



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

MAR 31 2010

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Robert Weisbuch  
President  
Drew University  
36 Madison Avenue  
Madison, New Jersey 07940

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
MAR 31 9 11 21 AM '10  
REGIONAL HEARING  
CLERK

Re: **In the Matter of Drew University**  
**Docket No. RCRA-02-2010-7105**

Dear Mr. Weisbuch:

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.

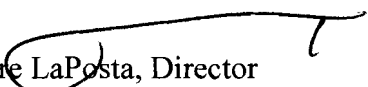
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 later part of the Complaint.) For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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 II

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 APR -9 PM 2:00  
REGIONAL HEARING  
CLERK

In The Matter of:

Drew University  
Madison, New Jersey

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-02-2010-7105**

**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 Drew University ("Drew" or "Respondent") has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its facility.

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 ( the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. 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 authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations

authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

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

### **JURISDICTION**

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

### **NOTICE**

2. EPA has given notice of this action to the State of New Jersey.

### **RESPONDENT**

3. Respondent is Drew University (hereinafter "Drew" or "Respondent").

4. Drew is a private university with both undergraduate and graduate programs located in Madison, New Jersey. It offers various areas of study, including classes in arts and science.

### **GENERAL ALLEGATIONS**

5. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.* The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.

6. 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.

7. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between March 15, 2004 and January 12, 2009 is \$ 32,500 per day of violation. 40 C.F.R. Part 19. The maximum civil penalty under Section 3008(a)(3) of

RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.

8. New Jersey's authorized hazardous waste program incorporates by reference, with minor modifications, the federal program set forth in 40 C.F.R. Parts 124, 260-266, 268 and 270. (Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference.

9. Drew is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).

10. The Drew University campus in Madison, New Jersey constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

11. Drew is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

12. Drew is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

13. In or about August 1980, Drew notified EPA that it generates hazardous waste at its facility. This notification was made pursuant to Section 3010 of RCRA. EPA issued Drew EPA Identification Number NJD002561868 for its facility.

14. On or about November 3, 1980, Drew submitted Part A of a Hazardous Waste Permit Application ("Part A Application") to EPA. The Part A Application indicated that certain hazardous wastes were being, and would be, stored and/or treated at the facility.

15. In November 1980, by submitting a Section 3010 Notification and Part A Application to EPA, Drew obtained "interim status" to treat and store hazardous waste at its facility pursuant to Section 3005 of RCRA and 40 C.F.R. Part 270, as incorporated by reference in NJAC 7:26G-12.1(a).

16. Drew never submitted a Part B of a Hazardous Waste Permit Application to EPA or the State for its facility.

17. Pursuant to Section 3005(c)(2)(C) and 40 C.F.R. § 270.73(g) as incorporated by reference in NJAC 7:26G-12.1(a), Drew's interim status to treat and/or store hazardous waste at its facility terminated on November 8, 1992 because it failed to submit a Part B Permit Application.

18. Pursuant to 40 C.F.R. § 265.1(b), as incorporated by reference in NJAC 7:26G-9.1(a), facilities that have interim status or were in existence on or before November 19, 1980 are

subject to the regulatory standards set forth in 40 C.F.R. Part 265 or the equivalent authorized State program.

19. On or about July 21, 2009, Drew submitted a revised notification to EPA indicating that it was operating as a small quantity generator ("SQG"), generating between 100 to 1000 kilograms of (non-acute) hazardous waste per month at the facility.

20. Drew is a "generator" of "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

21. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

### **EPA Investigative and Initial Enforcement Activities**

22. On or about May 21 and 28, 2009, a duly designated representative of EPA conducted inspections of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Drew's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the inspection").

23. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about June 19, 2009, EPA issued Drew an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its facility. On or about August 28, 2009, EPA issued Drew a second IRL pursuant to Section 3007 of the Act, 42 U.S.C. § 6927

24. On or about July 31, 2009, Drew submitted its response to EPA's June 2009 IRL/NOV. On or about November 2, 2009, Drew submitted its response to EPA's August 2009 IRL. Each of these submissions was prepared by an employee or agent of Drew in the course of carrying out his/her employment or duties.

