. Respondent generates wastes at its laboratory that are "hazardous wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); 40 C.F.R. § 261.3; 38 M.R.S.A. § 1303-C(15); and Chapter 850, Section 3A(3) of the Maine Rules.

16. At all times relevant to this Complaint, Respondent has been and is a "generator" of hazardous wastes, as that term is defined in 40 C.F.R. § 260.10 and Chapter 851, Section 3C of the Maine Rules.

17. On or about April 20, 2000, pursuant to Section 3010 of RCRA, Respondent submitted a Notice of Hazardous Waste Activity to the State of Maine, identifying itself as a large quantity generator ("LQG") of hazardous waste.

18. As an owner and/or operator of a facility that is an LQG of hazardous waste, Respondent is subject to state standards applicable to LQGs found at Chapter 850, 851, 852 and 855 of the Maine Rules.

19. On August 7 – 8, 2013, authorized representatives of EPA Region 1 conducted a RCRA compliance evaluation inspection of Respondent's facility ("Inspection"), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

20. Based on the Inspection and review of documents provided by Respondent, Complainant has identified the following violations at Respondent's facility:

V. VIOLATIONS

Count 1 - Failure to Conduct Adequate Hazardous Waste Determinations

21. Complainant realleges and incorporates by reference Paragraphs 1 - 20.

22. Under Section 5 of Chapter 851 of the Maine Rules, a person who generates waste shall determine if that waste is hazardous by using the following method:

- A. First determine if the waste is excluded from regulation under Chapter 850 of the [Maine Rules].
- B. Then determine if the waste is listed as a hazardous waste in Chapter 850 of the [Maine Rules].
- C. If the waste is not listed as a hazardous waste in Chapter 850, the person shall determine whether the waste is identified by characteristic, as a hazardous waste in Chapter 850 by either:
 - (1) Testing the waste according to the methods set forth in Chapter 850, or according to an equivalent method approved under Chapter 850; or
 - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

See also 40 C.F.R. §§ 262.11 and 268.7(a) (federal RCRA regulations requiring that generators

perform hazardous waste determinations to ensure safe handling and disposal).

23. At the time of the Inspection, Respondent failed to conduct hazardous waste determinations for the wastes that it neutralized and disposed of into the sink drain in the Neutralization Area in Room 119. Respondent identified the chemicals contained in the testing solutions that it used in its laboratory (i.e., the analytical re-agents), as shown in the waste streams described below, but failed to perform hazardous waste determinations for the constituents contained in the test samples exclusive of the testing solutions that were added to the sample. At a minimum, Respondent neutralizes and disposes of the following waste streams, without conducting hazardous waste determinations:

(a) Waste generated in Lab 102 (Drinking Water and Environmental Samples Metals Lab). There were three waste streams in Lab 102. The first waste stream was in a five-gallon container labeled as a hazardous waste located at an Optima Inductively Coupled Plasma (“ICP”) analyzer. This waste was labeled as containing trace metals and nitric acid. The second waste stream was in a five-gallon container labeled as a hazardous waste located at an ICP/Mass Spectrometry analyzer. This waste was labeled as containing nitric acid, hydrochloric acid and lead, D002, D008. The third waste stream was in a three-gallon container labeled as a hazardous waste located at the flow injection mercury system (“FIMS”). This waste was labeled as containing nitric acid and ferric nitrate.

(b) Waste generated in Lab 121 (Metals Analysis). Waste generated in Lab 121 was labeled as containing cadmium, ammonium hydroxide, ethylene diamine tetraacidic

acid, hydrochloric acid, n-1-naptha-ethylene diamine, phosphoric acid and disodium salt, and also labeled D002, D006.

(c) Waste generated in Lab 122 (Drinking Water Lab). A chemist employed by Respondent told EPA inspectors that waste generated in Lab 122 contains nitric and hydrochloric acids. This waste is generated at the ICP/Mass Spectrometer.

(d) Waste generated in Lab B-3 (Mass Spectroscopy Lab). There was a waste stream at a purge and trap analyzer in Lab B-3. It was in a one-gallon bottle labeled “HW day can for acid aqueous waste” and “neutralize to pH 7 for disposal via sewer.”

(e) Waste generated in Lab B-7 (Volatile Organics Lab). There were two waste streams in Lab B-7, according to HETL personnel and container labeling. The first waste stream was in a three-liter flask labeled as hazardous waste. The label stated “day can for acidic aqueous waste, neutralize to pH 7 for disposal via sewer.” The second waste stream was in a five-gallon carboy with a hazardous waste label located at a purge and trap analyzer. The container was labeled as waste acid, corrosive and “neutralize.”

(f) Waste generated in Lab B-11 (Wet Chemistry Lab). There was a waste stream in Lab B-11, according to Respondent’s employee Darcy Degone, who works in this laboratory. This waste stream was in a four-liter container labeled as hazardous waste. Ms. Degone stated that this container collects a variety of chemicals including acids, alkalis, phenol and sodium hypochlorite.

(g) Waste generated in Lab B-11B (Phosphorus Lab). There was a waste stream in Lab B-11B according to Respondent’s employee John Nims, a chemist who works in

this laboratory. This waste stream was in a one-gallon container, labeled as hazardous waste, and containing sodium hydroxide, ascorbic acid, sulfuric acid, sodium dodecyl sulfate, ammonium molybdate tetrahydrate, potassium antimonyl tartrate hemihydrate, ammonium persulfate and ethylenediaminetetraacetic acid. The inspection team used a pH test strip to determine that the contents of this waste container had a pH of approximately one.

