



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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

2007 MAR 29 PM 2:33

REGIONAL HEARING  
CLERK

MAR 28 2007

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Mr. William H. Christian  
Vice President  
W. H. Christian and Sons, Inc.  
22-28 Franklin Street  
Brooklyn, New York 11222

Re: **In the Matter of W. H. Christian and Sons, Inc.**  
**Docket No. RCRA-02-2007-7108**

Dear Mr. Christian:

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, 17th 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.

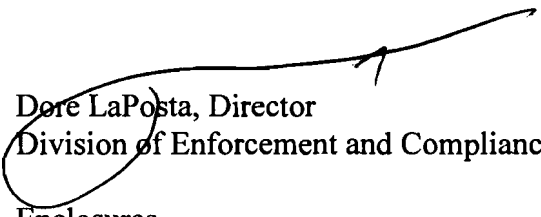
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" 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)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2

2007 MAR 29 PM 2:38

REGIONAL HEARING  
CLERK

In The Matter of:

W.H. Christian and Sons, 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-02-2007-7108

**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 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 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 W.H. CHRISTIAN AND SONS, INC. has violated requirements of the authorized New York 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 and /or HSWA, 40 C.F.R. § 272.1651 (2005). See also 67 Fed. Reg. 49864 (August 1, 2002) and 70 Fed. Reg. 1825 (January 11, 2005). This includes most EPA regulations issued as of July 1, 1999.

Section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2), 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.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that “whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation.” Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2) provides, in part, that “[i]n the case of a violation of any requirement of [Subtitle C of RCRA] where such violation occurs in a State which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. § 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order.”

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).
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 Facilities**

3. Respondent is W.H. Christian and Sons, a for-profit corporation organized pursuant to the laws of the State of New York.
4. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations (“6 NYCRR”) § 370.2(b).<sup>1</sup>
5. Respondent owns and operates industrial facilities that perform laundering and dry cleaning of work uniforms and apparel.

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

6. Respondent conducts solvent-based fabric cleaning (“dry cleaning”), wet cleaning and related activities at its facility located at 211-217 Banker Street, Brooklyn, New York 11222 (“Banker Street Facility”).
7. Respondent conducts wet-cleaning, administrative activities, and vehicle maintenance at another facility located at 22-28 Franklin Street, Brooklyn, New York 11222 (“Franklin Street Facility”) which is not the subject of this Complaint.
8. Respondent is an “owner” and “operator” of the Banker Street Facility.

**Respondent’s Generation of Waste**

9. From at least May 18, 2006, Respondent has been operating a Columbia 4<sup>th</sup> generation dry-cleaning machine that utilizes the solvent tetrachloroethylene at the Banker Street Facility,.
10. Tetrachloroethylene, also known as perchloroethylene, is commonly referred to as “perc.”
11. Respondent generates and has been generating “solid waste,” within the meaning of 6 NYCRR § 371.1, in carrying out its dry-cleaning and regular building maintenance operations at the Banker Street Facility.
12. At the Banker Street Facility, Respondent generates perc-contaminated waste distillation residues (“Perc Sludge”); spent perc-contaminated lint, button trap and spin disk filter wastes (“Perc Lint Waste”); spent perc-contaminated separator wastewater (“Perc Wastewater”); and spent perc-contaminated filter cartridges.
13. Respondent generates and has been generating “hazardous waste,” within the meaning of 6 NYCRR § 371.1(d)) at its Banker Street Facility.
14. Perc Sludge is a listed hazardous waste (F002 - spent halogenated solvent), as defined at 6 NYCRR § 371.4(b)(1).
15. Perc Lint Waste is a listed hazardous waste (F002), as defined at 6 NYCRR § 371.4(b)(1).
16. Perc Wastewater is both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (D039), as defined at 6 NYCRR § 371.3(e)(1).

17. Spent perc-contaminated filter cartridge waste is both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (D039), as defined at 6 NYCRR § 371.3(e)(1).
18. At all times stated in this Complaint, Respondent has been a “generator” of “hazardous waste” within the meaning of 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii) at the Banker Street Facility.
19. As of May 2006, Respondent has generated, and continues to generate, on average, more than 100 kilograms (“kg”) and less than 1000 kg of hazardous waste in a calendar month and is considered a “small quantity generator” as that phrase is defined in 6 NYCRR § 370.2(b), for the Banker Street Facility.
20. A small quantity generator may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 6 NYCRR § 372.2(a)(8) including but not limited to 6 NYCRR § 372.2(a)(8)(iii) - (v).

