



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

DEC 31 2013

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2

2014 JAN -8 P 3:09

REGIONAL HEARING
CLERK

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5940 0333

Honorable Jeffery Jones
Mayor
City of Paterson
Paterson City Hall
155 Market St.
Paterson, NJ 07505-1414

Re: **In the Matter of City of Paterson**
Docket No. RCRA-02-2014-7501

Dear Mayor Jones:

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

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

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

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

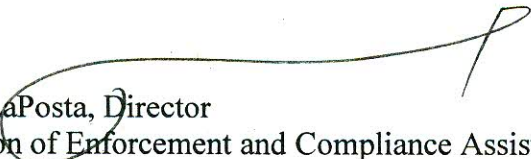
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have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

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and reference, I also enclosed an "Information Sheet for U.S. EPA Small Business 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)

Site: **City of Paterson, NJ**
 Violation: **§280.34 - No Response to IRL or NOV**

- 1. Days of noncompliance: **1-Jul-13** **31-Dec-13**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **184**

Part 2 - Economic Benefit Component (See BEN computer model v. 5.3):

- 4. One Time Capital & Time Costs: **\$ 1,200.00**
- 5. Delay Capital & Avoided Costs: **\$ 1,187.00**
- 6. Avoided Annually Recurring Costs: **\$ -**
- 7. Initial Economic Benefit (4-5+6): **\$ 39.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 39.00**

Part 3 - Matrix Value For The Gravity-Based Component:

- 9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflatio Round To		Matrix	Total
10a.	1,500	7/1/2013	12/31/2013	1.4163	\$ 2,124.45	10	\$2,120.00	\$ 6,360.00

Note: Inflation adjustments are defined as:

- a. **9.83% increase effective Jan 13,2009**

Potential for Harm: **Major** Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	0%	\$2,120.00	-
13a. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$6,360.00

- Justification for Degree of Cooperation/ Noncooperati **no adjustmer** No adjustment was made.
- Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.
- Justification for History of Noncompliance: **no adjustmer** No adjustment was made.
- Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **2**

	Start	End	Days	DNM
18a.	7/1/2013	12/31/2013	184	2

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	7/1/2013	12/31/2013	\$6,360.00	1	2	\$ 12,720.00

20. Total Gravity-Based Component = **\$ 12,720.00**

21. Economic Benefit Component (from line 8): **\$ 39.00**

22. Gravity-Based Component (from line 20): **\$ 12,720.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 12,759.00**

Run Name = City of Paterson Fail to Respond

<u>Present Values as of Noncompliance Date (NCD),</u>	<u>01-Jul-2008</u>
A) On-Time Capital & One-Time Costs	\$0
B) Delay Capital & One-Time Costs	\$0
C) Avoided Annually Recurring Costs	\$344
D) Initial Economic Benefit (A-B+C)	\$344
E) Final Econ. Ben. at Penalty Payment Date,	
<u>01-Jul-2013</u>	<u>\$425</u>

Municipality, which pays no taxes

Discount/Compound Rate	4.3%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	31-Dec-2013

Capital Investment:

Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)

One-Time, Nondepreciable Expenditure:

Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A

Annually Recurring Costs:

Cost Estimate	\$72
Cost Estimate Date	31-Dec-2013
Cost Index for Inflation	PCI

User-Customized Specific Cost Estimates:

On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
<u>Delay Nondepreciable Expenditure</u>	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2014 JAN - 8 P 3: 09
REGIONAL HEARING
CLERK

IN THE MATTER OF:

City of Paterson, NJ

Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

COMPLAINT, COMPLIANCE ORDER
AND
NOTICE OF OPPORTUNITY FOR HEARING

DOCKET NO. RCRA-02-2014-7501

COMPLAINT

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is the City of Paterson, NJ (hereinafter "Paterson" and/or "Respondent"), which occupies approximately 8.704 square miles in the State of New Jersey.
4. Paterson's main administrative offices are located at 800 Broadway, Paterson, NJ 07514
5. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
6. Respondent was and is the "owner" and/or "operator" of "USTs" or "UST systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and 40 C.F.R. §280.12, that are located at seven (7) facilities in the City of Paterson, New Jersey.
7. Pursuant to 40 C.F.R. §280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint.

8. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated regulations setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These regulations include requirements related to release detection, record-keeping, upgrade requirements, and temporary and permanent closure.
9. Forty C.F.R. § 280.12 defines an “underground storage tank or UST” as any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
10. Forty C.F.R. § 280.12 defines an “UST system or Tank system” as an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
11. Forty C.F.R. § 280.12 defines an “existing tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.
12. Forty C.F.R. § 280.12 defines a “new tank system” as a tank system used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
13. Forty C.F.R. § 280.12 defines “regulated substance” as: (a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

The term “regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

14. Forty C.F.R. § 280.12 defines “petroleum UST system” as an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
15. Pursuant to 40 C.F.R. §280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (“RCRA”).
16. Pursuant to 40 C.F.R. Section 280.34(b)(4) owners and operators of UST systems must maintain records of recent compliance with release detection requirements (40 C.F.R. Section 280.45).
17. Pursuant to 40 C.F.R. Section 280.34(c) owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the

implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency.

18. Pursuant to 40 C.F.R. §280.45(a), owners and operators of UST systems must maintain, for 5 years from the date of installation, or another reasonable period of time determined by EPA, records of all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer.
19. Pursuant to 40 C.F.R. §280.45(b), owners and operators of UST systems must maintain, for at least a year, the results of any sampling, testing or release detection monitoring.
20. Pursuant to 40 C.F.R. Section 280.40(a)(2), owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
21. RCRA § 9005, 42 U.S.C. § 6991d provides, in relevant part, that “any owner or operator of an underground storage tank (or any tank subject to study under Section 9009 that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency furnish information relating to such tanks.”
22. On or about July 27, 2011 and July 28, 2011, Mr. Jeffrey K. Blair of PARS Environmental, Inc., a contractor to EPA, conducted UST inspections of Paterson’s federally regulated UST systems.
23. The USTs located at the seven facilities inspected by Mr. Blair each had an automatic tank gauge for monthly release detection of the tanks. At the time of the inspection(s), no release detection (RD) record was provided either on-site or at an alternate location indicating that monthly monitoring of the tanks was being conducted at the Hillcrest, Northside and Southside Firehouses as further specified in Paragraph 26, below.
24. EPA, pursuant to RCRA § 9005 and 40 C.F.R. Section 280.34, sent an Information Request Letter (IRL), dated December 9, 2011, (hereinafter “First IRL”) to Respondent in order to determine its compliance with the Act and 40 C.F.R. Part 280. The First IRL required the submittal of information on all UST systems owned and/or operated by Paterson.
25. On or about February 17, 2012, Respondent submitted a response to the First IRL.
26. The Respondent indicated that the following facilities had federally regulated “new tank system(s)” as defined in Paragraph 12 above:

State ID: 023456, Hillcrest Firehouse, 221 Union Ave., Paterson, NJ 07514, one 550-gallon, double walled (DW) fiberglass reinforced plastic (FRP), installed in 2000, stores diesel fuel, piping is DW Geoflex, with European Suction

State ID: 023459, Madison Ave Firehouse, 850 Madison Ave, Paterson, NJ 07501, one 3000-gallon, DWFRP, installed in 2000, stores diesel fuel, piping is DWFRP and one 1000-gallon DWFRP, installed in 2000, stores gasoline, piping is DWFRP, with American Suction

State ID: 023460, Northside Firehouse, 48 Temple Street, Paterson, NJ 07505, one 1000-gallon DWFRP, installed in 2000, stores diesel fuel, piping is Geoflex, with American Suction

State ID: 023461, Riverside Firehouse, 236 Lafayette St., Paterson, NJ 07505, one 600-gallon, DWFRP, installed in 1999, stores diesel fuel, piping is DWFRP with American Suction