### **Drew's Participation in EPA's Self Audit Policy**

25. On or about July 20, 2007, Drew self disclosed to EPA possible violations of RCRA and other federal environmental statutes at its facility pursuant to EPA's policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations." See 65 Fed. Reg. 19618 (April 11, 2000).

26. By letter dated September 18, 2007, Drew informed EPA that the majority of the violations disclosed to the Agency had been corrected and that the remaining violations would be corrected within the next thirty days.

27. On or about September 21, 2007, EPA issued Drew a "Notice of Determination" in which it would not seek a penalty of \$179,500 which it had calculated using the RCRA Civil Penalty Policy for the RCRA violations disclosed by Drew. These violations included: a) failure to identify and properly manage hazardous wastes including but not limited to used paints, spray booth filters, obsolete chemicals, and contaminated rags; b) failure to provide RCRA training regarding the generation and management of hazardous waste; and c) failure to keep hazardous waste containers closed.

## COUNTS

### Count 1

#### Failure to Make Hazardous Waste Determinations

28. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

29. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a), a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

30. Pursuant to 40 C.F.R. § 261.2, as incorporated by reference by NJAC 7:26G-5.1(a), 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.

31. Pursuant to 40 C.F.R. § 261.2(b), as incorporated by reference by NJAC 7:26G-5.1(a), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

32. On or prior to May 21, 2009, Drew generated and abandoned the following waste materials at its facility:

- a. Off-specification, out-of-date, and orphaned chemicals were accumulated in a closet on the loading dock of the Hall of Sciences prior to being disposed of off-site. The material containers were covered with dust and some of the materials had crystallized. These chemicals included: mercury; sulfuric acid; phosphoric acid; formic acid; and nitric acid.
- b. Dozens of one-gallon cans containing used or left over paints, enamel and wood stains; numerous five-gallon containers containing used or left over joint compound, as well as ceramic floor and wall tile adhesive; and four 30-gallon plastic drums containing an unknown material. All of these containers were haphazardly deposited, dumped or placed on the earthen ground in an open, outdoor area at the facility.

- c. Rags and paper towels contaminated with mineral spirits, solvents and ink from the Dorothy Young Arts Center were deposited or placed in the general trash.
- d. Two television sets, which contain cathodic ray tubes that contain lead, were deposited in the facility's waste dumpster for off-site disposal.

33. Respondent "abandoned" each of the materials identified in paragraph 32 by disposing of them on the facility's property and/or by storing or accumulating them before or in lieu of disposal off-site.

34. Each of the materials identified in paragraph 32 above was a "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2, as incorporated by NJAC 7:26G-5.1(a).

35. On or prior to May 21, 2009, Drew had not determined if any of the materials identified in paragraph 32 constituted a hazardous waste.

36. Drew's failure to determine if each solid waste generated at its facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G- 6.1(a).

37. Drew's failure to comply with 40 C.F.R. § 262.11, as incorporated by NJAC 7:26G-6.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

**Count 2**  
**Failure To Minimize Releases**

38. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

39. The Drew facility was in existence prior to November 19, 1980 and, pursuant to 40 C.F.R. § 265.1(b), as incorporated by NJAC 7:26G-9.1(a), is therefore subject to the requirements set forth in 40 C.F.R. Part 265 or the equivalent authorized State program.

40. Pursuant to 40 C.F.R. § 265.31, as incorporated by NJAC 7:26G-9.1(a), a facility 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. For at least a month prior to May 21, 2009, Drew stored dozens of one-gallon containers with used or left over paint, enamel and/or wood stains; numerous five-gallon containers containing used or left over joint compound, and ceramic floor and wall tile adhesive; and four 30 gallon plastic drums of an unknown waste(s) on the ground in an open, outdoor area, identified by the facility as a "waste staging area." Most of the containers were open, and



contained the above referenced materials and other unidentified waste materials. Many of the containers were rusted and filled to the brim with rainwater contaminated by these waste materials.

42. The containers and drums identified in Paragraph 41 were placed directly on earthen soil. The contents of these containers could easily spill or leak directly onto the ground. Additionally, the contents and residues in these containers could be rinsed out onto the ground or into nearby surface water during rain events.