(h) Wastes generated by inorganic ammonia analysis. According to the HETL Waste Stream Identification Form, the waste stream profile sheet for this waste stream states: "Per local ordinance, waste stream must be collected as hazardous waste." This stream contains a variety of chemicals including acids, alkalis, phenol, sodium nitroprusside, and sodium hypochlorite.

(i) Wastes generated by fluoride analysis at the inorganics autoanalyzer I. According to the HETL Waste Identification Form, this waste stream contains glacial acetic acid, sodium hydroxide, fluoride, and trans 1,2,diaminocyclohexane-n,n,n,n tetraacidic acid.

(j) Wastes generated by color analysis at the inorganics autoanalyzer I. According to the HETL Waste Identification Form, this waste stream contains sodium hydrogen phosphate and potassium hydrogen phosphate.

(k) Four organic waste streams from Gas Chromatography ("GC") and Mass Spectrometry ("MS") analyzers. According to the HETL Waste Stream Identification Form, these waste streams, including streams 5970MS, 5890GC, 5971GC/MS, and

5973GC/MS, contain aromatic and halogenated volatile solvents.

(l) Wastes generated by inorganic sulfate analysis at the inorganics autoanalyzer

II. According to the HETL Waste Stream Identification Form, this waste stream contains barium chloride dehydrate, ethanol and methylthymol blue.

24. By failing to determine if a solid waste is a hazardous waste, Respondent violated Chapter 851, Section 5 of the Maine Rules.

**Count 2 – Treatment of Hazardous Waste in an On-Site
Neutralization Unit Without a License**

25. Complainant realleges and incorporates by reference Paragraphs 1 - 24.

26. Pursuant to Section 5.A. of Chapter 856 of the Maine Rules (Section 5.A.), any person who proposes to own or operate a waste facility for hazardous waste must apply for and obtain a license.

27. There is an exemption to the license requirement set forth in Section 5.A. for generators of laboratory hazardous waste. Under Section 6.H. of Chapter 856 of the Maine Rules, generators of laboratory hazardous waste who neutralize hazardous waste, which is hazardous solely due to the characteristic of corrosivity, are not required to obtain a license, but only if they neutralize such waste “in quantities less than 500 milliliters per treatment within their laboratory.” Five hundred milliliters of liquid is equal to approximately 2.11 cups of liquid.

28. Respondent does not possess a license to neutralize hazardous waste, which is hazardous solely due to the characteristic of corrosivity, at the facility.

29. Section 6.G. of Chapter 856 of the Maine Rules also includes the following

warning, with respect to generators of laboratory hazardous waste who neutralize hazardous waste which is hazardous solely due to the characteristic of corrosivity:

Generators need to ensure that their waste is only hazardous for corrosivity [for the license exemption of Section 6.G. to apply] and not for other hazardous waste characteristics, such as toxicity (including metals), ignitability, or reactivity.

Thus, the license exemption in Section 6.G. does not apply, regardless of the quantity neutralized per treatment, if a laboratory neutralizes hazardous waste which is hazardous for reasons other than the characteristic of corrosivity.

30. Under Section 5 of Chapter 851 of the Maine Rules, a person who generates waste shall determine if that waste is hazardous by using the following method:

- A. First determine if the waste is excluded from regulation under Chapter 850 of the [Maine Rules].
- B. Then determine if the waste is listed as a hazardous waste in Chapter 850 of the [Maine Rules].
- C. If the waste is not listed as a hazardous waste in Chapter 850, the person shall determine whether the waste is identified by characteristic, as a hazardous waste in Chapter 850 by either:
 - (1) Testing the waste according to the methods set forth in Chapter 850, or according to an equivalent method approved under Chapter 850; or
 - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

See also 40 C.F.R. §§ 262.11 and 268.7(a) (federal RCRA regulations requiring that generators perform hazardous waste determinations to ensure safe handling and disposal).

31. During the Inspection, EPA inspectors observed Respondent's activities in Room 119 of the laboratory, known as the Neutralization Area. EPA inspectors also spoke with Respondent's employee John Nims about the neutralization process used in Room 119, and

reviewed documents provided by Respondent.

32. Based on EPA's observations, conversations, and review of documents, EPA determined that the neutralization process performed by Respondent is as follows. Respondent sends wastes from various locations at its facility to its Room 119 for neutralization and placement of neutralized waste into a sink drain. These wastes then travel from the sink drain through the sewer to a Publicly Owned Treatment Works. The waste streams described in Paragraph 23(a) – (l), herein, are sent to Room 119 for such neutralization and disposal.

33. After the wastes identified in Paragraph 23(a)-(l) above are brought to Room 119 for neutralization, Respondent's employees pour the wastes into an open plastic bucket located under a fume-hood. The open plastic bucket has the capacity to hold several gallons of liquids. After the waste is placed into the plastic bucket, Respondent's employees determine whether the waste is characteristic for corrosivity by performing a pH test and using an indicator solution to measure the acidity or alkalinity of the substance. Respondent's employees then add, alternately, caustic and acidic solutions into the batch until neutralization is determined to be successful through a final pH test result. Once neutralized, Respondent's employees pour the neutralized waste into the sink drain located beneath the fume-hood.

34. At the time of the Inspection, no evidence was provided by Respondent to establish that any waste determinations are or had been performed with respect to the wastes that were neutralized, other than the pH testing. Nor was evidence provided by Respondent to establish that it was measuring the amount of waste per treatment or neutralizing waste in quantities less than 500 milliliters per treatment, keeping any record of the volume of each batch

or the number of batches per day, or taking any other steps to ensure that it was neutralizing waste in quantities of less than 500 milliliters per treatment.

35. At the time of the Inspection, the amount of time spent neutralizing one batch of waste was approximately 15 minutes.