#### **Past Regulatory Filings**

21. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification under the name W.H. Christian and Sons and dated April 25, 1990 that it generated hazardous waste at the Banker Street Facility.
22. In response to the Notification, EPA provided Respondent with EPA Identification Number NYD 986 899 425.

#### **Past Regulatory Compliance Violations**

23. On or about July 6, 1999, and on or about August 3, 1999, a duly authorized representative of the EPA conducted a RCRA Compliance Evaluation Inspection of the W.H. Christian & Sons, Inc. facilities located at 211-217 Banker Street, 22-28 Franklin Street, and 31 Franklin Street, Brooklyn, NY (the “Facility”), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. (the “1999 Inspection”).
24. Pursuant to Section 3008 of RCRA, on or about August 24, 1999, EPA issued the Facility a Notice of Violation (the “1999 NOV”) which cited fifteen (15) RCRA violations which were observed during the 1999 Inspection.
25. Violations of RCRA regulations discovered during the 1999 Inspection and cited in the 1999 NOV included, among others, the following:

- a. Failure to make a hazardous waste determination of spent fluorescent lamps in violation of 6 NYCRR § 372.2(a)(2);
- b. Failure to post the location of the names and telephone numbers of emergency coordinators and of fire extinguishers and spill control material next to a telephone in violation of 6 NYCRR §§ 372.2(a)(8)(iii)(e)(2)(i) and 372.2(a)(8)(iii)(e)(2)(ii);
- c. Failure to mark containers of hazardous waste with the words “hazardous waste”, label containers with accumulation start dates, and to keep containers of hazardous waste closed except when adding or removing waste in violation of 6 NYCRR §§ 372.2(a)(8)(iii)(b), 372.2(a)(8)(iii)(d), 6 NYCRR 373-3.9(d)(1);
- d. Failure to inspect, at least weekly, areas where hazardous waste containers are stored in violation of § 6 NYCRR 373-3.9(e);
- e. Failure to maintain and operate the Facility to minimize the possibility of a release of hazardous waste to air, soil or surface water which could threaten human health or the environment in violation of § 6 NYCRR 373-3.3(b); and
- f. Failure to make arrangements to familiarize local hospitals, police, fire departments and emergency response teams with the layout of the Facility and properties of hazardous waste handled at the Facility in violation of §§ 6 NYCRR 373-3.3(g)(1)(iv) and 373-3.3(g)(1)(i);

**EPA’s Inspections in 2006**

- 26. On or about February 22, 2006, a duly designated representative of EPA conducted an inspection of the Banker Street Facility (“First Inspection”).
- 27. At the time of the First Inspection, there were seven containers filled with waste in the outdoor courtyard of the Banker Street Facility.
- 28. At the time of the First Inspection, Respondent stated that only three of the seven containers contained perc contaminated hazardous waste.
- 29. At the time of the First Inspection, none of the containers were labeled as hazardous waste.
- 30. At the time of the First Inspection, none of the containers were marked with accumulation start dates.
- 31. At the time of the First Inspection, at least three of the containers were open.

