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

SEP 26 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Article numbers: 7015 0640 0001 0675 3704 / 7015 0640 0001 0675 3698

Michael O'Neill, President and CEO
Kerry North America
3400 Millington Rd.
Beloit, WI 53511

Michael Rowbottom, Plant Manager
Kerry Biofunctional Ingredients, Inc.
158 State Hwy 320
Norwich, NY 13815

Re: **In the Matter of Kerry BioFunctional Ingredients, Inc. d/b/a Kerry Bio Sciences**
Docket Number RCRA-02-2017-7108

Dear Mr. O'Neill and Mr. Rowbottom:

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

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

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

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

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

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

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

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

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of: Kerry Biofunctional Ingredients, Inc.d/b/a Kerry Bio Sciences Respondent Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2017-7108

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code ("U.S.C.") §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 Code of Federal Regulations ("C.F.R.") Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that Kerry Biofunctional Ingredients, Inc.doing business as ("d/b/a") Kerry Bio Sciences **has** violated requirements of the authorized New York State hazardous waste program.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005), 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013)).

New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

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

General Allegations

Jurisdiction

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

Notice

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

Respondent's Background

3. Kerry Biofunctional Ingredients, Inc.d/b/a Kerry Bio Sciences ("Respondent" or "Kerry") is engaged in the manufacture and distribution of ingredients for food manufacturers and provides savory ingredients, sweet ingredients, food coating systems, nutritional systems and speciality protein applications for the pharmaceutical industry.

4. Kerry is a New York State corporation.

5. Kerry is a subsidiary of Kerry Inc. whose North America Headquarters ("Kerry North America") is situated in Beloit, Wisconsin.

6. Kerry is situated at 158 State Hwy 320, Norwich, NY 13815.

7. In 1923, Sheffield Biosciences operated a manufacturing facility at 158 State Highway 320, Norwich, New York 13815.

8. In 1996, the facility situated at 158 State Highway 320, Norwich, New York 13815 was acquired by Quest International ("Quest").

9. In 2004, Quest sold this facility to Kerry Inc. and it was reorganized into and or renamed Kerry.

10. Since 2004, Kerry has owned and operated the manufacturing facility ("facility") located at 158 State Highway 320, Norwich, NY 13815.

11. Respondent's "facility" is a facility as that term is defined at Title 6 of the New York Codes, Rules and Regulations ("6 N.Y.C.R.R.") § 370.2(b).

12. Kerry is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C § 6903(15), and in 6 N.Y.C.R.R. § 370.2(b).[1]

Respondent's Generation of Waste

13. Respondent, in carrying out its manufacturing and pharmaceutical activities, and in the course of conducting normal building maintenance operations, has been generating, and continues to generate, "solid waste" within the meaning of 6 N.Y.C.R.R. § 371.1(c) at its facility.

14. Respondent in carrying out its manufacturing and pharmaceutical activities has been generating, and continues to generate, hazardous waste, within the meaning of 6 N.Y.C.R.R. § 371.1(d), at its facility.

15. During the period from February 24, 2014 through August 15, 2016, Respondent generated at its facility at least 1000 kilograms ("kg") of hazardous waste in each calendar month.

16. As of August 15, 2016, and at times both prior thereto and subsequent thereto, Respondent was and is a "generator" of hazardous waste at its facility as that phrase is defined in 6 N.Y.C.R.R. §370.2(b).

17. Respondent's facility has been an "existing hazardous waste management facility" (or "existing facility") within the meaning of 6 N.Y.C.R.R. § 370.2(b).

Regulatory Filings

18. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Sheffield Products informed EPA, under the name of Sheffield Biosciences, through a notification (EPA Form 8700-12) on December 5, 1990, that it generated hazardous waste at its facility.

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

19. In response to that Notification, EPA, on or about December 10, 1990, provided Sheffield Products with EPA Identification Number NYD986895852.

20. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Quest, on or about October 25, 1996, and, again, on February 14, 2000[2], informed EPA, through a notification (EPA Form 8700-12), that it now owned the facility previously owned by Sheffield Products

21. On or about November 4, 1996, and again on or about February 21, 2000, EPA transferred to Quest the EPA Identification Number NYD986895852 that it had previously issued to Sheffield Products.

22. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Kerry informed EPA, on or about May 5, 2004, through a notification (EPA Form 8700-12) that it was operating as Kerry Bio Sciences and now owned the faculty previously owned by Quest.