State ID: 023462, Southside Firehouse, 124 Getty Ave., Paterson, NJ 07503, one 1000-gallon DWFRP, installed in 1999, stores diesel fuel, piping is Geoflex, with American Suction

State ID: 031077, Police Motor Pool, 266 Ellison St., Paterson, NJ 07505, one 5000- gallon, DW fiberglass coated steel, installed in 2000, stores gasoline, piping is DWFRP, with American Suction

State ID: 033922, Eastside Public Works Garage, 800 Broadway, Paterson, NJ 07505, one 4000-gallon, Elutron construction, installed in 2000, stores gasoline, piping is Geoflex, with American Suction, one 4000-gallon, Elutron construction, installed in 2000, stores diesel fuel, piping is Geoflex, with American Suction and one 3000-gallon, Elutron construction, installed in 2000, stores diesel fuel, with Enviroflex piping and American Suction

27. After a review of the response to the First IRL, it was determined that the UST systems at three facilities, Northside Firehouse, Southside Firehouse and Hillcrest Firehouse, were not in compliance with 40 C.F.R. §280.45(b).
28. On May 26, 2012, three Proposed Expedited Enforcement Compliance Orders and Settlement Agreements, or "Field Citations" (FC), were sent to Paterson, for non-compliance with 40 C.F.R. §280.45(b), with a penalty of \$70 per Facility for the USTs located at the Northside Firehouse (FC#868EC), Southside Firehouse (FC#867EC) and Hillcrest Firehouse (FC#869EC), respectively.
29. Paterson received the Field Citations on May 29, 2012.
30. Field Citations are tentative offers on the part of EPA to settle a matter with a reduced penalty, subject to certain conditions that must be satisfied. The offer to settle is valid for 30 days after receipt, unless an extension is granted by EPA. The conditions that must be met include the following: violations must be corrected, documentation of compliance must be provided to EPA, and the penalty associated with the violations must be paid within this time.
31. Patterson neither contacted EPA, requested an extension, provided documentation of compliance, nor paid the penalty within 30 days of its receipt of the Field Citation.
32. On or about, August 1, 2012, Mr. Edward Guster of the EPA telephoned Mr. Christopher Coke, Director, City of Patterson, Department of Public Works, to discuss the failure of Paterson to provide a response to the Field Citations.
33. On or about August 6, 2012, Mr. Coke sent an e-mail to Mr. Guster indicating that Paterson was having trouble getting the information from the three firehouses listed in the Field Citations.
34. On or about, August 28, 2012, Mr. Guster contacted Mr. Coke to discuss the status of the response to the Field Citations. Mr. Coke indicated that Paterson would respond by August 29,

2012.

35. On September 6, 2012, Paterson sent a purchase order for payment of the three issued Field Citations, in the amount of \$210 to EPA Region 2. Paterson did not submit any compliance information demonstrating that the UST violations had been corrected.
36. Between September 9, 2012 and October 26, 2012, Mr. Guster and Mr. Coke exchanged e-mails regarding the purchase order and Paterson's failure to submit information demonstrating that the USTs were in compliance.
37. On or about November 20, 2012, Paterson sent a check in the amount of \$210 to Mr. Guster, for payment of the Field Citations listed in Paragraph 28 above. No compliance information was submitted. The check expired without being deposited by EPA.
38. On or about February 19, 2013, Mr. Guster spoke to Mr. Fred Margron of the City of Paterson. Mr. Margron indicated that he would send the compliance information after the City's UST contractor, Fairfield Maintenance, had visited the firehouses.
39. On March 20, 2013, Mr. Guster received an e-mail from Mr. Margron with the compliance information for the Hillcrest Firehouse only. The information provided was incomplete with regard to Hillcrest Firehouse, and the City's contractor, Fairfield Maintenance, reported problems with the alarms for the sump at Hillcrest Firehouse. No information was submitted for either Northside Firehouse or Southside Firehouse.
40. On May 29, 2013, pursuant to Section 9005 of RCRA, 42 U.S.C. Section 6991d, and 40 C.F.R. Section 280.34, EPA sent a second IRL (hereinafter "the Second IRL") to Respondent requiring submittal of clarifying and additional information to complete EPA's assessment of Respondent's UST compliance status. This letter was received by Respondent on June 1, 2013.
41. The Second IRL required an answer within thirty (30) calendar days of receipt of the letter, or July 1, 2013, and specified that a request for additional time to respond needed to be made within ten (10) days of receipt of the letter.
42. On or about July 11, 2013, EPA sent Paterson a "2nd Notice – Response Overdue" letter requesting that it respond to the Second IRL.
43. EPA did not receive a request for an extension of time by which the Respondent was to respond to the Second IRL.
44. Between July 11, 2013 and October 31, 2013, EPA e-mailed and called Paterson officials to obtain the compliance information for the non-compliant USTs and encouraged them to submit a response to the Second IRL.
45. Respondent did not submit a response to EPA with the information required by the Second IRL.
46. Respondent's failure to respond to the Second IRL, from July 1, 2013 to the date of issuance of this Complaint, constitutes a violation of 40 C.F.R. Section 280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d.