32. On March 3, 2006, i.e. about one week after the First Inspection, Respondent shipped off-site eight (8) containers, totaling more than 1,300 pounds, of spent solvent hazardous waste from its facility as shown by manifest number NYC7748741.
33. On or about May 18, 2006, a duly designated representative of EPA (“RCRA Inspector”) conducted a RCRA Compliance Evaluation Inspection of the Banker Street Facility, the Franklin Street Facility, and Respondent’s parking lot and storage area at 31 Franklin Street, Brooklyn, New York 11222 (“Second Inspection”).
34. At the time of the Second Inspection, a vacuum cleaner used as a container to collect and store Perc Lint Waste at the Banker Street Facility was stored within the enclosure of the dry cleaning machine.
35. At the time of the Second Inspection, the vacuum cleaner was not labeled as containing hazardous waste, and was not marked with an accumulation start date.
36. At the time of the Second Inspection, approximately 15 drums were stacked haphazardly along a wall in an outdoor courtyard designated as a hazardous waste storage area at the Banker Street Facility; at least three of these containers were filled as determined by tapping the sides of those containers which were accessible, and none were labeled as to their contents.
37. At the time of the Second Inspection, Respondent could not identify the contents of any containers but stated that some of these containers “probably” contained “washing fluid”.
38. At the time of the Second Inspection of the Banker Street Facility, Respondent had not posted the names and telephone numbers of emergency coordinators next to a telephone.
39. At the time of the Second Inspection of the Banker Street Facility, Respondent had not posted the location of fire extinguishers and spill control material next to a telephone near the hazardous waste storage area.
40. At the time of the Second Inspection of the Banker Street Facility, Respondent had not attempted to make arrangements to familiarize police, fire departments, emergency response teams and local hospitals with the layout of the Facility and the properties of hazardous waste handled at the Facility.
41. At the time of the Second Inspection of the Banker Street Facility, spent fluorescent tubes were not contained to prevent breakage and were not labeled as either “Hazardous Waste” or as “Universal Waste”.



### **Notices of Violations and Requests for Information**

42. On or about June 12, 2006, EPA issued to Respondent a combined Notice of Violation and Information Request Letter (“NOV-IRL”) pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.
43. The NOV portion of the NOV-IRL informed the Respondent that EPA had identified RCRA violations at its Facility.
44. On or about July 31, 2006, Respondent submitted an undated Response to the NOV-IRL (“Response”) that stated the violations denoted in the NOV “will not happen again.”
45. In its Response, Respondent stated that, at the time of the First Inspection, “there were a total of seven containers of hazardous waste in the yard at Banker St.”

### **COUNT 1 - Storage of Hazardous Waste Without a Permit**

46. Complainant realleges each allegation contained in paragraphs “1” through “45”, inclusive, as if fully set forth herein.
47. Prior to 1990, Respondent notified EPA that it was operating a dry cleaning facility at its Facility.
48. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2, the owner or operator of an existing hazardous waste management facility must obtain a permit or qualify for interim status in order to treat, store or dispose of any such waste.
49. Respondent was storing hazardous waste at the Banker Street Facility at the time of the First Inspection and of the Second Inspection and for at least 180 days prior thereto.
50. To be exempt from the permit requirements of 6 NYCRR Part 373, a small quantity generator that generates more than 100 kg but less than 1,000 kgs of non-acute hazardous waste must comply with all of the provisions of 6 NYCRR § 372.2(a)(8)(iii).
51. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)(‘b’) and 373-3.9(d)(3), a generator may store more than 100 kgs but less than 1,000 kgs of non-acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided the containers with hazardous waste are clearly marked with the words “Hazardous Waste.”

52. At the time of the First Inspection and at the time of the Second Inspection, containers of perc hazardous waste, stored at the Banker Street Facility, were not labeled with the words "Hazardous Waste."
53. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)('d') and 373-1(d)(1)(iii)('c')('2'), a generator may store more than 100 kgs but less than 1,000 kgs of non acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
54. At the time of the First Inspection and at the time of the Second Inspection, containers of perc hazardous waste, stored at the Banker Street Facility, were not marked with accumulation start dates.
55. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)('b') and 373-3.9(d)(1) a generator may store more than 100 kgs but less than 1,000 kgs of non acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that a container holding hazardous waste is always closed during storage except when it is necessary to add or remove hazardous waste from that container.
56. At the time of the First Inspection, containers of perc hazardous waste stored in the court yard at the Banker Street Facility, were not closed, and hazardous waste was not being added or removed from these containers.
57. Pursuant to 6 NYCRR §§ 372.2(a)(8)(iii)('d') and 373-3.3(g)(1)(i), a generator may store more than 100 kgs but less than 1,000 kgs of non acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided the owner or operator of the facility has made arrangements to familiarize police, fire departments, emergency response teams and local hospitals with the layout of the facility and the properties of hazardous waste handled by the Banker Street Facility.
58. At the time of Second Inspection, Respondent had not notified the police, fire departments, and emergency response teams about the layout of its facility and the properties of hazardous waste that Respondent generated and handled, and had not made arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility and the properties of hazardous waste handled by the Banker Street Facility.