43. Subsequent sampling and analysis of the contents in the four 30 gallon plastic drums indicated that the material exhibited the characteristic of ignitability and constituted D001 hazardous waste. The Respondent also determined, based on generator knowledge, that the liquids and residues in other containers referenced in Paragraph 41 also contained hazardous waste. Hazardous constituents were also present in these waste materials.

44. The waste staging area referenced in paragraph 41 was located approximately four hundred feet away from a pond, and approximately one hundred and sixty feet away from residential housing. Drew did not cover the discarded materials or secure the waste staging area. The staging area and the discarded materials were accessible to members of the public and wildlife.

45. Each action or inaction set forth in Paragraphs 41 – 44 constitutes a failure by Drew to maintain or operate its facility in a manner minimizing 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, and each action or inaction constitutes a violation of 40 C.F.R. § 265.31 as incorporated by NJAC 7:26G-9.1(a).

46. Drew's violation of 40 C.F.R. § 265.31 as incorporated by NJAC 7:26G-9.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

**Count 3**  
**Storage of Hazardous Waste Without a Permit**

47. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

48. Drew 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 throughout academic semesters in various facility locations including: the hazardous waste storage area in the Hall of Sciences; the hazardous waste storage area in the Dorothy Young Arts Center; and in various satellite accumulation areas.

49. Drew's facility is a "storage" facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

50. Pursuant to 40 C.F.R. § 270.1 as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, a RCRA permit or interim status is required for the storage of hazardous waste.

51. The Drew facility does not have interim status or a permit authorizing the storage of hazardous waste at its facility.

52. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), a generator 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 conditions identified therein, including but not limited to the requirements set forth in Subparts C, D and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

53. Pursuant to 40 C.F.R. § 262.34(d), as incorporated by reference in NJAC 7:26G-6.1(a), a SQG may accumulate limited quantities of hazardous waste on-site for 180 days or less without having a permit or interim status provided it complies with all applicable conditions identified therein, including but not limited to requirements set forth in Subparts C and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with Conditions Set Forth in Subpart C of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.30-.37), as incorporated by reference by NJAC 7:26G-9.1(a)

54. Drew 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, which is set forth in Subpart C of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a). See Count 2.

55. Forty C.F.R. § 265.32(b), which is set forth in Subpart C of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), requires facilities to have a device such as a telephone or two way radio (immediately available at the scene of the operations) capable of summoning emergency assistance from local police and fire departments, or State or local emergency response teams.

56. Prior to May 21, 2009, Drew did not have a two way radio or communication system in the hazardous waste storage area located in the Dorothy Young Arts Center, as required by 40 C.F.R § 265.32(b), as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with Conditions Set Forth in Subpart I of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.170 - .178), as incorporated by reference by NJAC 7:26G-9.1(a)

57. Forty C.F.R. § 265.174, which is set forth in Subpart I of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), requires owners or operators to conduct weekly inspections of container storage areas, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors.

58. Prior to May 21, 2009, Drew failed to conduct weekly inspections of the storage area in the Dorothy Young Arts Center during periods of waste storage, as required by 40 C.F.R. § 265.174, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with All Conditions Set Forth in Subpart D of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.50-.56), as incorporated by reference by NJAC 7:26G-9.1(a)

59. Forty C.F.R. § 265.51, which is set forth in Subpart D of 40 C.F.R. Part 265 and incorporated by reference by NJAC 7:26G-9.1(a), requires facility owners or operators to have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

60. Prior to May 21, 2009, Drew did not have a contingency plan for the facility, as required for larger generators by 40 C.F.R. § 265.51, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Satisfy Conditions for Generators which, if Complied With, Would Have Exempted Respondent from Permitting Requirements

61. Prior to May 21, 2009, Drew failed to satisfy all the conditions set forth in 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), including but not limited to conditions set forth in Subparts C, D and I of 40 C.F.R. Part 265, or the equivalent authorized State Program provisions, which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 90 days.

62. Prior to May 21, 2009, Drew failed to satisfy all the conditions set forth in 40 C.F.R. § 262.34(d), as incorporated by reference in NJAC 7:26G-6.1(a), including applicable conditions set forth in Subparts C and I of 40 C.F.R. Part 265, or the equivalent authorized State Program provisions, which, if complied with, would have allowed Respondent to store limited amounts of hazardous waste without interim status or a permit for up to 180 days.

