



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

2019 SEP 26 11 09 19

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article number: 7018 1830 0000 9639 5729

Mr. Bruce Bzura
President
Madison Industries, Inc.
554 Waterworks Road
Old Bridge, New Jersey 08857

In the Matter of Madison Industries, Inc.

Docket No.: RCRA-02-2019-7109

Dear Mr. Bzura:

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.

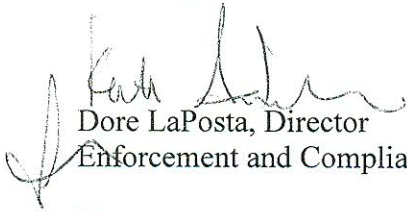
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 latter part of the Complaint.)

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
Enforcement and Compliance Assurance Division

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In the Matter of:

Madison Industries, Inc.

Respondent.

Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2019-7109

I. 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.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Madison Industries Inc. has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its manufacturing facility located in Old Bridge, New Jersey.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program on August 2, 1999 (64 Fed. Reg. 41823). At that time, the authorized state program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Register (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. On December 16, 2002, New Jersey was also authorized for the hazardous waste requirements promulgated by EPA between July 2, 1993 and July 31, 1998 (67 Fed. Reg. 76995). These changes became effective February 14, 2003. Thus, as of February 14, 2003, the authorized state program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's regulations that comprised the original state program, and that

were authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The regulations authorized in 2002 can be found at 31 N.J.R.166 (Jan. 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998, for which EPA retains primary responsibility.

The Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division, USEPA- Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

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 Jersey notice of this action.

GENERAL ALLEGATIONS

Respondent

3. Respondent is Madison Industries, Inc. (“Madison” or “Respondent”), established in 1962.
4. Respondent, along with its sister company Old Bridge Chemicals, manufactures and has manufactured a variety of inorganic chemicals including copper sulfate, copper carbonate, zinc chloride and zinc sulfate at a 64-acre facility located at 554 Waterworks Road, Old Bridge New Jersey 08857. Respondent primarily manufactures zinc chemicals.
5. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Administrative Code (N.J.A.C.) 7:26G-4.1(a).

Hazardous Waste

6. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste and used oil. 42 U.S.C. § 6901 et seq.
7. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 279.

8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which include the regulations referenced below.
9. Respondent is and has been the “owner” and/or “operator” of the “facility” located in Old Bridge, New Jersey as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
10. In or about May 1993, Respondent notified EPA that it generates 1,000 kilograms or more of non-acute hazardous waste in each calendar month at its facility in Old Bridge, New Jersey. Respondent’s notification was made pursuant to Section 3010 of RCRA.
11. In response to the notification referenced above, EPA issued Respondent’s facility EPA Identification Number NJD002460855.
12. Respondent is and has been a “generator” of “hazardous waste” at the facility identified in Paragraph 4 above as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
13. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference at N.J.A.C. 7:26G-6.
14. Respondent stores hazardous waste in an outdoor container storage area at its facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
15. Respondent’s facility is a “storage” facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
16. Respondent never submitted a Part A or a Part B Permit Application to EPA or the State of New Jersey for the facility identified in Paragraph 4 and never received “interim status” or a hazardous waste permit to treat, store or dispose of hazardous waste at this facility.
17. In March 2019, and prior and subsequent thereto, Respondent generated and continues to generate 1000 kilograms (“kgs”) or more of hazardous waste in a calendar month at its facility.

EPA’s Investigative and Enforcement Activities Related to this Complaint

18. On or about March 18, 2019, duly designated representatives of EPA conducted an inspection of Respondent’s Old Bridge facility to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s

authorized hazardous waste regulations (the “2019 Inspection”). The inspection was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

19. Pursuant to Section 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about May 30, 2019 EPA issued Respondent a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding hazardous waste activities at its Old Bridge facility.
20. On or about June 21, 2019, Respondent emailed EPA a certified response to EPA’s combined NOV and IRL.