59. Pursuant to 6 NYCRR § 372.2(a)(8)(iii)(‘e’)(‘2’)(‘i’), a generator may store more than 100 kgs but less than 1,000 kgs of non acute hazardous waste on-site for a period of 180 days or less without being subject to the permitting provisions of 6 NYCRR Part 373 provided that the generator posts next to the telephone the name and number of the emergency coordinator.
60. At the time of the Second Inspection, the names and telephone numbers of emergency coordinators, and the location of fire extinguishers and spill control materials were not posted at the Banker Street Facility.
61. As a result of Respondent’s failure to mark its hazardous waste containers, keep containers of hazardous waste closed except when adding or removing hazardous waste, provide notice to, and make arrangements with, emergency responders, and post required information, Respondent was not eligible for a permit exemption available to small quantity generators of hazardous waste for the Banker Street Facility.
62. At the time of the First Inspection and of the Second Inspection, and for at least 180 days prior thereto, Respondent had failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.
63. Respondent was subject to the permit requirements of Section 3005 of RCRA, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2.
64. At the time of the First Inspection and the Second Inspection, and for at least 180 days prior thereto, Respondent did not have a permit or interim status to store hazardous waste at its Banker Street Facility.
65. At the time of the First Inspection and the Second Inspection, and for at least 180 days prior thereto, Respondent had been operating a hazardous waste management facility without a permit or interim status at its Banker Street Facility.
66. Respondent’s storage of hazardous waste and operation of the Banker Street Facility, 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 NYCRR § 373-1.2.



1. Respondent shall either:
  - a. submit an application to the New York State Department of Environmental Conservation for a hazardous waste permit for its facility, within thirty (30) calendar days of the effective date of this Compliance Order, comply with all applicable rules and regulations, including paragraphs “2” through “5” below, until it obtains such permit; **or**,
  - b. comply with all conditions necessary to be exempt from hazardous waste permitting requirements, including paragraphs “2” through “5” below.
2. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall only store hazardous waste in containers labeled “Hazardous Waste” and with other words that identify the contents of the containers, mark all hazardous waste containers with the date accumulation of hazardous waste starts in that container, and only utilize containers that are closed to accumulate and/or store hazardous wastes at its Banker Street Facility.
3. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent that it has not done so, post emergency information such as the name and telephone numbers of emergency coordinators and the location of fire extinguishers and spill control materials near a telephone in any hazardous waste storage areas.
4. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall undertake, to the extent it has not done so, a program to notify and maintain up-to-date arrangements or agreements with local hospitals, police, and emergency response teams to familiarize them with the layout of the facility, properties of hazardous waste handled there and associated hazards, entrances to and roads near the facility, possible evacuation routes, and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.
5. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators.
6. Respondent shall submit to EPA within thirty (30) calendar days of the effective date of this Compliance Order, written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in paragraphs “1” through “5” of this Compliance Order. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for

noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

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

Ronald Voelkel  
Environmental Scientist  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 22nd Floor  
New York, New York 10007-1866

This Compliance Order shall take effect thirty (30) days after service of the Final Order, unless by that date 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).

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 facilities. 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 facilities.

#### **IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$32,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New York.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been 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,” and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint, Compliance Order and Notice of Opportunity for Hearing.”

**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 to the Complaint, and such Answer 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 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 lacks 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 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 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.

## **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 does 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 requests 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.

## **C. Failure To Answer**

If Respondent fails in its Answer 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 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 to the Complaint, any order issued therefor 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. Exhaustion Of Administrative Remedies**

Where Respondent fails 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 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, (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:

Beverly Kolenberg  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, Room 1770  
New York, New York 10007-1866  
212-637-3167

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 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 the 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 La Posta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

Date March 23, 2007

**To:** Mr. William H. Christian  
Vice President  
W.H. Christian and Sons, Inc.  
22-28 Franklin Street  
Brooklyn, New York 11222

**cc:** Thomas Killeen, Chief  
Hazardous Waste Compliance Section  
Bureau of Hazardous Waste Management  
New York State Department of Environmental Conservation  
625 Broadway, 5<sup>th</sup> Floor  
Albany, New York 12233-7250