## Storage of Hazardous Waste Without a Permit

63. Drew's storage of hazardous waste at its facility prior to at least May 21, 2009 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 Section 3005 of the Act, 42 U.S.C. § 6925.

64. Drew's failure to comply with 40 C.F.R. § 270.1(c), as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

## **II. PROPOSED CIVIL PENALTY**

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Drew be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1: \$29,700

Count 2: \$67,000

Count 3: \$ 64,200

Total Proposed Penalty for Counts 1, 2 and 3 is **\$160,900**

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: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. This 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 by the Debt Collection Improvement Act of 1996, 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. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule.

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. See Paragraph 7 *supra*, and 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out below 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 and multi-day penalties are included as Attachments II, and III, below.

### **COMPLIANCE ORDER**

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

1. Within twenty (20) days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent shall:
  - a. make hazardous waste determinations for each solid waste generated at its facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a);
  - b. maintain and operate the facility in a manner that minimizes 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 pursuant to 40 C.F.R. § 265.31, as incorporated by NJAC 7:26G-9.1(a),
  - c. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including:
    - i. the provisions for small quantity generators set forth in 40 C.F.R. § 262.34 (mainly at 40 C.F.R. § 262.34(d)), as incorporated by reference by NJAC 7:26G-6.1(a), during each calendar month in which the Respondent generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste, provided Respondent neither accumulates hazardous waste in quantities exceeding more than 6000 kilograms nor accumulates hazardous waste for more than 180 days (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or

- ii. the provisions for generators set forth in 40 C.F.R. § 262.34(a), as incorporated by reference by NJAC 7:26G-6.1(a), provided hazardous waste is accumulated on site for 90 days or less;
- d. as an alternative to compliance with the generator provisions identified in Paragraph 1.c.i. – ii. of this Compliance Order, obtain and comply with a hazardous waste storage permit from the New Jersey State Department of Environmental Protection pursuant to applicable provisions set forth in 40 C.F.R. Part 270, as incorporated by reference by NJAC. 7:26G-12.1(a). However, Respondent must comply with the appropriate requirements cited in Paragraph 1.c. above until such permit is obtained.

2. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall submit to EPA: a) a written statement indicating if it intends to continue its operations as a small quantity generator, a generator generating more than 1000 kilograms of hazardous waste in a calendar month (often referred to as a “large quantity generator”), or a permitted facility; and b) a statement indicating its compliance with this Compliance Order, and all documentation demonstrating such compliance. Respondent’s submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates, and other identifying aspects, of these prior submissions should be indicated. 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.

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

Ms. Meghan La Reau  
Senior Enforcement Team  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, NY 10007-1866

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Drew 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 release Drew from liability for any violations at the facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding the facility.

#### **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 regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

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

The rules of procedure governing this civil administrative litigation have been set forth in 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." These rules are codified at 40 C.F.R. Part 22. A copy of these rules 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 are 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 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. Part 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 (*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. 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.

#### **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 they believe 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 R. 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).

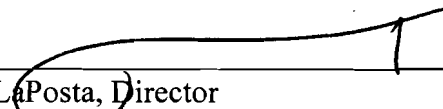
Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent 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.

#### **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 on the previous page.

**Dated:** MARCH 31, 2010  
New York, New York

**COMPLAINANT:**

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, NY 10007-1866

**To:** Robert Weisbuch  
President  
Drew University  
36 Madison Avenue  
Madison, New Jersey 07940

**cc:** Mike Hastry, Chief  
Bureau of Hazardous Waste Compliance and Enforcement  
Central Field Office, New Jersey Department of Environmental Protection  
300 Horizon Center  
P.O. Box 407  
Trenton, New Jersey 08625-0407

**ATTACHMENT 1**

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

Respondent: Drew University  
Facility Address: Madison, New Jersey 07940

Requirement Violated:

40 C.F.R. § 262.11, as incorporated by NJAC 7:26G-6.1(a).

Respondent failed to make hazardous waste determinations for each solid waste stream generated at its Facility.