36. During the Inspection, Respondent also provided EPA inspectors with waste stream identification documents which stated that the facility manages approximately 8,190 liters of hazardous waste through neutralization on an annual basis. At this rate, and assuming an annual work year of 260 days (assuming no holidays or closures other than weekends), EPA estimates that Respondent would need to neutralize approximately 63 batches of hazardous waste per day in order to manage 8,190 liters of hazardous waste through neutralization on an annual basis. Assuming each batch is neutralized in 15 minutes, as it was at the time of EPA's Inspection, Respondent would not be able to neutralize 8,190 liters annually, while adhering to the required 500 milliliter per treatment license threshold.

37. Respondent also provided EPA with its "Spill Prevention, Control, and Clean-up Plan" which states that Respondent typically neutralizes "2 to 4 Liters" of hazardous waste in each batch, and that it does not neutralize more than a "15 L" batch at one time.

38. Respondent's documents identified in Paragraphs 36 and 37 above establish that Respondent's procedures and practice did not limit the volume of hazardous waste neutralized per batch to less than 500 milliliters.

39. Based on Respondent's failure to determine that wastes were hazardous solely due to the characteristic of corrosivity and its failure to limit that volume of hazardous waste

neutralized per batch to less than 500 milliliters, Respondent violated Section 5.A. by owning or operating a waste facility for hazardous waste without a license.

**Count 3 - Failure to Provide Waste Training to
Employees Managing Hazardous Waste**

40. Complainant realleges and incorporates by reference Paragraphs 1 – 39.

41. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16, facility personnel with hazardous waste management responsibilities must successfully complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulatory requirements. In relevant part, facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA requirements. The training program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. At a minimum, the training program must 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. Facility personnel must successfully complete the training program within six months after their employment to a facility, or to a new position at a facility, whichever is later. Facility personnel must take part in an annual review of the initial training. The facility owner/operator must maintain records that document that

training has been given to, and completed by, relevant facility personnel.

42. At the time of the Inspection, the following employees of Respondent who were managing hazardous waste had not received adequate training:

(a) Kenneth Pote, the HETL Director and Emergency Coordinator, stated to EPA inspectors that he had not had any RCRA training.

(b) Rick Danforth, the facility's RCRA contact and Environmental, Health and Safety Manager, stated to EPA inspectors that he had not had any RCRA training.

(c) Michael Bourdon, the HETL Chemist and Alternate Emergency Coordinator, stated to EPA inspectors that he had received annual RCRA training since 2008, except in the year 2011.

43. Although Respondent provided documentation that certain RCRA training had been provided to certain of its employees, it did not have documentation to establish that RCRA training had been given to, and completed by, all employees at the facility relevant to their positions at the facility.

44. Respondent also failed to provide any RCRA training to its employees that neutralized hazardous waste, or failed to maintain records that such training had been provided.

45. By failing to ensure that all employees with hazardous waste management responsibilities were adequately trained in hazardous waste management, Respondent violated Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16.

Count 4 - Failure to maintain a complete personnel training plan

46. Complainant realleges and incorporates by reference Paragraphs 1 - 45.

47. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16(d), a facility must have a personnel training plan which contains certain elements, including a written description of the introductory and annual update training given to each person having hazardous waste management duties, and a complete description of the hazardous waste management responsibilities for each position.

48. At the time of the Inspection, Respondent's personnel training plan was deficient in the following areas: (a) the plan did not include a written description of the introductory and annual update training to be given to each employee position having hazardous waste management duties, and; (b) the plan did not include a complete description of the hazardous waste management duties for each position

49. By failing to maintain an adequate facility personnel training plan, Respondent violated Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16(d).

Count 5 - Failure to maintain a complete hazardous waste contingency plan

50. Complainant realleges and incorporates by reference Paragraphs 1 - 49.

51. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, each owner or operator of a hazardous waste facility must have a contingency plan for the facility meeting the requirements of 40 C.F.R. § 264.52. 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 or hazardous waste constituents to air, soil or surface water. The plan must also describe actions facility personnel must take in response to emergency situations. Specifically, the plan must describe arrangements agreed to by local emergency responders and hospitals to coordinate emergency services. In addition, the plan must: list the names, addresses, and phone numbers of all persons qualified to act as an emergency coordinator for the facility; include a list of all emergency equipment at the facility including the location, description and capabilities of the equipment; and the information in the plan must be kept up-to-date.

52. At the time of the Inspection, Respondent failed to have a Hazardous Waste Contingency Plan. The facility did have a Safety Manual that included: a BioSafety Plan, a Chemical Hygiene Plan, an Emergency Action Plan, and a Radiation Safety Plan. These plans were written in 2012. The facility also had a “Spill Control, and Clean-up Plan” that was written in 2003.

53. The plans described in Paragraph 52 were deficient in the following areas:

(a) The plans did not list the current names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators. The Spill Control, and Clean-up Plan, written in 2003, merely lists Kenneth Pote as the Primary Emergency Coordinator and James Curlett as the Alternate Emergency Coordinator, without providing addresses and phone numbers (office and home). The Emergency Action Plan refers to the HETL Director as the Emergency Coordinator, without any specific name, address or phone number (office and home). The Chemical Hygiene Plan (CHP) does not

include an Emergency Coordinator.

(b) The plans fail to include a description or list of emergency equipment available for use in the event of an emergency (but do include evacuation routes and show the locations of spill kits and emergency equipment).

(c) The plans do not include protocols or the hierarchy for making decisions on evaluation, seeking emergency assistance, or notifying personnel of an emergency; and

(d) The plans do not include evidence that arrangements have been made for coordination with local authorities in the event of an emergency.