23. On or about May 28, 2004, EPA transferred to Kerry Bio Sciences the EPA Identification Number NYD986895852 that it previously had given to Quest.

EPA Inspection

24. On or about July 14 - 15, 2016, a duly designated representative of EPA conducted a Compliance Evaluation Inspection ("Inspection") of Respondent's Facility pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.

EPA Notice of Violations and Request for Information

25. On or about December 2, 2016, EPA issued to Kerry a combined Notice of Violation ("NOV") and Information Request Letter ('IRL") regarding its Facility.

26. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Kerry that EPA had identified a number of potential RCRA violations at its Facility and asked Kerry to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.

27. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and

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[2] The October 1996 Notification was under EPA I.D. Number NYD986895852 and indicated that the Quest facility was situated at Woods Corners and Rte. 320, Norwich, New York 13815. Quest, on or about February 14, 2000, filed another EPA Form 8700-12 under EPA I.D. Number NYD986895852 indicating that the facility's address was now 158 State Highway 320, Norwich, NY 13815. EPA's February 21, 2000 response provided Quest with the same facility identification number but now at the 158 State Highway 320, Norwich, NY 13815 address.

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

28. On or about January 4, 2017, and on or about January 27, 2017, Kerry submitted its certified Response to the combined NOV and IRL attesting that the information provided in its Response was true and accurate.

COUNT 1—Respondent's Failure Make a Hazardous Waste Determination

29. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "28," inclusive, with the same force and effect as if fully set forth below.

30. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste using the procedures specified in that provision.

31. Pursuant to 6 N.Y.C.R.R. § 371.1(c), subject to certain inapplicable exclusions, a solid waste is any discarded material that includes abandoned, recycled or inherently waste-like materials as those terms are further defined therein.

32. Pursuant to 6 N.Y.C.R.R. § 371.1(c)(3), materials are solid wastes if they are abandoned by being: disposed of; burned or incinerated; or accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated.

33. At the time of the Inspection and for some time prior thereto, a cabinet in the facility's paint room contained dozens of cans of paints, thinners and epoxies. Some of these cans were significantly rusted and appeared to be old and inherently waste-like. A gray sticky substance which may have leaked from a can was observed on the shelf under a can and under other containers.

34. At the time of the Inspection, Respondent, with respect to the cans described in paragraph "33," above, agreed "to identify which of these materials is a solid waste, to characterize them, and to provide manifests of their disposal."

35. In its response to the NOV/IRL, Kerry stated: "[t]he Paint Room was cleaned out of old paint and leaking cans. The [hazardous] waste was removed from the site through Clean Harbors" accompanied by a hazardous waste manifest showing Respondent had disposed of 400 lbs. of paint-related hazardous waste ("D001") on August 1, 2016.

36. Upon information and belief, at the time of the Inspection, the cans, identified in paragraph "35," above contained solid waste.

37. Upon information and belief, at the time of the Inspection, Respondent had not made a determination as to whether the contents of the cans identified in paragraph "35," above, were hazardous waste.

38. Respondent's failure to timely determine whether the contents of the cans identified in paragraph "35," above, were a hazardous waste is a violation of 6 N.Y.C.R.R. § 372.2(a)(2).

COUNT 2– Respondent's Failure to Keep a Copy of Each Complete Manifest for at Least Three Years

39. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "28," inclusive, with the same force and effect as if fully set forth below.

40. Pursuant to 6 N.Y.C.R.R. § 372.2(c)(1)(i), a generator must keep a copy of each complete manifest document as a record for at least three years from the date the waste was accepted by the initial transporter.

41. At the time of the Inspection, Respondent could not produce a copy of each complete manifest document for the off-site shipments of the following hazardous waste streams:

- Manifest #007759628, for 6,050 lb. of sodium hydroxide and hypochlorite solutions (D002) shipped off-site from Kerry on October 14, 2014.
- Manifest #008864435, for 325 lb. of sodium hydroxide (D002) shipped offsite from Kerry on August 25, 2015.
- Manifest #007469912, for 8,490 lb. of liquid flavoring extracts (D001) shipped off-site from Kerry on October 13, 2015.
- Manifest #009080419, for 80 lb. of lead (D009) shipped off-site from Kerry on October 30, 2015.

42. In the December 16, 2016, NOV/IRL, EPA sought copies of the four manifests described in paragraph "41," above.

43. In its January 27, 2017, response to the NOV/IRL, Kerry stated "copies of the above manifests were obtained from Clean Harbors at the conclusion of the EPA site visit" and were attached to the response.