47. Section 9005 of the Act and 40 C.F.R. Section 280.34 constitute requirements of Subtitle I of RCRA for purposes of Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

PROPOSED CIVIL PENALTY

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996); on February 13, 2004, see 69 Fed. Reg. 7121 (2004); and on December 11, 2008, see 73 Fed. Reg. 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring after March 15, 2004 and before January 13, 2009 is \$11,000. The maximum civil penalty for violations occurring on January 13, 2009 and afterwards was increased to \$16,000.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements,” dated November 1990 (“UST guidance”). The penalty amounts in this UST guidance have been amended by EPA to account for inflation in various EPA documents (which are available upon request). This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, a civil penalty of **\$12,759.00** for Respondent’s failure to respond to the Second IRL issued under RCR A § 9005 and 40 C.F.R. § 280.34 for UST Systems Owned and/or Operated by Respondent.

The penalty calculation is appended to this Complaint.

Complainant reserves its right to seek a higher civil penalty if Respondent continues to fail to provide a complete response to the Second IRL and to seek civil penalties for each violation of requirements codified at 40 C.F.R. Part 280 at each tank (including underground pipes connected thereto) for each day of violation.

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall, within thirty (30) days after the effective date of this Order, provide a complete and accurate response to the Second IRL.

2. The response shall be accompanied by the following certification:

I certify that the information contained in this written response and any accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Respondent shall submit its response to:

**Dennis J. McChesney, PhD, MBA Team Leader
UST Team
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
290 Broadway, 20th Floor
New York, NY 10007**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated there under (see the Civil Monetary Inflation Rule, 73 Fed. Reg. 75340 (December 11, 2008), codified at 40 C.F.R. Part 19), a violator failing to comply with the requirements of a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 9006(b) and 40 C.F.R. Part 22.

The rules of procedure governing this civil administrative litigation have been set forth in 40 C.F.R. Part 22, entitled, “CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS” (hereinafter “Consolidated Rules”). A copy of these rules accompanies this “Complaint, Compliance

Order, and Notice of Opportunity for Hearing” (hereinafter the “Complaint”).

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the compliance order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer 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**

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

Respondent shall also then serve one copy of the Answer 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 to affirmatively raise in the Answer 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 in its Answer, 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 30 days after such Order is served, such 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 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 the 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. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

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

If filing by the United States Postal Service:

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

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

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

E. Exhaustion of Administrative Remedies

Where Respondent 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 its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (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 effected by mail, "5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive 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 this 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:

Carl R. Howard
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637- 3216
(212) 637-3199 (fax)

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.

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2014-7501, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Honorable Jeffery Jones
Mayor
City of Paterson
Paterson City Hall
155 Market St.
Paterson, NJ 07505-1414

And by regular mail to:

Christopher Coke, Director
City of Paterson
Department of Public Works
111 Broadway 4th Floor
Paterson, NJ 07505

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: JAN - 8 2013
New York, New York

Mary C. Cogswell