54. Respondent's failure to have a contingency plan for the facility meeting the requirements of 40 C.F.R. § 264.52 constitutes a violation of Chapter 851, Section 8B(5) of the Maine Rules.

Count 6 - Failure to conduct and/or document daily inspections at SAAs and failure to conduct adequate inspections at the HWSA

55. Complainant realleges and incorporates by reference Paragraphs 1 - 54.

56. Pursuant to Chapter 851, Section 13D of the Maine Rules, a generator must conduct daily inspections during regular business days of all containers of hazardous waste, including containers at SAAs, and record the conclusions or results in a log book kept at the facility. The purpose of the inspections is to ensure that, among other things, all hazardous waste containers are stored in a manner that allows access for inspection and for remedial action if any container is found to be rusting, bulging or leaking or waste is spilled or discharged; that incompatible wastes are segregated; and that hazardous wastes have not accumulated on-site

beyond the time limit of ninety days or less. The log book documenting the inspections must contain the name of the person conducting the inspection, the date and time of the inspection, and the conclusions or results of each inspection.

57. At the time of the Inspection, Respondent stored containers of hazardous waste in the SAAs and the HWSA, among other areas of the HETL. EPA inspectors reviewed the inspection logs for the SAA and the HWSA, among other areas of the HETL.

58. At the time of the Inspection, EPA found that several inspection log entries for the SAAs were missing, as follows:

(a) In Lab 118 (pH Laboratory), there were no log entries for the following dates:

July 9–10, 2013
May 1-2, 2013
April 1, 2013
March 2 and 21, 2013
January 2 and 15, 2013
December 21, 2012
November 1, 5 and 6, 2012
October 5, 8, 11, 12, 23, 24 and 25, 2012
September 3, 21, 24 and 26, 2012

(b) In Lab 121 (Metals Analysis Laboratory), there was no log entry for the period from February 28, 2013 to the date of the Inspection, August 7-8, 2013.

59. In the HWSA, Respondent relied on an inspection checklist for a SAA, instead of a HWSA, in performing its inspections. As a result, Respondent's inspections of the HWSA did not check for the dating of containers, adequacy of aisle space, and the use of secondary containment. At the time of the EPA Inspection, EPA inspectors observed twenty-four

containers stored in the HWSA located in Room B10 that were covered in dirt and dust, which did not allow for adequate inspection by Respondent of these containers. Respondent's employee Jim Curlett explained to EPA inspectors that the open louvers from the explosion proof panels in the HWSA allowed dirt and moisture into the HWSA.

60. Respondent's failure to conduct daily inspections of hazardous waste containers in the SAAs, perform adequate inspections in the HWSA, and/or properly record the conclusions or results of daily inspections in a log book kept at the facility, constitute violations of Chapter 851, Section 13D of the Maine Rules.

Count 7 - Failure to separate incompatible hazardous wastes

61. Complainant realleges and incorporates by reference Paragraphs 1 - 60.

62. Pursuant to Chapter 851, Section 13C(6) of the Maine Rules, containers holding incompatible hazardous wastes must not be stored in the same enclosure, building or structure unless they are segregated in a manner that prevents the wastes from coming into contact with one another under any circumstance, including simultaneous leakage or failure of a container(s).

63. At the time of the Inspection, and within the HWSA, Respondent was storing containers with labels indicating that they contained acids, flammables, oxidizers and toxics. None of the containers in the HWSA had secondary containment, and the containers were not segregated in a manner that prevented the wastes from coming into contact with one another. Within the HWSA, at the far end of the room, Respondent stores various types of containers. In order to distinguish the containers, EPA assigned numbers to each of the containers and developed a handwritten map depicting the containers, with assigned numbers, for purposes of

note taking and identification. The following containers in the HWSA, as numbered by EPA for purposes of note taking and identification, held potentially incompatible wastes:

(a) Container #1: This 30-gallon polyethylene drum had a hazardous waste label, and was marked “chloride waste with Hg and TKN,” nitric and methanol, D002, D009 and F003.

(b) Container #2: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as cadmium, hydrochloric and phosphoric acids, D002 and D006.

(c) Container #3: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as acetonitrile and phosphoric acid waste, D001 and D002.

(d) Container #5: This one-gallon glass bottle had a hazardous waste label, and was marked as sodium arsenite, D004.

(e) Container #6: This half-gallon metal can had no hazardous waste label on it. There was a label with a caution statement on the side of the container concerning ethers and peroxides.

(f) Container #7: This three-gallon fire safety can had a hazardous waste label, and was marked as methylene chloride.

(g) Container #8: This small 10-inch square box had no hazardous waste label on it. The words “Freon TF solvent and IPA” and “No pressure” were written on the box, which contained aerosol cans. By picking up several of the aerosol cans, an EPA inspector determined by their approximate weight that at least several of the aerosol cans held in the box were likely full or largely full of liquid.

(h) Container #10: This approximately one and one-half-gallon fire safety can had a hazardous waste label, and was marked as "mixed flammables."

(i) Container #12: This two-gallon fire safety can had a hazardous waste label, and was marked as methylene chloride with mixed solvents, acetone, D001, F001 and F003.

(j) Container #14: This five-gallon polyethylene container had a hazardous waste label, and was marked as methylene chloride, F002.

(k) Container #15: This five-gallon polyethylene container had a hazardous waste label, and was marked as scintillation vials - toluene, D001.

(l) Container #16: This approximately nine-gallon polyethylene carboy container had a hazardous waste label, and was marked as mixed flammables acetonitrile and hexane, D001 and F003.

(m) Container #17: This five-gallon polyethylene container had a hazardous waste label, and was marked as scintillation vials - toluene, D001.