Other Enforcement Actions Regarding the Facility

21. In or about November 2016, the New Jersey Department of Environmental Protection (NJDEP) issued Respondent a Notice of Violation for failing to properly close hazardous waste containers (supersacks) at its facility.
22. Respondent’s facility is part of the CPS/Madison Industries Superfund Site (Site), which was listed on the National Priorities List in 1983. The Site includes the facility identified in Paragraph 4 above, where Madison and Old Bridge Chemicals currently both operate, as well as the adjacent CPS Chemical (“CPS”) facility, which closed in 2001. (BASF Corporation is currently the owner of the CPS property). EPA signed an Administrative Order on Consent for Remedial Investigation/Feasibility with Madison Industries and Old Bridge Chemicals in 2015, and with CPS in 2005. Site remediation is occurring in phases.
23. In April 2019, EPA public noticed a proposed plan to address contaminated groundwater emanating from both the Madison and CPS facilities, as well as contaminated soil on the CPS property. Contaminated soil and surface water on the Madison property will be addressed in a subsequent EPA proposed plan. Site contaminants include organic compounds and metals, including copper, zinc, lead and cadmium. Inorganic contamination (metals) predominately originate from the Madison facility.

Count 1

Storage of Hazardous Waste Without a Permit

24. Complainant re-alleges each allegation contained in the above paragraphs as if set fully forth herein.
25. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1 as incorporated by reference by N.J.A.C. 7:26G-12.1(a), a RCRA permit or interim status is required for the storage of hazardous waste.
26. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a generator of 1,000 kilograms or more (hereafter referred to as a large quantity generator

("LQG")) may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided it complies with all applicable requirements referenced therein, including 40 C.F.R. Subparts C (Preparedness and Prevention), and I (Use and Management of Containers) of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

27. During at least the 2019 Inspection, Respondent stored hazardous waste in approximately forty (40) flexible intermediate bulk containers (resin coated fabric containers commonly called "supersacks") in an outdoor container storage area ("storage area"). Each supersack was approximately 36 inches x 36 inches x 43 inches with a maximum vendor capacity rating of 3000 pounds.

Failure to Comply with Hazardous Waste Container Requirements

Failure to Mark Each Hazardous Waste Container with the Words "Hazardous Waste"

28. Pursuant to 40 C.F.R. § 262.34(a)(3) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a large quantity generator must clearly label or mark each container with the words "Hazardous Waste."
29. During at least the 2019 Inspection, Respondent stored hazardous waste in containers in the storage area referenced above that were neither labeled nor marked with the words "Hazardous Waste."

Failure to Mark Each Hazardous Waste Container with the Accumulation Start Date

30. Pursuant to 40 C.F.R. § 262.34((a)(2) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a large quantity generator must clearly mark each container with the date hazardous waste accumulation in that container begins.
31. During at least the 2019 Inspection, Respondent stored hazardous waste in containers in the storage area referenced above without marking the initial hazardous waste accumulation date on each of the containers.

Failure to Properly Close Each Hazardous Waste Container

32. Pursuant to 40 C.F.R. § 265.173, as referenced by 262.34(a)(1)(i) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), a container holding hazardous waste must be closed during storage, except when it is necessary to add or remove waste.
33. During at least the 2019 Inspection, approximately one quarter of the containers storing hazardous waste in the storage area referenced above were open when hazardous waste was neither being added nor removed from these containers.

34. Pursuant to 40 C.F.R. § 265.174 as referenced by 262.34(a)(1)(i) incorporated by reference by N.J.A.C. 7:26G-6.1(a), owners or operators must conduct weekly inspections of areas where hazardous waste containers are stored, looking for leaking containers and for deterioration of containers.
35. During at least the 2019 Inspection, the container storage area referenced above had insufficient aisle space such that the integrity and compliance status of each container could not be inspected.