44. Respondent's failure to keep a copy of each complete manifest document for each hazardous waste shipment that was accepted by the initial transporter for three years from the date of that acceptance constitutes a violation of 6 N.Y.C.R.R. § 372.2(c)(1)(i).

COUNT 3 – Respondent's Storage of Hazardous Waste Without a Permit at the Facility

45. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "28", inclusive, with the same force and effect as if fully set forth below set forth herein.

Legal Requirements for Permit and Exemptions

46. Respondent stores hazardous waste at its facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurs in various facility locations including the Hazardous Waste Storage Area and numerous satellite accumulation areas located throughout Kerry's facility.

47. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:

a) Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of existing facilities for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and

b) 6 N.Y.C.R.R. § 373-1.2(a), provides that no person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.

48. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(ii), a generator who generates more than 1,000 kilograms of hazardous waste in any calendar month may accumulate hazardous waste on-site for 90 days or less without being subject to the permitting requirements of 6 N.Y.C.R.R. Part 373 [*i.e.* without having obtained a permit or without having interim status], provided such generator complies with the requirements of, *inter alia* 6 N.Y.C.R.R. §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx) and clearly marks and makes visible for inspection on all containers, tanks, or storage areas the date upon which each period of accumulation begins.

49. Six N.Y.C.R.R. § 372.2(a)(8)(i)('a') provides, that a generator of hazardous waste can be exempt from the permit requirements and still accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, that is under the control of the operator of the process generating the waste, provided that the generator complies with the use and management standards set forth in 6 N.Y.C.R.R. §373-3.9(b)-(d) and marks the containers with the words "Hazardous Waste" and with other words that identify the contents of the containers.

Facility's Storage of Hazardous Waste and Failures to Qualify for An Exemption from Its Obligation to Have A Permit

50. At the time of the Inspection, and for some time prior thereto, Kerry was storing containers of hazardous waste.

Failure to label with words identifying the hazardous waste

51. Pursuant to 6 N.Y.C.R.R. § 373-3.9(d)(3), a large quantity generator storing containers holding hazardous waste must mark each container with the words "Hazardous Waste" and with "other words identifying their contents."

52. At the time of the Inspection, and for some time prior to, Kerry was storing seven 55 gallon drum containers labeled as hazardous waste in the facility's Chemical Storage Building Central Hazardous Waste Storage Area ("CHWSA") without marking each container with other words identifying its contents.

53. In its January 4 and January 27, 2017 Responses, Respondent stated "Retraining of employees that create hazardous waste occurred in November [2016]. This training *included the proper labeling of hazardous waste*." (emphasis supplied)

Failure to maintain aisle space for unobstructed movement

54. Pursuant to 6 N.Y.C.R.R. § 373-3.3(f), a generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

55. At the time of the Inspection, and for some time prior to, Kerry was storing most of the twenty-four 55-gallon drums of hazardous waste in the CHWSA stacked abutting each other, two drums high and placed against the building's chain-link fence, so that one could not walk around them nor could one inspect the drums from the other side of the chain link fence due to a change in grade and interfering structures.

56. In its January 4 and January 27, 2017 Responses to the NOV/IRL, Respondent attached revised Work Instruction 04.0120.01O.002-2WI, entitled "Hazardous Materials Waste 90 Day Accumulation Sites," dated December 30, 2016 (Attachment 4), which stated "Pallets of hazardous waste stored in 90-day storage locations will be single stacked with aisle space between each pallet to allow unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment in case of emergency. Personnel should be able to walk around the pallet at all times."

57. In its January 4 and January 27, 2017 Responses to the NOV/IRL, Respondent stated "Accumulation Sites was [sic] revised to describe the storage configuration of hazardous

waste drums in the Chemical Storage Area. The drum configuration was added to the 90 day checklist. The floor was marked with storage locations."

Failure to clearly mark containers with the accumulation start date

58. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(ii), a large quantity generator storing containers holding hazardous waste must label the container with the date upon which each period of accumulation begins and this date must be clearly marked and visible for inspection on each container.

59. At the times of the Inspection, Kerry was storing in a small hazardous waste storage area a quart container of hazardous waste that had not been marked with its accumulation start date.

60. At the time of the Inspection, Respondent was storing in its CHWSA three 55-gallon drums of hazardous waste that were not marked with their accumulation start dates.