(n) Container #23: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as methylene chloride.

(o) Container #24: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as "mixed flammables," D001 and F003.

64. The nitric acid in Container #1, hydrochloric acid in Container #2, and sodium arsenite in Container #5 are incompatible with the contents of most of the other containers in the HWSA described in Paragraph 63. If incompatible wastes were released and mixed together, the

reaction could include the generation of heat, fire toxic gases and other violent chemical reactions. Given the large numbers of containers of product and hazardous waste stored in the HWSA, the potential for a significant fire resulting from the potential mixture of incompatible wastes was heightened.

65. Respondent's failure to properly segregate incompatible hazardous wastes by storing them in the same room and failing to segregate them in a manner that prevents the wastes from coming into contact with one another under any circumstance, including simultaneous leakage or failure of a container(s), constitutes a violation of Chapter 851, Section 13C(6) of the Maine Rules.

Count 8 – Failure to Have Adequate Aisle Space in the HWSA

66. Complainant realleges and incorporates by reference Paragraphs 1 - 65.

67. Pursuant to Chapter 851, Section 13C(7) of the Maine Rules, all hazardous waste containers must be stored in a manner that allows access for inspection and for remedial action if any container is found to be rusting, bulging or leaking or waste is spilled or discharged. In any event, aisle space between rows of containers must be sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in any emergency but in no event shall the aisle space be less than thirty six (36) inches wide.

68. At the time of the Inspection, Respondent stored at least twenty-four containers closely together in the HWSA in Room B10. The labels on these containers indicated that they contained acids, flammables, oxidizers and toxics. To the extent that there

was any aisle space or storage in rows, the aisle space between rows of these containers was less than approximately six (6) inches wide, and considerably less than thirty six (36) inches wide.

69. Respondent's failure to store hazardous waste containers with aisle space between rows of containers sufficient to allow the unobstructed movement of personnel and equipment in any emergency, and in no event less than thirty six (36) inches wide, violated Chapter 851, Section 13C(7) of the Maine Rules.

Count 9 – Failure to Have Adequate Secondary Containment in the HWSA

70. Complainant realleges and incorporates by reference Paragraphs 1 - 69.

71. Pursuant to Chapter 851, Section 13B(2), each container storage area must have a containment and collection system the capacity of which must exceed 20% of the total capacity of all containers used to store wastes or 110% of the capacity of the largest container, whichever is greater.

72. At the time of the Inspection, Respondent stored at least twenty-four containers in the HWSA in Room B10, with labels indicating that these containers contained acids, flammables, oxidizers, and toxics. None of these containers had any secondary containment.

73. Respondent's failure to store hazardous waste containers with secondary containment violated Chapter 851, Section 13B(2) of the Maine Rules.

Count 10 – Failure to Keep Containers of Hazardous Wastes Closed

74. Complainant realleges and incorporates by reference Paragraphs 1 - 73.

75. Pursuant to Chapter 851, Section 8B(2), a generator may accumulate hazardous

waste on the site of its generation for ninety (90) days or less without a license, provided that, among other things, the waste is placed in containers which meet the requirements of Chapter 855, Section 9(C) of the Maine Rules, with certain exceptions not relevant here.

76. Pursuant to Chapter 855, Section 9(C) of the Maine Rules, container storage facilities must be in compliance with 40 C.F.R. §§ 265.171-265.177 (federal RCRA requirements which are incorporated into the Maine Rules), with certain exceptions not relevant here. Pursuant to 40 C.F.R. § 265.173, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

77. At the time of the Inspection, the following containers of hazardous wastes were open, even though no one was filling or emptying these containers:

(a) In the HWSA in Room B10, and as numbered by EPA as described in Paragraph 63:

i. Container #3: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as acetonitrile and phosphoric acid waste, D001 and D002. Both bungs on this drum were open, even though no one was filling or emptying it.

ii. Container #24: This 30-gallon polyethylene drum had a hazardous waste label, and was marked as “mixed flammables,” D001 and F003. Both bungs on this drum were open, even though no one was filling it or emptying it.

(b) In Lab B-11 (Wet Chemistry Laboratory):

i. There was an approximately three-gallon polyethylene container

which, according to Respondent's employee James Curlett, contained waste acetonitrile and water. It was approximately one-tenth full of liquid. This container was open, even though no one was filling it or emptying it.

ii. There was an approximately three-gallon polyethylene container, with the words "HPLC Waste" written on handwritten tape on the container. It was approximately two-thirds full of liquid. This container was open, even though no one was filling it or emptying it.

(c) In Lab B-3 (Mass Spectroscopy Laboratory): There was an approximately two and one-half gallon plastic jug that was open, due to large opening in the cover, even though no one was filling it or emptying it.

(d) In Lab B-7 (Volatile Organics Laboratory):

i. There was a one-gallon bottle with a hazardous waste label, with markings stating that the container held nitric acid, ferric nitrate and mercury. The bottle was approximately one-half full of liquid. The cap to the bottle was unscrewed and was left loose and partially off, even though no one was filling it or emptying it.

ii. There was a five-gallon carboy waste container with a hazardous waste label, and marked as containing "chloride waste with Hg and TKN." The container was approximately three-quarters full of liquid. The cap to the container was unscrewed and was left loose and partially off, even though no one was filling it or emptying it.

(e) In Room 119 (the Neuralization Area): There was approximately one-half liter of liquid waste in a bucket used for neutralization of wastes in Room 119.

Respondent's employee John Nims told EPA inspectors that the waste in the bucket was pink in color due to the presence of indicator solution that had been added to the waste. The pink color indicated that the waste was acidic. The EPA inspection team used a pH test strip to determine that the contents of the waste in the bucket had a pH of approximately zero, signifying that the waste was acidic. The bucket was open, even though at the time of the inspection no one was emptying the bucket or filling it.