Failure to Store Hazardous Waste in Containers in Good Condition

36. Pursuant to 40 C.F.R. § 265.171, as referenced by 262.34(a)(1)(i) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste to a container that is in good condition.
37. During at least the 2019 Inspection, approximately one quarter of the hazardous waste containers in the storage area referenced above were torn, ruptured and/or porous. Hazardous waste had not been not transferred from torn, ruptured and/or porous containers to containers in good condition.

Failure to Store Hazardous Waste in Compatible Containers

38. Pursuant to 40 C.F.R. § 265.172, as referenced by 262.34(a)(1)(i) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), the owner or operator must use a container made or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored so that the ability of the container to contain the waste is not impaired.
39. During at least the 2019 Inspection, Respondent used containers in the storage area referenced above that were incompatible with the hazardous waste stored in them. The integrity of the containers was impaired, resulting in release of hazardous waste from the containers.

Failure to Comply with Preparedness and Prevention Requirements

Failure to Minimize Unplanned Releases of Hazardous Waste or Constituents

40. Pursuant to 40 C.F.R. § 265.31, as referenced by 262.34(a)(4) as incorporated by reference in N.J.A.C. 7:26G-6.1(a), facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

41. Complainant hereby incorporates by reference the allegations set forth in Paragraphs 49 – 53, located below in Count 2.
42. During at least the 2019 Inspection, Respondent failed to maintain and operate its facility in a manner to minimize threats to human health and the environment as required by 40 C.F.R. § 265.31, as referenced by 262.34(a)(4) as incorporated by reference in N.J.A.C. 7:26G-6.1(a).

Failure to Satisfy Conditions for Storage of Hazardous Waste by a Generator which, if Complied With, Would Have Exempted Respondent from Permitting Requirements

43. During at least the 2019 Inspection, Respondent failed to satisfy all the conditions which referenced in 40 C.F.R. § 262.34(a), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), which if, complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 90 days at its facility.
44. Respondent's storage of hazardous waste during at least the 2019 Inspection without interim status or a permit is a violation of 40 C.F.R. § 270.1(c) as incorporated by reference by NJAC. 7:26G-12.1(a), and of Section 3005 of RCRA, 42 U.S.C. § 6925.
45. Respondent's failure to comply with Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

Count 2

Failure to Minimize Risks of Fire, Explosion and Releases

46. Complainant re-alleges each allegation contained in the above paragraphs, except Paragraph 41, as if set fully forth herein.
47. Pursuant to 40 C.F.R. § 265.1(b), as incorporated by N.J.A.C. 7:26G-9.1(a), facilities in existence on or before November 19, 1980 are subject to the requirements set forth in 40 C.F.R. Part 265 or the equivalent authorized State program.
48. Pursuant to 40 C.F.R. § 265.31, as incorporated by N.J.A.C. 7:26G-9.1(a), facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
49. During at least the 2019 Inspection, Respondent stored white powdery hazardous waste in supersacks in an uncovered outdoor container storage area. Some of the supersacks containing hazardous waste were open, torn, ruptured and/or porous.

50. During at least the 2019 Inspection, hazardous waste and/or hazardous waste constituents were present on the ground of the open-air container storage area.
51. During at least the 2019 Inspection, hazardous waste and/or hazardous waste constituents were present on the floor/surface of an asphalt pad, which was located outdoors, adjacent to the container storage area. Areas of the asphalt pad were cracked and/or crumbling, and the pad was and is located adjacent to an earthen unlined area.
52. At least some of the un-containerized hazardous waste and/or hazardous constituents referenced in Paragraphs 50 and 51 above was released from the containers referenced in Paragraph 49 above.
53. The actions or inaction that led to the presence of un-containerized hazardous waste or hazardous waste constituents on the ground at Respondent's facility as set forth in Paragraphs 48 through 52 above, constitute a failure by Respondent to maintain and/or operate its facility in a manner minimizing the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
54. Respondent's failure to maintain and operate its facility in a manner to minimize the release of hazardous waste or hazardous waste constituents to the air, soil or surface water as stated above constitutes a violation of 40 C.F.R. § 265.31, as incorporated by N.J.A.C. 7:26G-9.1(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 January 11, 2018 memorandum, "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) ..."