61. In its January 4 and January 27, 2017 Responses, Respondent admitted "Retraining of employees that create hazardous waste occurred in November [2016]. This training *included the proper labeling of hazardous waste*." (emphasis supplied)

Failure to ensure that hazardous wastes when moved within a facility from the point of generation is sent to a hazardous waste storage area

62. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(i), a generator may accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste. Once the above volume limits are exceeded, the wastes must be removed within 3 days to a hazardous waste storage area or shipped off-site and the containers must be immediately marked with the date the volume limits are met.

63. At the time of the Inspection and for some time prior thereto, the facility's wastewater treatment plant was storing five approximately 1-quart bottles that, according to facility representatives, were brought from their points of generation to the wastewater treatment plant on or around the dates marked on the bottles. The wastewater treatment plant was not a designated hazardous waste storage area.

64. In its January 27, 2017 Response to the NOV/IRL, Respondent attached the revised Work Instruction 04.0120.010.002-1WI entitled Hazardous Material Waste Satellite Accumulation that stated "Once the 55-gallon threshold has been exceeded the containers will be dated. Personnel shall contact the Environmental Supervisor or designee, and take the waste directly to the 90-Day Accumulation Site (per Work Instruction 04.0120.01 0.002-2WI) within 3 calendar days."

Failure to attempt to make emergency arrangements

65. Pursuant to 6 N.Y.C.R.R. § 373-3.3(g)(1)(i), an owner or operator must attempt to make arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility; properties of hazardous waste handled at the facility and their associated hazards; places where facility personnel would normally be working; entrances into and the roads inside the facility; and possible evacuation routes.

66. At of the time of the Inspection, Respondent's representatives stated that the facility had made informal contacts with the local fire department,

67. In the January 4, 2017, Response to the NOV/IRL, Kerry stated "the Emergency Preparedness Plan (EPP) was revised to *include the relationship with local responding agencies and hazardous waste locations.* The HSE Manager had coordinated with the local fire department for familarization with the facility. The fire department visit occurred on December 28, 2016. *In addition, the coordination with local responders has been added to the EPP as an annual event that will be coordinated and documented by the HSE Manage*r". (emphasis supplied)

Failure to maintain training records

68. Pursuant to 6 N.Y.C.R.R. § 373-3.2(g)(4), the owner or operator must maintain the following training records on-site: (1) the job title and written description for each position at the facility related to hazardous waste management and the name of the employee filling each job; (2) a written description of the type and amount of both introductory and continuing training that will be given to each person filling these positions; and (3) records documenting that the required training has been completed by facility personnel. Such records on current personnel must be kept until closure of the facility. Records for former employees must be kept for three years after departure. Personnel training records may accompany personnel transferred within the same company.

69. At the time of the Inspection, the facility could not produce the required training records.

70. In the January 27, 2017, Response to the NOV/IRL, the Respondent attached a revised SOP 04.0120.010.002, entitled Hazardous Waste, and dated December 30, 2016, that included the roles and responsibilities for employees who generate or handle hazardous waste and the training associated with those roles. Kerry also attached revised job descriptions for the employees noted in the SOP.

Respondent's failure to have the required permits

71. At the time of the Inspection, and at times prior thereto, Respondent failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status as proscribed by 6 N.Y.C.R.R. § 373-1.2(b).

72. Kerry was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 N.Y.C.R.R. § 373-1.2(a).

73. Kerry had not applied for a permit to store hazardous waste at its facility and did not have interim status pursuant to 6 N.Y.C.R.R. 373-1.2(a).

74. Respondent's operation of an existing hazardous waste management facility, without having obtained a permit or qualifying for interim status constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 N.Y.C.R.R. § 373-1.2(a).

II. PROPOSED CIVIL PENALTY

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

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 ("Inflation Adjustment Act"), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the December 6, 2013 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalties Policies to Account for Inflation (applicable to violations that occurred between December 7, 2013 and November 2, 2015);" and the July 27, 2016 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015)."

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

A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are also included in Attachment II.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual penalties and for multiple violations are included as Attachment II, below.

Count 1	$10,602
Count 2:	$5,628
Count 3:	$28,545
TOTAL	**$44,800**

Total proposed Penalty for counts 1 through 3 is rounded to the nearest hundredth and incorporates the July 2016 inflationary adjustment of the calculated penalty

III. COMPLIANCE ORDER

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

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct, to the extent possible, the past violations alleged in Counts 1 through 3of this Complaint. Respondent shall thereafter maintain compliance at its Facility with the requirements cited in Counts 1 through 3.