(f) In Lab B-9 (Instrumental Pesticide Laboratory): There was a high pressure liquid chromatography ("HPLC") unit present in Lab B-9. According to Jim Curlett, the unit had not been in use for approximately two months. Mr. Curlett stated that the waste consisted of acetonitrile and water. There was an open approximately three-gallon polyethylene satellite container located at this unit. The container was not labeled. It was approximately one-tenth full. There was a post-column fluorescence HPLC present in this room. There was an open approximately three-gallon polyethylene satellite container located at this unit. The container was not labeled. Handwritten, on tape on the top of the container, was "HPLC Waste." It was approximately two-thirds full.

78. Respondent's failure to ensure that containers holding hazardous waste were closed during storage, except when necessary to add or remove waste, violated Chapter 851, Section 8B(2) and Chapter 855, Section 9(C), incorporating 40 C.F.R. § 265.173.

Count 11 – Failure to label containers with the words “hazardous waste”

79. Complainant realleges and incorporates by reference Paragraphs 1 - 78.

80. Pursuant to Chapter 851, Section 8(B)(3), a generator may accumulate hazardous waste on the site of its generation for ninety (90) days or less without a license, provided among other things that each on-site container is labeled or marked clearly with the words, “Hazardous Waste.”

81. At the time of the Inspection, Respondent stored the following containers of hazardous wastes that were not labeled or marked clearly with the words, “Hazardous Waste”:

(a) In the HWSA in Room B10, and as numbered by EPA as described in Paragraph 63:

i. Container #4: This four liter glass bottle was marked with the handwritten words “Glycol, H2O, Oil.” It was not marked with the words “Hazardous Waste.”

ii. Container #6: This half-gallon metal can was marked with a caution statement on the side of the can concerning ethers and peroxides. It was not marked with the words “Hazardous Waste.”

iii. Container #8: This small 10-inch square box was marked with the handwritten words “Freon TF solvent and IPA.” It was not marked with the words “Hazardous Waste.”

iv. Container #9: This approximately one-quart fire safety can had a label on the side that stated “harmful vapor – contents may explode.” The can was not

marked with the words "Hazardous Waste."

v. Container #11: This approximately one and one-half gallon fire safety can was not marked with the words "Hazardous Waste." The contents of this can could not be determined by EPA inspectors.

vi. Container #13: This approximately two-gallon fire safety can was not marked with the words "Hazardous Waste." The contents of this can could not be determined by EPA inspectors.

vii. Container #20: This approximately one-gallon fire safety can was not marked with the words "Hazardous Waste." The contents of this can could not be determined by EPA inspectors.

(b) In Lab B-9:

i. There was a high pressure liquid chromatography ("HPLC") unit present in this room. According to Respondent's employee, Jim Curlett, the unit had not been in use for approximately two months. Mr. Curlett stated that the waste consisted of acetonitrile and water. There was an open approximately three-gallon polyethylene satellite container located at this unit. The container was not labeled. It was approximately one-tenth full.

ii. There was a post-column fluorescence HPLC present in this room. There was an open approximately 3-gallon poly satellite container located at this unit. The container was not labeled. Handwritten on tape on the top of the container was "HPLC Waste." It was approximately two-thirds full.

(c) In Lab B-8D:

i. There was a three-gallon safety can that Respondent's employee, James Curlett, stated contained waste acetone. The can was not marked with the words "Hazardous Waste."

ii. There was a one-gallon bottle marked as containing "DPA Diluent Waste." The bottle was not marked with the words "Hazardous Waste."

iii. There was a one-gallon bottle marked as containing "DPA Diluent with thiofluor Waste." The bottle was not marked with the words "Hazardous Waste."

(d) In Lab B-3 (Mass Spectroscopy Laboratory), there was an approximately two and one-half gallon plastic jug labeled as "day can for HPLC/MS/MS effluent," which is likely a solvent. The jug was not marked with the words "Hazardous Waste."

(e) In Lab B-11 (Wet Chemistry Laboratory), there was a four-liter container that had an old label that was illegible. Respondent's employee Darcy Degone told EPA inspectors that the container held a variety of chemicals including acids, alkalis, phenol and sodium hypochlorite. The container was not clearly marked with the words "Hazardous Waste."

(f) In Room 103 of the Forensics Area, the following wastes were to be lab-packed and, according the labels on the containers, contained potassium permanganate, ferric chloride crystals, trimethyl ammonium chloride, citric acid anhydrous powder, strontium nitrate/hydrochloric acid, vitrium/nitric acid, barium nitrate crystals and oxalic

acid. These containers were not clearly marked with the words "Hazardous Waste."

82. Respondent's failure to label or clearly mark containers of hazardous waste with the words, "Hazardous Waste," constitutes a violation of Chapter 851, Section 8(B)(3) of the Maine Rules.

Count 12 – Failure to date containers of hazardous waste

83. Complainant realleges and incorporates by reference Paragraphs 1 - 82.

84. Pursuant to Chapter 851, Section 8(B)(3), a generator may accumulate hazardous waste on the site of its generation for ninety (90) days or less without a license, provided that among other things the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

85. At the time of the Inspection, Respondent stored the following containers of hazardous wastes in the HWSA in Room B10, as numbered by EPA as explained in Paragraph 63, and Room 103 which were not clearly marked with the date upon which the period of accumulation began:

(a) Container #3: This 30-gallon polyethylene drum had a hazardous waste label but was not dated.

(b) Container #7: This three-gallon fire safety can had a hazardous waste label but was not dated.