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 \$99,681 per day for each violation occurring after November 2, 2015 and for which a penalty is assessed after February 6, 2019. See 40 C.F.R. Part 19 and 84 *Fed. Reg.* 2056 (Feb. 6, 2019) and 84 *Fed. Reg.* 5955 (Feb. 25, 2019).

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

Count 1 - Violation of RCRA § 3005 and 40 C.F.R. § 270.1(c) as incorporated by reference in N.J.A.C. 7:26G-12.1(a): \$42,300

Counts 2 - Violation of 40 C.F.R. § 265.31, as incorporated by N.J.A.C. 7:26G-9.1(a): \$42,300.

Total Proposed Penalty is **\$84,600**

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 the violations alleged in Counts 1 and 2 of this Complaint. Respondent shall thereafter maintain compliance at its facility with the requirements cited in Counts 1 and 2.

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. § 22.15. See 42 U.S.C. § 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:

Mr. John Wilk
Hazardous Waste Compliance Section
RCRA Compliance Branch
Enforcement and Compliance Assurance Division
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 Improvement 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 \$60,039 for each day of continued noncompliance. 84 *Fed. Reg.* 2056 (Feb. 6, 2019) and 84 *Fed. Reg.* 5955 (February 25, 2019). Such continued noncompliance may also result in suspension or revocation of any permits issued to this violator whether issued by the EPA or the State of New Jersey.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under Section 3008(a) of RCRA, 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 are 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, and which are codified at 40 C.F.R. Part 22. These rules have been 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 (Jan. 9, 2017). These amendments became effective on May 22, 2017 and apply to all 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**

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

Respondent shall also then serve one copy of the Answer(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 lacks 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(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 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. § 22.

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 Answer to the Complaint (*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)), 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:

Mary Angeles
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:

Mary Angeles
Headquarters Hearing Clerk
Office of the Administrative Law Judges

Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board 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 the right to judicial review. 40 C.F.R. § 22.27(d).

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

VI. INFORMAL SETTLEMENT CONFERENCE

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

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor

New York, N.Y. 10007-1866
Telephone (212) 637-3213

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 request for 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(s) 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 shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the 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 entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their 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 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: SEP 26 2019


Dore LaPosta, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To: Bruce Bzura
President
Madison Industries, Inc.
554 Waterworks Road
Old Bridge, New Jersey 08857.

cc: Robert Gomez, Chief
Bureau of Hazardous Waste Compliance and Transportation Oversight
New Jersey Department of Environmental Protection
9 Ewing Street
Mail Code 09-01
P.O. Box 420
Trenton, New Jersey 08625-0420

CERTIFICATE OF SERVICE

This is to certify that on _____, 2019, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2019-7109 hereinafter referred to as the "Complaint"), together with Attachments I, II and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. § 22, by certified mail, return receipt requested, to Bruce Bzura, President. Madison Industries, Inc., 554 Waterworks Road, Old Bridge, New Jersey 08857.

I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Date:

9/27/19



Now come

1/12/12

ATTACHMENT I

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet - Count 1

Respondent: Madison Industries, Inc.

Facility Address: 554 Waterworks Road, Old Bridge, New Jersey 08857

Requirement Violated: Count 1: Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1 as incorporated by reference in N.J.A.C. 7:26G-12.1(a). Respondent stored hazardous waste without having obtained either a permit or interim status.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$42,292
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1 (30 days minus 1).	Not applicable
4. Add line 1 and line 3.	\$42,292
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Add lines 4 and 9 for gravity penalty amount	\$42,292*
11. Calculate economic benefit.	Not applicable
12. Penalty figure to be inserted in Complaint	\$42,300

* Total penalty has been rounded to the nearest hundred.