**PENALTY AMOUNT FOR REFERRAL**

|   |                |
|---|----------------|
| 1. Gravity based penalty from matrix  | \$24,790       |
| (a) Potential for Harm.   | MAJOR          |
| (b) Extent of Deviation.  | MODERATE       |
| 2. Select an amount from the appropriate multi-day matrix cell.                 | Not applicable |
| 3. Multiply line 2 by number of distinct wastes types minus 1.                  | Not applicable |
| 4. Add line 1 and line 3.   | \$24,790       |
| 5. Percent increase/decrease for good faith.                                    | Not applicable |
| 6. Percent increase for willfulness/negligence.                                 | Not applicable |
| 7. Percent increase for history of noncompliance.                               | Twenty Percent |
| 8. Total lines 5 through 7.   | Not applicable |
| 9. Multiply line 4 by line 8.   | \$4,958        |
| 10. Calculate economic benefit.   | Not applicable |
| 11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint. | \$29,700*      |

\* Penalties have 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. 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 noncompliance on the regulatory scheme. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be treated as such. In this instance, Respondent failed to determine if waste streams generated at its facility constituted hazardous waste. Consequently, Respondent was unaware that its waste was subject to regulation and accumulated the waste on site for an extended period of time without instituting mandated managerial requirements intended to protect human health and the environment.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE since other waste streams at the Facility were properly identified.

The applicable cell ranges from \$21,250 to \$ 28,330. The mid point of the range was selected.

c. Multiple/Multi-day – Based on information presently available to it, multi-day penalties are not being sought at this time.

2. Adjustment Factors

a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

c. History of Compliance - In 2007, the University self-disclosed that it failed to make hazardous waste determinations for solid waste generated at its facility, including some types of the waste streams (obsolete chemicals and contaminated rags) which are identified in this Complaint. The University indicated in 2007 that it would be correcting these violations. Therefore, EPA is increasing the penalty for this Count by 20%. No penalty was assessed and collected in 2007 because of the University's self disclosure and promised corrections of the violations.

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 for this count is *de minimis*.

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

Respondent: Drew University  
Facility Address: Madison, New Jersey 07940

Requirement Violated:

40 C.F.R. § 265.31, as incorporated by NJAC 7:26G-9.1(a).

Respondent failed to operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water which could threaten human health or the environment.

**PENALTY AMOUNT FOR REFERRAL**

|   |                |
|---|----------------|
| 1. Gravity based penalty from matrix  | \$13,455       |
| (a) Potential for Harm.   | MODERATE       |
| (b) Extent of Deviation.  | MAJOR          |
| 2. Select an amount from the appropriate multi-day matrix cell.                 | \$ 1,845       |
| 3. Multiply line 2 by number of days of violation minus 1 (30-1 = 29).          | \$53,505       |
| 4. Add line 1 and line 3.   | \$66,960       |
| 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. Calculate economic benefit.   | Not applicable |
| 11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint. | \$67,000*      |

\* Penalties have 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 MODERATE. At the time of the Inspection, dozens of cans and containers that originally stored paint, joint compound, ceramic floor and wall tile adhesive, as well as unknown materials were deposited on the ground. These containers held residue materials which constituted hazardous waste and/or hazardous waste constituents. Many containers were open and/or leaking allowing for these materials to be released into the environment. These materials were also deposited in close proximity to a pond and residential homes, without any security to prevent access by unauthorized individuals or wildlife. EPA determined the potential for harm was moderate because the “waste staging area” where this material was accumulated was relatively small in comparison to the overall size of the facility.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. No steps were taken to minimize the release of materials from these containers into the environment or to protect human health. Containers were rusted, and left open. There was no cover or liner. Access was not secured.

The applicable cell ranges from \$11,330 to \$15,580. The mid point of the cell was selected.

- c. Multiple/Multi-day – Because this condition existed for at least a month, a multi-day penalty component is being sought for a twenty-nine day period (thirty days minus one day). The applicable cell ranges from \$570 to \$3,120. The mid point for the cell matrix was selected.

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



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f. Other Unique Factors - Not applicable

3. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit for this count is *de minimis*.

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

Respondent: Drew University  
Facility Address: Madison, New Jersey 07940

Requirement Violated:

40 C.F.R. § 270.1 as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.

Respondent stored hazardous waste at its facility without interim status or a permit. Additionally, Respondent did not meet all of the conditions set forth in 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a) which, if complied with, would have authorized the facility to accumulate hazardous waste on site for limited periods of time.