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

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

Charles Zafonte
Enforcement Officer
Compliance Assistance & Program Support Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in a compliance **order that has taken effect is liable for** a civil penalty of up to $57,391 for each day of continued noncompliance 82 Fed. Reg. 3633 (January 12, 2017).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

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

The rules of procedure governing this civil administrative litigation were originally set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS ("Consolidated Rules of Practice"), and which are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017 and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

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

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

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

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

B. Opportunity To Request A Hearing

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

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

(**NOTE:** Except for compliance information sent to EPA to satisfy the requirements of the compliance Order in Section III, any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

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

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

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

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

C. Failure To Answer

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

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

D. Filing Of Documents Filed After the Answer

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

If filing by the United States Postal Service:

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

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

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

E. Exhaustion Of Administrative Remedies

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

To appeal an initial decision to the EAB, Respondent must do so [w]ithin thirty (30) days after the initial decision is served. 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

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

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

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

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3195

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

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

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

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

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

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

Complainant:

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

Date SEP 26 2017

To: Michael O'Neill, President and CEO
Kerry North America
3400 Millington Rd.
Beloit, WI 53511

Michael Rowbottom, Plant Manager
Kerry Biofunctional Ingredients, Inc.
158 State Hwy 320
Norwich, NY 13815

cc: Kelly Lewandowski, Chief
Site Control Section
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233

CERTIFICATE OF SERVICE

This is to certify that on the day of 27th of September, I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number RCRA-02-2017-7108, together with Attachments I and II (collectively henceforth referred to as the Complaint), and with a copy of the CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, 40 C.F.R. Part 22, by certified mail, return receipt requested, to both Michael O'Neill, President and CEO, Kerry North America, 3400 Millington Road, Beloit, WI 53511 and Michael Rowbottom, Plant Manager, Kerry Biofunctional Ingredients, Inc., 158 State Hwy 320, Norwich, NY 13815. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

SEP 27 2017

Dated: _____,
New York, New York

ATTACHMENT 1

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

Respondent: Kerry Biofunctional Ingredients, Inc.

Facility Address: 158 State Hwy 320, Norwich, NY 13815

Requirement Violated: Failure to make hazardous waste determinations

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$ 7,149.50
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Moderate
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of waste streams minus 1.	N/A
4. Add line 1 and line 3	$7,149.50
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$7,149.50
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	$10,602

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

1. **Gravity Based Penalty**

   a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is maximized. This follows because, if the owner/operator is unaware that the facility is generating hazardous waste, there is a much greater likelihood that the owner/operator will not comply with the applicable provisions of the regulatory scheme. In this case, the Potential for Harm was determined to be MODERATE. The wastes, which included ignitable solvents, paints and epoxy glues, were situated in the same room as the facility's ignitable paint thinner wastes. However, the amount of wastes involved was limited..

   b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE: Hazardous waste determinations were not conducted on only a small percentage of the wastes generated at the Facility.

   The applicable cell ranges from $5,500 to $8,799. The mid-point ($7,149.50) for the cell was selected, in consideration of the fact that Respondent had characterized most of its solid wastes.

2. **Multiple Day/Violations** – EPA exercised its discretion and decided not to impose either multiple violations or multi-day penalties for the relatively small amount of ignitable hazardous waste paints and paint wastes (400 lbs. of waste solvents, paints and epoxy glues) that had been stored in the Paint Room until they were transported off-site by Clean Harbors on or about August 1, 2016.

3. **Adjustment Factors**

   a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

   b. Willfulness/Negligence - Not applicable

   c. History of Compliance - Not applicable

d. Ability to Pay - Not applicable

e. Environmental Project – Not applicable

f. Other Unique Factors – Not applicable

g. Economic Benefit – The cost of conducting the hazardous waste determinations is considered to be de minimis because Respondent could have used generator knowledge and safety data sheets to make the determination.

h. Recalculation of Penalty Based on New Information: - Not applicable

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

Respondent: Kerry Biofunctional Ingredients, Inc.