(c) Container #8: This small 10-inch square box was labeled with the words "Freon TF solvent and IPA." The label was not dated.

(d) Container #9: This approximately one-quart fire safety can was labeled with the words “harmful vapor – contents may explode.” The label was not dated.

(e) Container #10: This one and one-half gallon fire safety can had a hazardous waste label but was not dated.

(f) Container #11: This approximately one and one-half gallon fire safety can had no label and was not dated.

(g) Container #12: This two-gallon fire safety can had a hazardous waste label but was not dated.

(h) Container #13: This approximately two-gallon fire safety can had no label and was not dated.

(i) Container #20: This approximately one-gallon fire safety can had no label and was not dated.

(j) In Room 103 of the Forensics Area, the following wastes were to be lab-packed and, according the labels on the containers, contained potassium permanganate, ferric chloride crystals, trimethyl ammonium chloride, citric acid anhydrous powder, strontium nitrate/hydrochloric acid, vitrium/nitric acid, barium nitrate crystals and oxalic acid. These containers were not dated.

86. Respondent’s failure to clearly mark containers of hazardous waste at the facility with the date upon which the period of accumulation began violated Chapter 851, Section

8(B)(3) of the Maine Rules.

VI. PROPOSED PENALTY

87. In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged violations 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. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

88. By this Complaint, Complainant seeks to assess Respondent a total civil penalty of \$ 202,571. The calculation of the proposed penalty is explained in detail in Attachment 1 to this Complaint, and is summarized as follows:

1. Failure to Conduct Adequate Waste Determinations	\$ 38,684
2. Treatment Without a License	\$ 46,191
3. Failure to Adequately Train Employees	\$ 11,101
4. Failure to Maintain Training Program	\$ 9,210
5. Failure to Maintain an Adequate Contingency Plan	\$ 9,210
6. Failure to Conduct Adequate Inspections	\$ 9,210
7. Failure to Segregate Incompatibles	\$ 32,915
8. Failure to Have Adequate Aisle Space	\$ 9,210
9. Failure to Have Secondary Containment	\$ 9,210
10. Failure to Keep Containers Closed	\$ 9,210
11. Failure to Label Containers of Hazardous Waste	\$ 9,210
12. Failure to Date Containers of Hazardous Waste	\$ 9,210
<hr/>	
Total Proposed Penalty	\$ 202,571

89. Quick Resolution. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. 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 also note the docket number of this Complaint ("RCRA-01-2015-0024") and should be forwarded to:

U.S. EPA
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 a copy of the check should also be forwarded to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (ORA 18-1)
Boston, Massachusetts 02114-2023

and to:

Audrey Zucker
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES 04-2)
Boston, Massachusetts 02109-3912

VII. COMPLIANCE ORDER

90. Based on the foregoing findings, Respondent is hereby ordered to comply with the following requirements immediately upon receipt of this Compliance Order ("Order"):

(a) Respondent shall achieve and maintain compliance with all applicable requirements of RCRA and the Maine Rules. Specifically, upon receipt of this Order, Respondent shall comply with the following requirements:

(b) Within sixty (60) days of receipt of this Order and in accordance with Section 5 of Chapter 851 of the Maine Rules and 40 C.F.R. § 268.7(a), Respondent shall make hazardous waste determinations with respect to all solid wastes generated at the facility.

(c) Immediately upon receipt of this Order, Respondent shall cease the unauthorized treatment and disposal of hazardous waste and shall comply with all applicable sections of Section 6.G. of Chapter 856 of the Maine Rules.

(d) Within sixty (60) days of receipt of this Order and in accordance with Section 8B(5) of Chapter 851, of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16, Respondent shall develop and implement a training program directed by a person trained in hazardous waste management procedure, and maintain adequate hazardous waste personnel and training documentation.

(e) Within ninety (90) days of receipt of this Order and in accordance with Section 8B(5) of Chapter 851, of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16, Respondent shall have properly trained all employees requiring hazardous waste training.

(f) Within forty-five (45) days of receipt of this Order and in accordance Section 8B(5) of Chapter 851 of the Maine Rules, Respondent shall develop and implement a complete contingency plan.

(g) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13D of the Maine Rules, Respondent shall develop and follow new inspection checklists and conduct and document adequate hazardous waste inspections.

(h) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13C(6) of the Maine Rules, Respondent shall segregate all incompatible hazardous waste at the facility.

(j) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13C(7) of the Maine Rules, Respondent shall store all hazardous waste at the facility with appropriate aisle spacing.

(k) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13B(2) of the Maine Rules, Respondent shall store all hazardous waste at the facility in appropriate secondary containment.

(l) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13B(2) of the Maine Rules, Respondent shall ensure all hazardous waste containers at the facility remain closed except when wastes are being added or removed.

(m) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13B(3) of the Maine Rules, Respondent shall ensure all hazardous waste containers at the facility are properly labeled with the words "hazardous waste."

(n) Immediately upon receipt of this Order and in accordance with Chapter 851, Section 13B(3) of the Maine Rules, Respondent shall ensure all hazardous waste containers at the facility are properly labeled with the accumulation start date.

(o) Within seventy (70) days of receipt of this Order, Respondent shall submit to EPA written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraph 90. Any notice of noncompliance with the requirements of Paragraph 90 shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance. The information requested in this Compliance Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to:

Richard Piligian
Environmental Scientist
RCRA, EPCRA and Federal Programs Unit
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES 05-1)
Boston, Massachusetts 02109-3912

(p) If Respondent fails to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA and the Debt Collection Improvement Act provide for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$ 37,500 for each day of continued noncompliance.