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

1. Gravity Based Penalty

a. Potential for Harm- The potential for harm was determined to be **Major**. Respondent's failure to obtain either a hazardous waste permit or interim status, or, in the alternative, to comply with conditions for the safe short-term accumulation of hazardous waste posed a substantial adverse effect on the purposes and procedures for implementing the RCRA regulatory program.

b. Extent of Deviation- The extent of deviation present in this violation was determined to be **Major**. Respondent did not have interim status or a hazardous waste permit for its facility and failed to comply with many regulations regarding the management of hazardous waste that must be met by large quantity generators to be exempt from RCRA permitting while storing hazardous waste for short periods of time.

c. Gravity-based- The applicable cell ranges from \$33,834 to \$42,292. The high-point of the penalty cell matrix was selected because Respondent violated almost all of the regulations regarding the storage of hazardous waste in containers. These actions or inactions, including Respondent's storage of hazardous waste in numerous open and/or torn containers, increased the likelihood of releases of hazardous waste from the containers.

d. Multiple/Multi-day - Multi-day penalties were not assessed because violations were observed only on one day.

2. Adjustment Factors

- a. Good Faith - Based upon presently available information, 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

3. Economic Benefit - Based on presently available information, EPA has determined that the economic benefit is de minimis.

ATTACHMENT I

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet -Count 2

Respondent: Madison Industries Inc.

Facility Address:554 Waterworks Road, Old Bridge, New Jersey 08857

Requirement Violated:

Count 2: 40 C.F.R. § 265.31 as incorporated by N.J.A.C. 7:26G-9.1(a): Failure to maintain and operate facility to minimize the release of hazardous waste or hazardous waste constituents.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$42,292
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	Not applicable
3. Multiply line 2 by number of days of violation minus 1 (30 days minus 1).	Not applicable
4. Add line 1 and line 3.	\$42,292
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Add lines 4 and 9 for gravity penalty amount	\$42,292*
11. Calculate economic benefit.	Not applicable
12. Penalty figure to be inserted in Complaint	\$42,300

* Total penalty has been rounded to the nearest hundred.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet -Count 2

1. Gravity Based Penalty

a. Potential for Harm- The Potential for Harm was determined to be **Major**. Respondent's failure to maintain and operate its facility in a manner which minimizes potential releases of hazardous waste and/or hazardous waste constituents undermines RCRA and its regulatory program, which are intended to ensure hazardous waste management practices be conducted in a manner that protect human health and the environment and reduce the need for corrective action in the future. Respondent's actions or inactions led to the release of hazardous waste or constituents, potentially increasing the likelihood of needing additional corrective measures at the facility.

b. Extent of Deviation- The extent of deviation was determined to be **Major**. Respondent's actions or inactions led to the release of hazardous waste or hazardous waste constituents, potentially impacting soil, surface water and the air. Hazardous waste or hazardous waste constituents were observed dispersed, outdoors, on the ground in two locations.

c. Gravity-based- The applicable cell ranges from \$33,834 to \$42,292. The high-point of the penalty cell matrix was selected because Respondent's actions or inactions resulted in the release of hazardous waste or hazardous waste constituents.

d. Multiple/Multi-day -Multi-day penalties were not assessed because the violation was observed on only one day.

2. Adjustment Factors

- a. Good Faith - Based upon presently available information, 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

3. Economic Benefit - Based on presently available information, EPA has determined that the economic benefit is de minimis.

ATTACHMENT II

Gravity-Based Penalty Matrix Effective January 11, 2018
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Potential
for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$42,292 to \$33,834	\$33,933 to \$25,375	\$25,374 to \$18,609
MODERATE	\$18,608 to \$13,534	\$13,533 to \$8,458	\$8,457 to \$5,075
MINOR	\$5,074 to \$2,538	\$2,537 to \$846	\$845 to \$169

Multi-Day Matrix of Minimum Daily Penalties Effective January 11, 2018

Extent of Deviation from Requirement

Potential
for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$8,458 to \$1,692	\$6,767 to \$1,269	\$5,075 to \$930
MODERATE	\$3,722 to \$677	\$2,707 to \$423	\$1,692 to \$254
MINOR	\$1,015 to \$169	\$508 to \$169	\$169