Facility Address: 158 State Hwy 320, Norwich, NY 13815

Requirement Violated: Failure to Keep a Copy of Each Complete Manifest for at Least Three Year

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$3,300
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Minor
2. Select an amount from the appropriate multi-day matrix cell.	$165
3. Multiply line 2 by number of missing manifests minus 1	$495
4. Add line 1 and line 3	$3,795
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$3,795
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	$5,628

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

1. **Gravity Based Penalty**

a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of harm to humans or the environmental and the impact of non-compliance on the regulatory scheme. A generator of hazardous waste is obligated to ensure that the Treatment, Storage and Disposal ("TSD") facility that its hazardous waste is sent to is authorized to handle that hazardous waste and receives the hazardous waste sent to it. This "cradle-to-grave" tracking of hazardous waste is a fundamental cornerstone of RCRA. Kerry failed to maintain copies of four separate manifests indicating the TSD facility to which it had sent its hazardous waste had received that waste. The Potential for Harm was MODERATE because these four manifests, in fact, were in the state database indicating that the TSD had received such waste.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MINOR. Kerry had shipped hazardous waste off-site approximately 28 times in 2014 and 2015. It was unable to locate only four manifests and was able to subsequently obtain copies of these four manifests from the TSD.

The applicable cell ranges from $3,300 to $5,499. The low-point for the cell matrix ($3,300) was selected, in consideration of the fact that Respondent had return manifests for its other shipments of hazardous wastes and following the identification of the issue during the inspection, quickly obtained copies of these four missing manifests from the TSD.

2. **Multiple Violations** – EPA used its discretion and used the multiday penalty matrix to assess a penalty for the Respondent's failure to keep a copy of four manifests for at least three years.

The low-point of moderate/minor cell matrix was used ($165).

3. **Adjustment Factors**

a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

c. History of Compliance - Not applicable

d. Ability to Pay - Not applicable

e. Environmental Project – Not applicable

f. Other Unique Factors – Not applicable

g. Economic Benefit – The cost of contacting the designated facility to obtain a copy of these manifests is de minimis.

h. Recalculation of Penalty Based on New Information: - Not applicable

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

Respondent: Kerry Biofunctional Ingredients, Inc.

Facility Address: 158 State Hwy 320, Norwich, NY 13815

Requirements Violated: Operating a Hazardous Waste Storage Facility Without a Permit

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	$19,249.50
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation	N/A
4. Add line 1 and line 3	$19,249.50
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	$19,249.50
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	$28,545

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1. **Gravity Based Penalty**

   a. Potential for Harm - The potential for harm present for this violation was determined to be MAJOR. Failure to comply with the safe harbor provisions required to store hazardous waste without a permit is a serious violation and has potential substantial adverse effects on the environment as well as EPA's regulatory program. The Respondent did not comply with a number of the safe harbor provisions as described in Count 3 of the Complaint.

   b. Extent of Deviation -The extent of deviation was determined to be MODERATE because Respondent did comply with some but not all of the safe harbor requirements; a relatively small number of drums/containers was not labeled or dated or moved from their point of generation to a location other than the CHWSA; and Kerry made some informal emergency arrangements prior to the inspection but did not do all the emergency planning that is required

   The applicable cell ranges from $16,500 to $21,999. The mid-point for the cell matrix was selected because Respondent was in compliance with some of the management requirements, and as noted above, had made attempts to comply with some of the other safe harbor provisions but was not fully in conformance with RCRA.

2. **Multi-day Violations**- EPA exercised its discretion and determined that Multi-day penalties were not appropriate.

3. **Adjustment Factors**

   a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

   b. Willfulness/Negligence - Not applicable.

   c. History of Compliance - Not applicable.

   d. Ability to Pay - Not applicable.

   e. Environmental Project - Not applicable.

f. Other Unique Factors - Not applicable.

g. Economic Benefit – The cost of complying with the violated requirements (e.g., marking and labeling containers, writing letters to make emergency arrangements, etc.) is believed to be de minimis.

h. Recalculation of Penalty Based on New Information - Not applicable.

ATTACHMENT II

2003 Gravity-Based Penalty Matrix

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		MAJOR	MODERATE	MINOR
	MAJOR	$27,500 to $22,000	$21,999 to $16,500	$16,499 to $12,100
	MODERATE	$12,099 to $8,800	$8,799 to $5,500	$5,499 to $3,300
	MINOR	$3,299 to $1,650	$1,649 to $550	$549 to $110

2003 Multi-Day Matrix of Minimum Daily Penalties

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT			
		Major	Moderate	Minor
	Major	$5,500 to $1,100	$4,400 to $825	$3,300 to $605
	Moderate	$2,420 to $440	$1,760 to $275	$1,100 to $165
	Minor	$660 to $110	$330 to $110	$110