91. Upon receipt of a compliance order issued under RCRA section 3008(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.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

92. As provided by Section 3008(b) of RCRA, Respondent has a right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. **A request for a hearing on the violations alleged in this Complaint 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 of Respondent to admit, deny or explain any material fact contained in the Complaint constitutes an admission of that allegation.

93. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109-3912

To be entitled to a hearing, Respondent must include a request for a hearing in its Answer to this Complaint.

94. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

95. Respondent should send a copy of the Answer, as well as a copy of all other documents which it files in this action, to Audrey Zucker, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

Audrey Zucker
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES 04-2)
Boston, Massachusetts 02109-3912
Zucker.Audrey@epa.gov

96. 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. 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.

IX. SETTLEMENT CONFERENCE


97. Whether or not a hearing is requested upon filing an answer, Respondent may

confer informally with the 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 by the Regional Judicial Officer, EPA Region 1. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

98. 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 explore the possibility of settlement in this matter, Respondent or Respondent's counsel should contact Audrey Zucker, Enforcement Counsel, at (617) 918-1788 or zucker.audrey@epa.gov.

X. EFFECTIVE DATE

99. This Complaint and Compliance Order shall become effective immediately upon receipt by Respondent.

 Date: March 20, 2015
Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:)

Electronic Submission of Documents)

EPA Docket No.
01-2015-0001

**STANDING ORDER AUTHORIZING FILING AND SERVICE BY E-MAIL
IN PROCEEDINGS BEFORE THE REGION 1 REGIONAL JUDICIAL OFFICER**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), state that "[t]he Presiding Officer... may by order authorize... electronic filing, subject to any appropriate conditions and limitations." 40 C.F.R. §22.5(a)(1), (b)(2). Note, however, that rulings, orders and decisions must be filed and served in accordance with 40 C.F.R. § 22.6, and complaints must be served in accordance with 40 C.F.R. § 22.5(b)(1). Accordingly, pursuant to this authority, the filing and service of documents, *other than the complaint*, rulings, *orders*, and decisions, in all cases currently before or subsequently filed with the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail.¹ See 40 C.F.R. §§ 22.5(a), (b)(1), (b)(2) & 22.6.

Note that this Standing Order does not require the use of e-mail for filing or service in lieu of other methods for filing and/or service. Rather, it authorizes the use of e-mail *in addition to* those methods already authorized in the Consolidated Rules of Practice. 40 C.F.R. § 22.5(b)(2).

In addition, the following conditions and limitations to facilitate filing and service by email are hereby adopted.

- A document is considered filed when the Regional Hearing Clerk receives it. 40 C.F.R. § 22.5(a)(1). All filed documents must be signed, accompanied by a certificate of service, and submitted to the Regional Hearing Clerk for filing in person, or by mail, courier, commercial delivery service, or email.
- Documents filed with the Regional Hearing Clerk by email after 11:59 p.m. Eastern Time will be treated as having been filed the next business day.
- For documents filed through non-electronic means, the inked date stamp physically applied by the Regional Hearing Clerk to the paper copy of the documents will continue

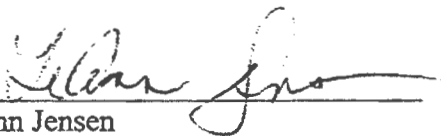
¹ This Order *shall not* apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures.

to serve as the official record of the date and time of filing. The Regional Hearing Clerk is open to receive such paper filings between 8:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

- Any party choosing to submit a document to the Regional Hearing Clerk by e-mail for filing must address the e-mail to R1_Hearing_Clerk_Filings@epa.gov (note: there are “_” underscore characters between each word). The subject line of the electronic transmission shall include the name and docket number of the proceeding. Documents submitted electronically must be in Portable Document Format (“PDF”), and contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. *All* documents submitted for filing, regardless of submission method, must be signed and accompanied by a certificate of service in accordance with 40 C.F.R. § 22.5(a)(3).
- Documents submitted by email for filing shall be deemed to constitute both the original and one copy of the document in satisfaction of the duplicate-filing requirement at 40 C.F.R. § 22.5(a)(1).
- This authorization terminates as to any particular proceeding when an answer is filed pursuant to 40 C.F.R. § 22.15. In addition, this authorization does *not* apply in proceedings under 40 C.F.R. § 22.13(b), or to consent agreements and final orders filed with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(b) and Memorandum from Susan L. Biro, Chief Administrative Law Judge, OALJ, Amendment of Hearing Clerk Pilot Procedures as to CAFOS (March 14, 2013) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo_Amendment.pdf).
- Documents filed after an answer is filed must comply with the Chief Administrative Law Judge’s Standing Order Authorizing Filing and Service By E-Mail in Proceedings Before the Office of Administrative Law Judges (November 21, 2013) (available at http://www.epa.gov/oalj/orders/2013/Standing_Order_2013-11-21_E-Mail_Filing_&_Service_Signed.pdf) and the Chief Administrative Law Judge’s Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges (August 11, 2014) (available at http://www.epa.gov/oalj/orders/2014/2014-08-11%20-%20E-Filing_Standing_Order_Final.pdf).
- This authorization applies only in proceedings in which the complaint clearly provides notice of the availability of electronic filing and service, and in which the complaint is accompanied by a copy of this notice and order. Prior to utilizing electronic service, the parties shall confer and reach agreement regarding acceptable electronic addresses and other logistical issues.
- The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Regional Judicial Officer in her sole discretion at any time. In addition, the Regional Judicial Officer may issue an order modifying these conditions and limitations if deemed appropriate in her discretion.

SO ORDERED.

Dated: October 9, 2014



LeAnn Jensen
Acting Regional Judicial Officer