**PENALTY AMOUNT FOR REFERRAL**

|   |          |                |
|---|----------|----------------|
| 1. Gravity based penalty from matrix  | \$13,455 |                |
| (a) Potential for Harm.   | MODERATE |                |
| (b) Extent of Deviation.  | MAJOR    |                |
| 2. Select an amount from the appropriate multi-day matrix cell.                 |          | \$ 570         |
| 3. Multiply line 2 by number of days of violation minus 1 (90-1 =89)            |          | \$ 50,730      |
| 4. Add line 1 and line 3.   |          | \$ 64,185      |
| 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. Calculate economic benefit.   |          | Not applicable |
| 11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint. |          | \$ 64,200*     |

\* Penalties have been rounded to the nearest hundred.

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

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm present in this violation was determined to be MODERATE. Operating a treatment, storage, or disposal facility without a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Potential for harm was determined to be moderate, however, because the penalty assessed in Count 2 took into account one of the worse manifestations of Drew’s improper storage of hazardous waste.
  
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Hazardous waste was stored at the facility without a permit or interim status. (Additionally, the facility failed to comply with many of the requirements for generators set forth in 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a), which, if complied with, would have authorized the storage of hazardous waste at the facility without interim status or a permit subject to certain limitations.

The applicable cell ranges from \$11,330 to \$15,580. The mid-point for the cell matrix was selected.

- c. Multiple/Multi-day – The facility was generating and accumulating/storing waste at its facility for at least one academic semester (three months) and failed have interim status or a permit for this entire period. Accordingly, EPA assessed a multi-day penalty component for eighty-nine days (ninety days minus one day). The applicable cell ranges from \$570 to \$3,120 per day. EPA determined that, for the purpose of assessing the multi-day penalty component, the low end of the cell matrix was the appropriate factor to be applied given the relatively low increased incremental potential for harm from each additional day of storage.

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

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f. Other Unique Factors - Not applicable

3. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit for this count is *de minimis*.

**ATTACHMENT II**

Gravity-based penalty matrix  
to supplement the RCRA Civil Penalty Policy  
for violations that occur after January 12, 2009\*

Extent of Deviation from Requirement

Potential for  
Harm

|          | MAJOR                      | MODERATE                   | MINOR                      |
|----------|----------------------------|----------------------------|----------------------------|
| MAJOR    | \$37,500<br>to<br>\$28,330 | \$28,330<br>to<br>\$21,250 | \$21,250<br>to<br>\$15,580 |
| MODERATE | \$15,580<br>to<br>\$11,330 | \$11,330<br>to<br>\$7,090  | \$7,090<br>to<br>\$4,250   |
| MINOR    | \$4,250<br>to<br>\$2,130   | \$2,130<br>to<br>\$710     | \$710<br>to<br>\$150       |

\* All penalties calculated in this action have been rounded to the nearest \$100.

**Multi-Day Matrix of Minimum Daily Penalties  
To Supplement the RCRA Civil Penalty Policy  
For Violations That Occur After January 12, 2009\***

Extent of Deviation from Requirement

Potential  
for  
Harm

|          | MAJOR                    | MODERATE                 | MINOR                  |
|----------|--------------------------|--------------------------|------------------------|
| MAJOR    | \$7,090<br>to<br>\$1,420 | \$5,670<br>to<br>\$1,070 | \$4,250<br>to<br>\$780 |
| MODERATE | \$3,120<br>to<br>\$570   | \$2,230<br>to<br>\$360   | \$1,420<br>to<br>\$220 |
| MINOR    | \$850<br>to<br>\$150     | \$430<br>to<br>\$150     | \$150                  |

\* All penalties calculated in this action have been rounded to the nearest \$100

**In re: the Drew University**  
**Docket Number RCRA-02-2010-7105**

**CERTIFICATE OF SERVICE**

This is to certify that on APR - 8, 2010, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2010-7105 hereinafter referred to as the "Complaint"), together with Attachments I and 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. Part 22, by certified mail, return receipt requested, to Robert Weisbuch, President, Drew University, 36 Madison Avenue, Madison, New Jersey 07940. On said day, 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, 16<sup>th</sup> floor, New York, New York 10007-1866.

Name: Mildred Baez  
Mildred Baez

**APR - 8 2010**