**bcc:** Richard Cahill(2PAT)  
Hanna Maciejko (2DEPP-RPB)  
George Meyer (2DECA-RCB)  
Joel Golumbek, (2DECA-RCB)  
William K. Sawyer (2ORC-WTS)  
Ronald Voelkel (DECA-RCB)  
Beverly Kolenberg (2ORC-WTS)  
Karl Mangels (DECA-ACB)

**CERTIFICATE OF SERVICE**

This is to certify that on the day of MAR 29, 2007, 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-02-2007-7108, 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 Mr. William H. Christian, Vice President, W.H. Christian and Sons, Inc., 22-28 Franklin Street, Brooklyn, New York 11222. 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, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: MAR 29, 2007  
New York, New York

Mildred Bay

## ATTACHMENT 1

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

Respondent: W.H. Christian and Sons, Inc.

Facility Addresses: 211-217 Banker Street, Brooklyn, New York 11222

Requirements Violated:

42 U.S.C § 6925, 6 NYCRR §§ 373-1.2. - Operating a Hazardous Waste Storage Facility Without a Permit

Respondent operated a hazardous waste management facility without having obtained a permit or qualifying for interim status. Respondent failed to comply with the requirements necessary for an exemption from permitting, as more specifically alleged in the body of the Complaint.

#### PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$12,350
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$12,350
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	25%
7. Percent increase for history of noncompliance.	25%
8. Total lines 5 through 7.	50%
9. Multiply line 4 by line 8.	\$6,175
10. Calculate economic benefit.	N/A

11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint. \$18,525

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

**1. Gravity Based Penalty**

- a. Potential for Harm - The potential for harm present in these violations was determined to be MODERATE. Operation of a facility without a permit is a serious violation and has a substantial adverse effect on the program. Respondent violated many of the conditions and management standards that have to be complied with in order to be exempt from obtaining a permit. Among other things, Respondent failed to label its containers as "Hazardous Waste" and failed to indicate the accumulation start date on hazardous waste containers. At least three containers were open. Respondent did not post required information, attempt to familiarize emergency responders with its facility, or make arrangements with local hospitals in the event of illness or injury at the Banker Street Facility. Since the amount of hazardous waste generated was relatively small, the MODERATE level was selected for the Gravity Based Penalty.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Many required regulations pertaining to small quantity generators with regard to the storage and management of hazardous waste and Preparedness and Prevention were violated. No hazardous waste permit had been obtained nor had the facility qualified for interim status.

The applicable cell ranges from \$10,400 to \$14,299. The mid-point for the cell matrix was selected.

- c. Multiple/Multi-day - Consistent with the RCRA Civil Penalty Policy, we have used our discretion and not imposed multi-day penalties for these violations.

**2. Adjustment Factors**

- a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time. Respondent did not take corrective action prior to EPA's Second Inspection despite EPA's prior inspection and outreach in the summer of 1999 related to hazardous waste requirements for dry-cleaning facilities.
- b. Willfulness/Negligence - A 25% increase was added to the penalty because Respondent failed to comply with the requirements for small quantity generators despite the fact it was notified that it had to implement changes in its operations after EPA's NOV of August 24, 1999. Respondent's continued failure to comply



with the small quantity generator requirements shows negligence and disregard of the regulatory requirements.

- c. History of Compliance - Although a previous NOV was issued to the Respondent as a result of an EPA Inspection conducted on July 6, 1999, EPA's second NOV cited many repeat violations. The First and Second Inspections revealed that many violations were occurring again. As a result, we have applied an additional 25% upward adjustment factor for History of Compliance.
- d. Ability to Pay - Not applicable
- e. Environmental Project - Not applicable
- f. Other Unique Factors - Not applicable

3. **Economic Benefit** - Determined to be less than \$3,000.

ATTACHMENT II

GRAVITY BASED PENALTY

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L  f o r  H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$32,500 to 26,000	\$25,999 to 19,500	\$19,499 to 14,300
	MODERATE	\$14,299 to 10,400	\$10,399 to 6,500	\$6,499 to 3,900
	MINOR	\$3,899 to 1,950	\$1,949 to 650	\$649 to 130

## MULTI-DAY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L  f o r  H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$6,500 to 1,300	\$6,499 to 975	\$3,900 to 715
	MODERATE	\$2,860 to 520	\$2,080 to 325	\$1,00 to 195
	MINOR	\$780 to 130	\$390 to 130	\$130